



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO. 146/2024

IN

CRIMINAL APPEAL NO.78/2024

Vijay S/o. Babanrao Mohad and Anr.

Vs.

State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. F. N. Haidari, Advocate for applicants/appellant Nos.2 & 3.
Mr. S. V. Narale and Mr. S. B. Bissa, A.P.P. for Non-applicant/State.

CORAM : VINAY JOSHI AND MRS.VRUSHALI V. JOSHI, JJ.
DATED : 09/05/2024.

. This is an application seeking for suspension of execution of sentence of accused No.2 Vijay Babanrao Mohod and accused No.3 Raju Babanrao Mohod. Both of them along with co-accused No.1 Gajanan Babanrao Mohod have been convicted in Sessions Case No.383/2019 vide judgment and order dated 27.10.2023 for the offence punishable under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment of life.

2. It is the prosecution case that all three accused have committed murder of one Saurabh Raju Gosavi on 08.07.2019 at about 7.00 p.m. by assaulting him with bricks, axe as well as by fist blows and kicks.

3. Learned Counsel for the applicants would submit that the evidence against the applicants is doubtful and thus, in absence of specific evidence to the requisite standard of proof, they have been convicted. On the other hand, learned A.P.P. resisted this application by pointing

certain circumstance which runs against the applicants.

4. With the assistance of both sides, we have examined the entire oral as well as documentary evidence. Though the prosecution has examined in all eight witnesses, the prosecution heavily relied on the evidence of only eye witness i.e. PW-6 Nitin. Besides that the prosecution lays hand to the evidence of CCTV footage and test identification parade.

5. PW-6 Nitin stated that at the relevant time, he has seen three unknown persons assaulting the deceased by means of brick. Particularly, he has stated that one of the assailants who has wore red colour towel has assaulted repeatedly by means of brick. Thus, it is a case of assault by unknown persons and, therefore, prior test identification parade assumed significance.

6. We have gone through the evidence of prior test identification parade, which is in the shape of panchanama. Admittedly, neither panch of test identification parade nor Executive Magistrate has been examined. The panchanama barely says that the witness has identified three persons without specifying their role. It emerges from the evidence of the eye witness that the major part of the assault was by one of the assailant, who has wore red colour napkin. However, the witness has not identified the said assailant by describing that he was the person, who repeatedly assaulted by brick.

7. The prosecution heavily relied on the seizure of clothes from the applicants on 11.07.2019. Our attention has been invited to the seizure panchanama as well as the

related evidence of panch witness PW-5. It is argued that particularly red colour scarf was seized from accused No.2 Vijay and thus, he is the person, who allegedly dealt repeated blows by brick. It requires consideration whether despite arrest on 09.07.2019 why there was no seizure till next two days. It is not the prosecution case that the seizure under Section 27 of the Indian Evidence Act, but it was the seizure from the person of the accused. Unless seizure is established, they cannot be connected with the incident.

8. Though PW-6 eye witness has seen the CCTV footage, he never pointed before the Court that who is the main assailant amongst the accused. Thus, it reveals that the conviction is merely based on sole eye witness that too stating that the assault by unknown person. Needless to say that when the conviction is based on the sole testimony, it has to inspire full confidence of the Court. The applicants have made out an arguable case, hence we are inclined to exercise our discretionary power in suspending the execution of sentence.

9. In view of the above, the application is allowed.

10. The execution of substantive sentence passed against accused No. 2 Vijay Babanrao Mohod and accused No.3 Raju Babanrao Mohod stands suspended till the final disposal of the appeal.

11. In the meantime, both the applicants shall furnish PR bond of Rs.50,000/- each with surety of like amount.

12. The Trial Court shall issue release warrant after ensuring deposit of entire fine amount.

13. The application stands disposed of in the above terms.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)