

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

907 CRIMINAL APPLICATION NO.2746 OF 2024
IN
CRIMINAL APPEAL NO.609 OF 2024

1. Hanmant Manik Gaikwad
2. Ram Hanmant Gaikwad
3. Gorakh Hanmant Gaikwad
4. Arvind Namdeo Gaikwad
5. Sandesh @ Shashikant Arvind Gaikwad
6. Malhari Rangrao Gaikwad
7. Digambar Parmeshwar Gaikwad
8. Mahesh @ Shambo Malhari Gaikwad
9. Shyam Narayan Gaikwad ..Applicants

Versus

The State of Maharashtra ..Respondent

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WITH

CRIMINAL APPLICATION NO. 3705 OF 2024
IN
CRIMINAL APPEAL NO.779 OF 2024

Vijay @ Bapu s/o. Narayan Dhale .. Applicant

Versus

The State of Maharashtra .. Respondent

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Shri. Satej S. Jadhav, Advocate for Applicants in Criml. Appln. No.2746 of 2024

Shri. Nilesh S. Ghanekar, Advocate for the Applicant in Criml. Appln. No.3705 of 2024

Shri. Nitin K. Chaudhari, Advocate for the Informant / Assist to P.P.

Shri. S. D. Ghayal, Addl. P. P. for the Respondent / State in both the Applications.

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**CORAM : R. G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

Dated : OCTOBER 17, 2024

PER COURT :-

. These are the Applications for suspension of the sentence imposed
by the learned Additional Sessions Judge, Nilanga, District – Latur

vide Judgment and Order dated 28.06.2024 in Sessions Case No.16 of 2021 convicting the Applicants as under :

“ORDER

All the Accused namely:

- (1) Vijay alias Bapu Narayan Dhale, Age 21 years;
- (2) Hanmant Manik Gaikwad, Age 50 years,
- (3) Ram Hanmant Gaikwad, Age 26 years,
- (4) Gorakh Hanmant Gaikwad, Age 28 years,
- (5) Arvind Namdeo Gaikwad, Age 53 years,
- (6) Sandesh alias Shashikant Arvind Gaikwad, Age 23 years,
- (7) Malhari Rangrao Gaikwad, Age 45 years,
- (8) Digamber Parmeshwar Gaikwad, Age 23 years,
- (9) Mahesh alias Shambo Malhari Gaikwad, Age 23 years;

and

(10) Shyam Narayan Gaikwad, Age 27 years, have been convicted for the offence punishable under Section 143, 147, 148, sections 302, 323, 324, 504 read with section 149 of the Indian Penal Code, 1860, as per Section 235 of the Code of Criminal Procedure, 1973.

II) Accused Nos.1 to 10 are sentenced to suffer Imprisonment for life, and also to pay a fine of Rs.1,000/each, in default to suffer Rigorous Imprisonment for 03 (three) months each, for the offence punishable under section 302 read with section 149 of the Indian Penal Code.

III) Accused Nos.1 to 10 are sentenced to Rigorous Imprisonment for 02 (two) months each, for the offence punishable under section 143 of the Indian Penal Code.

IV) Accused Nos.1 to 10 are sentenced to Rigorous Imprisonment for 02 (two) months each, for the offence punishable under section 147 of the Indian Penal Code.

V) Accused Nos.1 to 10 are sentenced to Rigorous Imprisonment for 04 (four) months each, and also to pay a fine of Rs.300/- each, in default to suffer Rigorous Imprisonment for 01 (one) month for the offence punishable under section 148 of the Indian Penal Code.

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Clerical mistake (two) is corrected by replacing word, (four).

Sd/-

ADJ, Nilanga dtd.18.07.2024.

VI) Accused Nos.1 to 10 are sentenced to Rigorous Imprisonment for 02 (two) months each, for the offence punishable under section 323 read with section 149 of the Indian Penal Code.

VII) Accused Nos.1 to 10 are sentenced to Rigorous Imprisonment for 04 (four) months each, for the offence punishable under section 324 read with section 149 of the Indian Penal Code.

VIII) Accused Nos.1 to 10 are sentenced to Rigorous Imprisonment for 04 (four) months each, for the offence punishable under section 504 read with section 149 of the Indian Penal Code.

IX) Substantive sentences passed against all accused shall run concurrently.

X) The period of detention undergone by the accused during the period of investigation, inquiry or trial of the present crime shall be set off, as prescribed under section 428 of the Code of Criminal Procedure, against the term of Imprisonment imposed on the respective accused.

XI) All the accused are acquitted of the offences punishable under sections 506 read with section 149 of the IPC, and under section 135 of the Maharashtra Police Act.

XII) Among seized muddemal properties: the sticks, clothes, pieces of bangles and footwear be destroyed by observing full care and caution, according to law, after one year, unless in the meantime an appeal has been preferred.

XIII) The memory cards produced on record be returned to Police Station Nilanga, after a year from today, unless in the meantime an appeal has been preferred.

XIV) Copy of the Judgment and Order be provided to the accused free of cost, forthwith.

XV) Issue conviction warrants to Latur District Prison Latur, accordingly.”

2. The case of the Prosecution is that, the Accused / Convicts No.1, 3, 5 & 10 namely Bapu alias Vijay Dhale, Ram Gaikwad, Arvind Gaikwad and Shyam Gaikwad, respectively used to hurl abusive language towards Vikram, who was the brother of the First Informant - Sunita Randive. Deceased Jagganath was also the brother of the Informant. The aforesaid Accused used to always sit on the bridge, which was near the house of the Informant and used to shout loudly and keep the cell phone volume on higher mode. The Informant's brother

Vikram asked them not to sit at that place. The said four Accused rushed towards him and abused. Thereafter, on 19.02.2021 around 04:00 p.m. all the Convicts came in front of the house of the Informant. Deceased Jagganath had also come to the village from Pune 2 (two) to 3 (three) days prior to the date of incident. The Convicts were armed with sticks and stones. They assaulted the Deceased and the witnesses. The incident was reported to the Police and the crime was registered. On completion of the investigation, the Convicts came to be Charge-sheeted and after the Trial, they came to be convicted.

3. It is submitted by the learned Advocate for the Convict No.1 that the eye witnesses attributed the role of assault by stick on the back side of the head of the Deceased. He submits that the version of the eye witnesses do not find corroboration from the Post-Mortem Report as no injury is shown on the back side of the head of the Deceased. He submits that, if we accept the evidence of the eye witnesses as it is, there is every possibility that assault by the other Convicts may have caused the fatal blow. He further submits that the Convict No.1 is behind bars for more than 3 ½ years. He, therefore, submits that, the Application be allowed.

4. It is submitted by the learned Advocate for the Convicts No.2 to 10 that, no role of assault on the Deceased is attributed by the eye witnesses to the Convicts No.2 to 10, except slap by the Convict -

Ram by holding Deceased's collar. It is submitted that the role attributed to the Convicts No.2 to 10 by the eye witnesses is assault to the witnesses who suffered simple injuries. He further submits that the evidence on record particularly of all the witnesses nowhere shows that the Convicts No.2 to 10 were having common object to commit Murder of any of the members of the family of the Informant. He submits that the Convicts No.2 to 10 were on bail during Trial. He, therefore, submits that the Application be allowed.

5. The learned Addl. P. P. and the learned Advocate for the Informant / Assisting the Addl. P. P. opposed the Applications and submits that, the case is based on the testimony of 3 (three) eye witnesses, who are consistent in respect of the incident. He submits that, medical evidence shows the injuries on the Deceased and also on the witnesses. He submits that the Convicts were armed with sticks and came in front of the house of the Deceased and this shows that they had the common object to kill the Deceased. He submits that the Medical evidence shows that one blow proved fatal, which indicates that it was delivered with full force. He submits that the stick recovered at the instance of the Convict No.1 was found to be broken and it shows that the blow was dealt with full force. He submits that the case is not made out for suspension of sentence and bail; hence, the Applications be rejected.

6. Heard both the sides and perused the testimony of the eye witnesses. There is no dispute that all these 3 (Three) eye witnesses, deposed in a more or less similar manner in respect of the incident. If we go by the testimony of the eye witnesses, the role attributed to Convict - Ram is slap to the Deceased. The role attributed to the Convict No.1 is blow on the back side of the head of the Deceased with the stick and thereafter assault with the stone on the neck. If we see the Post-mortem Report, the following injuries are noticed on the Deceased.

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| <p>“17. Surface wounds and injuries – Their nature, position, dimensions (measured) and directions to be accurately stated-their probable age and causes to be noted</p> | <p>1) Contusion on left fronto-parietal region 4x3 cm with depressed fracture of left parietal bone.
 2) Abrasion on left back 4x1 cm in dimensions
 3) Abrasion over right wrist 4x2 cm
 4) Abrasion over right knee joint 3x2 cm”</p> |
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7. Medical Evidence does not corroborate the testimony of the eye witnesses as there is no injury on back side of the head of the Deceased. The role attributed to the Convicts No.2 to 10 is assault by sticks and stones to the witnesses. Admittedly, the witnesses suffered simple injuries. In view of the above medical evidence, it is debatable whether the blow on the head of the deceased was caused by the Convict No.1. We find *prima facie* merit in the contention of the learned Advocate for the Convict No.1 that, since the evidence of the eye witnesses is not corroborated by the Post-mortem Report, there is every possibility that the fatal blow may have been caused by the other Convicts. The Convicts No.2 to 10 were on bail during the Trial and

Convict No.1 is behind the bars for the period of more than 3 ½ years. The Appeal is of the year 2024 and there is no possibility that it would be heard finally in the near future and hence, we proceed to pass the following order.

ORDER

- (i) The Criminal Applications are allowed.
- (ii) The substantive sentence imposed by the learned Additional Sessions Judge, Nilanga in Sessions Case No.16 of 2021 by the Judgment and Order dated 28.06.2024 on the Applicants / Convicts namely Vijay @ Bapu s/o. Narayan Dhale, Hanmant Manik Gaikwad, Ram Hanmant Gaikwad, Gorakh Hanmant Gaikwad, Arvind Namdeo Gaikwad, Sandesh @ Shashikant Arvind Gaikwad, Malhari Rangrao Gaikwad, Digambar Parmeshwar Gaikwad, Mahesh @ Shambo Malhari Gaikwad and Shyam Narayan Gaikwad is suspended during the pendency of the present Appeal.
- (iii) The Applicants / Convicts namely Vijay @ Bapu s/o. Narayan Dhale, Hanmant Manik Gaikwad, Ram Hanmant Gaikwad, Gorakh Hanmant Gaikwad, Arvind Namdeo Gaikwad, Sandesh @ Shashikant Arvind Gaikwad, Malhari Rangrao Gaikwad, Digambar Parmeshwar Gaikwad, Mahesh @ Shambo Malhari Gaikwad and Shyam Narayan Gaikwad be released on bail on furnishing PR. Bond of Rs.15000/-

[Rupees Fifteen Thousand Only] each, with one surety each in the like amount.

(iv) Bail before the Trial Court.

(v) The Criminal Applications stand disposed of accordingly.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)

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