



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

CRIMINAL APPLICATION NO.2811 OF 2024
IN
CRIMINAL APPEAL NO.628 OF 2024

Rohan Rajendra Wadagale

.. Applicant

Versus

The State of Maharashtra

.. Respondent

.....

Shri. Gajanan Kadam, Advocate for the Applicant

Smt. Kalpalata Patil Bharaswadkar, Addl. P. P. for the Respondent / State.

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

Dated : SEPTEMBER 26, 2024

PER COURT :-

. This is the Application for suspension of substantive sentence imposed upon the Applicant by learned Additional Sessions Judge, Ahmednagar in Sessions Case No.112 of 2020 by Judgment and Order dated 24.06.2024 convicting him for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer Imprisonment for Life and pay fine of Rs.10,000/- (Rs. Ten Thousand) only, in default to suffer Simple Imprisonment for 06 (Six) Months.

2. In brief, the case of the Prosecution is that, acquitted Accused No.2 - Aniket Rajendra Wadagale with PW4 – Ankit Avinash Mankar and PW5 - Dinesh Dipak Shinde were having liquor on 31.05.2020. Quarrel had taken place between them as liquor fell on the

mobile of Accused No.2 – Aniket Rajendra Wadagale. The quarrel was pacified and they all dispersed. In the evening on the same day, PW5 - Dinesh Dipak Shinde called PW4 – Ankit Avinash Mankar over phone and told that Accused No.2 – Aniket Wadagle called him (PW5 - Dinesh Shinde) near Gajraj Factory. Accordingly, PW4 - Ankit Avinash Mankar and PW5 - Dinesh Dipak Shinde and all the accused persons reached the said spot. Again quarrel took place, in the backdrop of the afternoon incident. In the quarrel, the Applicant inflicted blows on the deceased with Scissor, which proved fatal. The matter was reported to the police and crime came to be registered against in all four (4) Accused persons including the Applicant, who are the family members. By the impugned Judgment and Order, the learned Trial Court convicted the Applicant / Accused No.1 - Rohan Wadagale and acquitted other Accused persons.

3. It is submitted by learned Advocate for the Applicant that, the eye witnesses and the Panch witnesses for seizure of blood stained clothes of the Applicant have not supported the case of Prosecution. The only evidence against the Applicant is seizure of the broken Scissor pursuant to his disclosure statement. The Applicant was 19 years of age at the time of incident and he was pursuing education. The Applicant is behind the bars for more than 04 (four) years.

The quarrel had taken place all of a sudden and in any case there was no intention on the part of the Applicant and so, the offence gets scaled down. He submits that the Application may be allowed.

4. The Application is opposed by the learned Addl. P. P. She submits that though material witnesses have not supported, there is discovery of weapon used in the crime, blood stained clothes and blood stained shirt from the Applicant. She submits that the blood of deceased was of Group 'A' which was found on the shirt of the Applicant and the Scissor. She submits that this evidence is more than sufficient and the learned Trial Court has rightly convicted the Applicant.

5. Admittedly, the eye witnesses have not supported the case of the Prosecution. The Panch Witnesses of seizure of blood stained Shirt from the Applicant have also not supported the case of the Prosecution. The evidence of PW8 – Manohar Tulshiram Rokade, the Panch Witness of seizure show that when he went to the police station and made enquiry for the reason of calling him, he was told that they have to go to 'Mahal' for seizure of the weapon. This gives blow to the evidence of discovery and seizure of weapon at the instance of the Applicant. The other evidence against the Applicant is in the nature of C.A. Reports. It is debatable whether CA Reports can form the sole basis to maintain the conviction. The Applicant was young by age at the time

of incident. He is behind the bars for more than four (4) years. The Appeal is not likely to be heard in the near future. Thus, in our view, it would be appropriate to Suspend the substantive sentence of the Applicant during the pendency of the present Appeal.

6. Hence, the following order:

ORDER

- (i) The Criminal Application is allowed.
 - (ii) The substantive sentence imposed by learned Additional Sessions Judge, Ahmednagar in Sessions Case No.112 of 2020 by Judgment and Order dated 24.06.2024 on the Applicant namely – Rohan Rajendra Wadagale, is suspended during the pendency of the present Appeal.
 - (iii) The Applicant namely Rohan Rajendra Wadagale be released on bail on furnishing PR. Bond of Rs.15000/- [Rupees Fifteen Thousand Only] with one surety in the like amount.
 - (iv) Bail before the Trial Court.
7. Criminal Application stands disposed of accordingly.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)