



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

CRIMINAL APPLICATION (BA) NO. 490 OF 2024

Shubham s/o Fagulal Uikey Vs State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Samyak Chahande, counsel for applicant.

Mr. U.R. Phasate, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 02/09/2024.

1. The applicant came to be arrested on 14/07/2023 in connection with Crime No. 418/2023 registered with Police Station Khaperkheda, District Nagpur for the offence punishable under Section 302 of the Indian Penal Code, 1860.

2. The crime is registered on the basis of the report lodged by Mohammad Noushad Mohammad Shahid, on an allegation that on 13/07/2023 at Bhanegaon Bazar, he was present as he has to sell some articles in the said market. On that day, there was quarrel between the present applicant and the deceased. It is further alleged that, subsequently, the deceased was assaulted by the present applicant by a wooden log, and therefore, he sustained the injuries and was succumbed to death. On the basis of said report, police have registered the crime against the present applicant. During the investigation, the investigation officer has drawn the spot panchanama seized the blood stains clothes of the present applicant. The statements of the relevant witnesses are also recorded, and post mortem report was also collected. As per

the post mortem report, eleven injuries are found on the person of the deceased, and death of the deceased is caused due to the head injury.

3. Learned counsel for the applicant submitted that, from the charge-sheet, it reveals that as the deceased was continuously abusing the present applicant, the present applicant got annoyed and picked up the weapon. Thus, in a sudden fight and sudden quarrel, the injuries are caused to the deceased, there was no intention to cause his death. In view of that and considering the charge-sheet is already filed and the investigation is already completed, the applicant be released on bail.

4. Learned APP strongly opposed the said application and submitted that, as far as the sudden fight, sudden quarrel, and sudden provocation are concerned, there is absolutely no material to substantiate the said fact. In fact, it reveals that when an eyewitness has witnessed the incident, he has witnessed that the present applicant was assaulting the deceased by a wooden log on the vital part of the body. Repeated blows are given, which resulted into the death of the deceased.

He submitted that it is the story of the accused, who has put-forth that the deceased abused him and therefore he has assaulted. Thus, at this stage, there is no material to ascertain that, out of the grave and sudden provocation, there was a sudden quarrel, and therefore, the present applicant has assaulted him and caused the death of the deceased. He

submitted that, considering the entire case based on sole eye-witness, and 11 injuries were found on the person of the deceased. The intention of the applicant can be gathered from that, and therefore, the application deserves to be rejected.

5. After hearing learned counsel for the applicant and learned APP for the State, perused the investigation papers, from which it reveals that the entire case is based on the sole eye witness i.e. Ankit Punjaram Dongre. On perusal of the statement of the said eye-witness, it reveals that he has witnessed that applicant was assaulting the deceased therefore, he intervened in the quarrel, and after intervention, he asked the applicant who is assaulting, and on that, the applicant has put the story that the deceased was abusing him from the last two to three days, and therefore, he got annoyed and assaulted the deceased. As far as the story narrated by the present applicant to the eye witnesses is concerned, there is no witness came forward to show that there was a previous quarrel between the present applicant and the deceased, and the deceased was abusing him continuously from two to three days.

6. Thus, as far as the contention of the learned counsel for the applicant, there was grave and sudden provocation is not substantiated by any material. The injuries found on the person of the deceased are 11 in number. As per the opinion of the doctor, the death of the deceased is caused by the head injury. Thus, the intention can be gathered from the circumstances that the applicant has chosen the vital part of

the body to give a blow and caused the death of the deceased. Though, investigation is completed and considering the gravity of the offence, at this stage, the application deserves to be rejected. Accordingly, I proceed to pass the following order;

ORDER

The criminal application is **rejected** and disposed of.

[URMILA JOSHI-PHALKE, J.]