



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [APPA] NO. 796/2024
IN CRIMINAL APPEAL NO. 438/2024.

Samit Dilip Kumare and another.

-VERSUS-

The State of Maharashtra.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri M. Deo, Advocate for Applicants/Appellants.
Shri A.A. Madiwale, A.P.P. for the Respondent /State.

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

DATE : SEPTEMBER 23, 2024.

Heard.

2. This is an application seeking suspension of execution of sentence passed in Sessions Case No.103/2022 passed by the Sessions Judge, Gadchiroli dated 25.06.2024, by which the learned trial Court has convicted both applicants/appellants for the offence punishable under Sections 302 and 201 of the Indian Penal Code.

3. Applicants who are son and mother, are

facing charge of committing murder of their father and husband respectively. At the instance of a report lodged by the brother of the deceased namely Deorao, a crime was registered. After completion of the investigation, applicants were put to trial and on assessment of oral and documentary evidence, the learned Trial Court has convicted both of them.

4. The learned Counsel for applicants would submit that though the prosecution has examined in all 10 witnesses, their evidence does not make out a case beyond reasonable doubt. It is submitted that the prosecution case is solely based on the evidence of one eye witness i.e. P.W. 8 Sarasvata, but, her admissions destroys the credibility of her version. The learned Counsel for applicants further submits when the prosecution case rests on evidence of a single eye witness, her/his evidence shall be fully trustworthy, credible and unimpeachable. In case such evidence is shaky, then the Court must seek for corroboration. According to him there is no corroborative material

to support the evidence of sole eye witness. Learned Counsel took us through the evidence of sole eye witness Sarasvata, wherein she has stated that in her presence both applicants dealt stick blows and done Dilip to death.

5. Our attention has been drawn to paragraph nos. 3 and 4 of the cross-examination wherein the witness admits that at the relevant time, the applicant no.1 Samir was elsewhere i.e. at his work place. She admits that applicant no.2 Barubai came to her house and awakened her, on which she learnt about the incident. Further she gave admissions that the informant Deorao has tutored her about lodgement of the report and to give evidence before the Court. On the basis of said material certainly one should look for corroborative evidence.

6. There is evidence of two neighboring witnesses, however, they have only heard noise of quarrel and saying in between the parties. It is brought to our notice that statement of those

neighboring persons have been recorded after one week from the date of occurrence, though allegedly they have heard about the noise.

7. The informant is real brother of the deceased, but, he is not an eye witness. Applicants have also criticized the evidence of seizure of blood stained clothes by saying that the clothes have not been seized at the instance of applicant Samir, but, the informant himself has shown the clothes after two days.

8. Having regard to all above factors an arguable case is made out. The appeal will take its own time for disposal. In the circumstances, we are inclined to exercise our judicial discretion. Criminal Application is thus allowed.

9. The substantive sentence passed in Sessions Case No.103/2022 by the Sessions Judge, Gadchiroli dated 25.06.2024, is hereby suspended. The applicants / appellants are ordered to be released on bail on executing personal bond in the sum of Rs.50,000/- each, with one surety in the like

amount.

They shall attend the concerned police station on first Monday of each month between 10 a.m. to 12 noon till further orders.

The trial Court shall ensure deposit of entire fine amount before issuing release warrant.

10. Criminal Application is accordingly allowed and disposed of.

JUDGE

JUDGE