



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

CRIMINAL APPLICATION (APPA) NO. 1179/2023 IN
CRIMINAL APPEAL NO. 732/2023

(Umesh s/o Ganeshrao Kale 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. Amol Jaltare, Advocate for applicant.
Ms. Trupti Udeshi, APP for non-applicant No.1/State
Mr. Anirudh Anant Krishnan, Advocate for non-applicant No.2.

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

DATED : 14/03/2024.

Heard.

2. This is an application seeking of suspension of execution of sentence passed in Spl.(Atro) C No. 36/2019, whereby the applicant Umesh (accused No.1) has been convicted for the offence punishable under Section 302 of the Indian Penal Code read with Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and sentenced to undergo life imprisonment.

3. The learned counsel appearing for applicant seeks for suspension by making variety of submissions. It is applicant's contention that though the defence theory was probable, however the Trial Court did not rely on the same. There is variance in the evidence of two eye-witnesses. Independent eye-witness has not been examined. The prosecution has not explained injury sustained by the applicant Umesh. There is delay in

lodgment of First Information Report. The death occurred due to negligence in the treatment. At the most, it would be an offence punishable under Section 304A of the Indian Penal Code. Lastly, it is submitted that the applicant is behind bar from last five years. On the other hand, the learned APP strongly resisted this application by contending that after evaluating the entire material, the Trial Court held that the guilt has been proved beyond reasonable doubt. During the pendency of trial, the applicant was not on bail. The case is based on direct evidence of two eye-witnesses. The accused has used deadly weapon in the assault which was on the vital part of body. More particularly, it is argued that the presence of the applicant on the spot is undisputed. Considering the gravity of the offence, application is prayed to be rejected.

4. It is the prosecution case that the sister of applicant eloped with the son of deceased lady. The applicant along with his father and one Rishikesh went to the house of deceased to ask whereabouts of their daughter. After conversation, while the applicant and two others were leaving, there was quarrel, in which the applicant took out a big knife from his trouser and dealt a blow at the stomach of deceased which proved to be fatal. The prosecution relied on two eye-witnesses i.e. PW-1 Tejas Mendhe and PW-5 Karan Wankhede. Presence of these witnesses on the spot has not been denied. Moreover, the accused went to the house of deceased is also not in dispute. Rather it is the defence that quarrel do take place in which the informant's friend Sachin tried to

assault the applicant, however mistakenly deceased got injured. Though such defence is raised, however, prima faice two eye-witnesses have consistently stated that at the relevant time, the applicant took out sharp aged big knife from his trouser and stabbed at the right side stomach of deceased.

5. The incident took placed on 16.02.2019 around 06.30 p.m. whilst on the following day around 05.00 a.m. i.e. within 12 hours, report has been lodged specifying the role of the applicant. Prima facie, it reveals that the applicant had carried a big knife to said place which assumes significance. There can be no straight jacket rule that a case of single blow would fall under Section 304 of the Indian Penal Code. It depends upon the nature of weapon, part chosen of the body, force applied, the consequences and all other attending circumstances. It is a matter of appreciation at the time of trial. Particularly, the applicant has admitted his presence as well as quarrel at the relevant time. Prima facie, there is material that out of three, applicant has stabbed at the stomach of deceased to which she succumbed in the hospital. The genesis lies in stab though the cause of death may be different. The offence was of grave nature. There is direct evidence against the applicant. The applicant carried knife with him which prima facie assist to indicate his intention.

6. Considering all above circumstances, it is not a fit case to exercise our judicial discretion only on the ground that the applicant is in Jail for more than five years. In view of that application stands rejected.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

Gohane