



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

916 CRIMINAL APPLICATION NO. 4452 OF 2023
IN
CRIMINAL APPEAL NO. 320 OF 2023

Raju Kashinath Umap

....Applicant

Versus

The State Of Maharashtra

.....Respondent

.....

Mr. Nilesh S. Ghanekar - Advocate for Applicant

Mrs. Uma S. Bhosale - APP for Respondents

Mr. S. P. Koli – Advocate (appointed) for respondent no.2

.....

CORAM : R. G. AVACHAT
AND
NEERAJ P. DHOTE, J.

DATED : 24TH JANUARY, 2024

PER COURT : -

1. This is an application filed by the applicant/appellant under Section 389 of the Code of Criminal Procedure for suspension of substantive sentence awarded by the learned Additional Sessions Judge, Aurangabad, vide Judgment and Order dated 02.03.2023 in Sessions Case No. 363 of 2019, thereby convicting him for the offence punishable under Section 302 of the Indian Penal Code and sentencing to suffer imprisonment for life under Section 302 of the Indian Penal Code and pay fine of Rs. 20,000/-, in default of which to suffer further rigorous imprisonment for three months.

2. Heard learned advocate for the applicant/appellant and the learned APP for the State.

3. It is submitted by the learned advocate for respondent no.2 that since the offence is grave and the punishment is that of life imprisonment, sentence may not be suspended and the Court should be slow in granting suspension.

4. It is the case of the prosecution that the applicant/appellant along with the acquitted co-accused came to the house of the deceased on 14.09.2018 in the morning at 07:00 a.m. and assaulted the deceased with iron rod. Due to the said assault, the deceased sustained injury to his head and fell unconscious. The informant, who is the wife of the deceased, shifted the injured to the hospital in the evening. The injured succumbed to the injuries after four days and the matter was reported to the police after two days from the incident.

5. The evidence of PW9 – informant, who is the wife of the deceased, show that due to the assault on her husband, he fell unconscious at 07:00 a.m. and she took her husband to the hospital at 07:35 p.m. Further, it is seen that the history given to the Doctor by the informant was of assault by unknown person, whereas the offence is registered against the person known to the Informant. The evidence of Investigating Officer, who examined the PW9 informant, show that he was confronted with the MLC and he deposed that as per the MLC, the injured was assaulted on 14.09.2018 at 19:00 hrs. i.e. 07:00 p.m. Therefore, there is glaring variance in the deposition of PW1-informant and the documents. Though there are several injuries, most of them are simple and the injured died due to head injury.

6. There cannot be dispute in respect of the provisions under Section 389 of the Code of Criminal Procedure. Considering the glaring variance in the testimony of PW1 and the medical papers, *prima facie* it

can be said that the case is made out for suspension of sentence. The appellant is behind the bars since last five years and five months. Presently, this Court is hearing the appeals which are pending prior to this Appeal. There is no possibility that the appeal would be finally heard in the near future.

7. In view of the above, the application is allowed. The applicant be released on bail on his executing PR bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand). The applicant shall not leave his district without informing the concerned Police Station. Bail before the trial Court.

8. The provisional fees of the learned advocate appointed to represent respondent no. 2 is quantified at Rs.7,000/- (Rupees Seven Thousand), which shall be paid by the High Court Legal Services Sub-Committee, Aurangabad.

[NEERAJ P. DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE