



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

CRIMINAL APPLICATION NO. 1102 OF 2023

IN

CRIMINAL APPEAL NO. 672 OF 2023

Bhausahab Ananda Shinde Vs. The State of Maharashtra

WITH

CRIMINAL APPLICATION NO. 1091 OF 2023

IN

CRIMINAL APPEAL NO. 663 OF 2023

Hiralal Ananda Shinde Vs. 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.

Mr.T.Rahul, counsel for the applicant in Cri. Application No.1091 of 2023
Mr.N.B.Kalwaghe, counsel for the applicant in Cri. Application No. 1102 of 2023.
Mr. J.Y.Ghurde, A.P.P for non-applicant -State.

CORAM **VINAY JOSHI &**
MRS. VRUSHALI V.JOSHI, JJ.

DATE : 22nd January 2024.

1. Both the applicants have been convicted for the offence punishable under Section 302 r/w 34 of the Indian Penal Code in Sessions Case No.65 of 2018 vide judgment and order dated 16.08.2023. Both have claimed suspension on account of inadequacy of material to establish their guilt with requisite standard of proof. It is submitted that the trial Court erred in relying belated statements of chance witnesses, as well as relied on CCTV footage which in fact does not disclose the occurrence. It is submitted that during trial both applicants were on bail.

2. One Pramod Dilip Sable brother of deceased has lodged the report, regarding occurrence on 15.07.2018. Informant Pramod is not the eye witness, however, after knowing about the assault, and consequential death of his brother, Deepak has lodged the report. It is the prosecution case that out of property dispute, both applicants in furtherance of their common intention have committed murder of Deepak by means of sharp edged weapon.
3. The prosecution has examined several witnesses, however, the prosecution has relied on the evidence of three eye witnesses i.e. PW-3 Sushil Janardhan Kharat, PW-8 Vikas Janardhan Gawai and PW-11 Santosh Janardhan Lahane. Out of these three witnesses Santosh Janardhan Lahane has turned hostile. Thus, the prosecution case remains to the extent of evidence of PW-3 Sushil Janardhan Kharat and PW-8 Vikas Janardhan Gawai.
4. The learned counsel appearing for the applicants would submit that though they were close relatives, their statements have been recorded after 23 days of the occurrence. From the cross-examination, it is pointed out that they had attended funeral, had occasion to interact with the police, however, they did not disclose the occurrence nor their statement was recorded at the earliest. Precisely, their evidence has been criticised on

account of strong possibility of planting them in the occurrence. The learned counsel for the applicants has submitted that though the blood stained clothes and weapon namely, knife has been seized, however, neither there were blood stains on clothes or knife. The said submission has not been denied by other side. The learned trial court has relied on the CCTV footage expressing that the participation of both applicants is evident. We have been taken through the part of evidence, wherein the investigating officer has stated that CCTV footage is not clear. In order to have a *prima facie* view, we have played, the CCTV footage in open Court in presence of both sides. However, no one is *prima facie* able to point out the actual occurrence seen in CCTV footage.

5. In view of all above aspects, an arguable case has been made out. The appeals will take it's own time for disposal. In case of success of appeals, the position would become irreversible. In view of that we are inclined to exercise our judicial discretion. It is submitted that entire fine amount is already deposited. Hence the following order.

- (i) Both the applications are allowed and disposed of.

- (ii) Execution of substantive sentence of both applicants namely, Bhausahab Ananda Shinde and

Hiralal Ananda Shinde stands suspended till disposal of the appeals.

(iii) Both applicants shall be released on bail on their furnishing P.R. bond of Rs.25,000/-(rupees twenty five thousand only) each with one surety of like amount.

(iv) The trial court shall issue release warrant only after ensuring the deposit of entire fine amount.

(v) The pen drive shall be sealed and kept in the safe custody.

JUDGE

JUDGE