



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

CRIMINAL APPLICATOIN (APPA) NO. 634/2024 IN
CRIMINAL APPEAL NO. 358/2024

(Vinayak Shamrao Anole Vs. State of Maharashtra & anr.)

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

Court's or Judge's orders

Mr. R.M. Daga, Advocate for applicant.
Mrs. S.S. Jachak, APP for non-applicant No.1

CORAM: VINAY JOSHI AND
MRS. VRUSHALI V. JOSHI, JJ.

DATED : 19/08/2024.

Heard.

2. By this application under Section 389 of the Code of Criminal Procedure, the applicant is seeking suspension of execution of sentence passed in Sessions Case No. 87/2017. Applicant Vinayak along with two co-accused namely Shamrao and Raju have been tried and convicted by the Trial Court for committing murder of one Dinesh Zilpe. After full-fledged trial, it was held that the prosecution has proved the allegation against all accused and accordingly sentenced them to undergo imprisonment for life.

3. Though all three accused have been convicted, accused No. 1 Vinayak has only claimed suspension of execution of sentence by this application. It is argued that the Trial Court committed serious error in convicting Vinayak, thereby evidence requires under Criminal Law.

4. With the assistance of both sides, we have gone through the record and proceeding. It is not in dispute that the prosecution case is based on evidence of only two eye-witnesses i.e. PW-5 Deepak and PW-6 Nita. The Deepak was running Pan Stall and he allegedly saw occurrence at the relevant time. We have gone through the evidence of Deepak which is totally silent regarding the role of the applicant. He has even not stated about the presence of applicant on the spot. Obviously, the evidence of Deepak would not assist the prosecution to claim conviction of applicant Vinayak.

5. PW-6 Nita a widow has given evidence stating that she has seen the actual occurrence. The Trial Court relied on her evidence to convict the accused. She has stated that at the relevant time, she saw all three accused beating her husband. Particularly, she stated the role of co-accused Shamrao and Raju in actual assaulting deceased by means of iron rod and spade respectively. The learned counsel appearing for applicant would submit that general statement about the presence of applicant Vinayak in absence of specific role would not be sufficient to fasten the guilt.

6. The weapon used in commission of crime were seized from the spot itself. The applicant's clothes were seized, but no bloodstains were found.

7. The learned APP in resistance, has not disputed the above facts, but invited us to go through the statement of informant Digambar who is father of deceased. Reading of his statement conveys that he is not the eye-witnesses to the occurrence. It is his evidence that PW-6 Nita told him that all three accused have assaulted deceased. However, the statement of Nita is totally silent.

8. In view of above facts, we are convinced that the fit case is made out to exercise our judicial discretion, hence the application is allowed. We hereby suspend the execution of substantive sentence passed in Sessions Case No. 87/2017 against applicant Vinayak Shamrao Anole till disposal of appeal.

9. In the meantime, the applicant Vinayak Shamrao Anole shall be released on bail on furnishing PR Bond of Rs. 50,000/- with surety in the like amount.

10. The Trial Court shall ensure about the deposit of fine amount before issuing release warrant.

11. Application stands disposed of in above terms.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

Gohane