



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

CRIMINAL APPLICATION (APPA) NO.800 OF 2023

IN

CRIMINAL APPEAL NO.495 OF 2023

SONAL VITTHAL MANKAR

VS

STATE OF MAH. THR. PSO, PIMPALGAON RAJA PS, KHAMGAON DIST.
BULDHANA

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

Court's or Judge's Order

Mr. Rushikesh Ladekar Advocate for the applicant/s
Mr. Phasate, A.P.P. for the non-applicant/State

CORAM : SMT. VIBHA KANKANWADI
& MRS. VRUSHALI V. JOSHI, JJ.
DATE : 16.07.2024.

1. The present application has been filed by the original accused No.1, who faced sessions trial before the learned Additional Sessions Judge, Khamgaon, District : Buldhana and has been convicted for the offence punishable under Section 302 read with Section 34 of the IPC. He has been sentenced to suffer him for life with fine of Rs.10,000/- in default to undergone simple imprisonment for the period of three months. In this application, the applicant is praying for suspension of sentence.

2. Heard the learned Advocate for the applicant and the learned APP for the State.

3. The learned Advocate for the applicant brings to our notice that the accused Nos.2 and 3 who have also been convicted in

the same sessions trial, preferred Criminal Application Nos.754 of 2023 and 742 of 2023 for suspension of sentence and this Court vide order dated 31.10.2023 has suspended their sentence.

4. By taking us through the record, the learned Advocate for the applicant submits that the learned Trial Judge has not appreciated the evidence properly. It is submitted that the learned Trial Judge failed to consider that the prosecution had relied upon the testimony of the alleged eye witnesses, however, they cannot be said as true eye witnesses, as their testimony does not specifically say who had given fatal blow.

5. Further as per the medical evidence, it is contended that injury to the deceased could have been by hard and blunt object, however, the eye witnesses i.e. PW-1 and PW-2, have not stated that the accused persons were carrying hard and blunt object with them. As per the prosecution, one handkerchief (Rumal) has been seized at the instance of the present applicant, which then the prosecution intended to connect with the C.A. Report. It cannot be the said to be a hard and blunt object which could have been used for causing murder. The prosecution has also relied on the extra judicial confession. In fact, the learned Trial Judge ought to have seen that it is a weak kind of evidence which cannot be relied upon for convicting the accused. There are contradictions and omissions in the evidence of the prosecution witnesses which have not been considered. Lapses in the investigation, non-examination of the vital witnesses and absence of motive were also the points which were raised on behalf of the applicant, which have not been addressed and therefore, when re-

appreciation is required and the applicant is in jail since last seven years, the sentence needs to be suspended.

6. Per contra, the learned APP strongly opposes the application and supported the reasons given by the learned Additional Sessions Judge while convicting the present applicant. He also submits that as this Court had granted suspension of sentence to the co-accused, it will not give any kind of advantage to the applicant, as the role of the present applicant is different. The prosecution had proved that the death of the deceased Vitthal was homicidal in nature and PW-1 and PW-2 are the witnesses, who had seen the applicant going in the house of the Vitthal and having altercation with him prior to the incident. This fact was sufficient to hold the applicant guilty of committing offence.

7. At the outset, we would like to say that we are required to scrutinize the evidence only *prima facie* just to see whether suspension of sentence can be awarded in favour of the applicant, till his appeal is heard.

8. First and the foremost point which goes against the applicant is that he was never released on bail throughout the trial and after full-fledged trial, wherein opportunity was given to the applicant to cross-examine the witnesses, examined on behalf of the prosecution and upon scrutiny of the said evidence, a competent authority has come to the conclusion that the offence has been proved beyond reasonable doubt against the applicant.

9. We have gone through the order passed by this Court on 31.10.2023, whereupon it is to be noted that the point that was

harped upon was identification of those two witnesses being doubtful. It was also canvassed that the test identification parade was not conducted in proper manner. Though a statement has been made that the cause of death was blunt injuries to the vital organ and no weapon was used, but the next sentence is that the case against the applicants solely depended on the identification, which was questioned in the appeal and therefore, it was observed that the matter requires re-appreciation. Here it is not the case. The deceased Vitthal was the father of the present applicant and Vitthal was residing in Hadadgaon, Taluka Nadura, District Buldhana, The PW-1 Rajendra and PW-2 Ramkrushna are from the same village. They both are saying that they were knowing the present applicant as the son of deceased Vitthal. As regards the incident is concerned, they have said that the present applicant came around 3.00 p.m. on 24.05.2016 along with two unknown boys. Then the present applicant had altercation with his father and also demanded money. It is their specific statement that when the PW-1 Rajendra tried to intervene in the dispute, at that time the present applicant pushed them out of the house meaning thereby they both were contending that they were inside the house of Vitthal. They both have stated that they went outside and sat under the shadow of banyan tree. The present applicant then closed the door of the house of the deceased and after twenty minutes he came out of the house and gave extra judicial confession and left. Thereupon, they went inside the house of the deceased, who was lying unconscious. Thus, it is to be noted that for appreciating their evidence, the trial Court has considered that the identity of the

applicant was not in question. He was lastly seen in the company of the deceased and it is also stated that there is no explanation by the applicant in his statement under Section 313 of the CrPC as to how his father was found murdered/dead in the house, when it was alleged that he was in the company of his father prior to the death. Thereafter, it is connected with the extra judicial confession and then the discovery under Section 27 of the Indian Evidence Act in respect of the handkerchief. It is then connected to C.A. Report. Thus, there appears to be strong and separate evidence against the applicant.

10. Now it has been tried to be stated that as there was no hard and blunt object seen by the PW 1 and PW 2 in the hands of the applicant and it is not coming on record as to who had given vital blow, advantage should be given to the accused. Here as aforesaid the prosecution had come with a specific case that when alleged assaults were given, at that time three accused and the deceased were the only persons inside the house. In the said circumstances, it may not be possible to expect from the prosecution to give all these details which can be said to be in the exclusive knowledge of the accused. Therefore, that point cannot be considered even at this stage for suspending the sentence.

11. Recently the Hon'ble Supreme Court in *Special Leave Petition (Criminal) Diary No.27298/2024 dated 05.07.2024 (Bhupatji Sartajji Jabraji Thakor Vs. The State of Gujrat)*, has held as follows :

“7. There is a fine distinction between a sentence imposed by the trial court for a fixed term and sentence life

imprisonment. If a sentence is for a fixed term, ordinarily, the appellate court may exercise its discretion to suspend the operation of the same liberally unless there are any exceptional circumstances emerging from the record to decline. However, when it is a case of life imprisonment, the only legal test which the Court should apply is to ascertain whether there is anything palpable or apparent on the face of the record on the basis of which the court can come to the conclusion that the conviction is not sustainable in law and that the convict has very fair chances of succeeding in his appeal. For applying such test, it is also not permissible for the court to undertake the exercise of re-appreciating the evidence. The emphasis is on the word "palpable" and the expression "apparent on the face of the record".

12. In the aforesaid circumstance, we do not find this to be a fit case where the sentence awarded to the applicant should be suspended pending appeal. Accordingly, the application is **rejected.**

[MRS. VRUSHALI V. JOSHI, J]

[SMT. VIBHA KANKANWADI, J]