

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

908 CRIMINAL APPLICATION NO. 368 OF 2025
IN
CRIMINAL APPEAL NO. 72 OF 2025

Ramkishan Pandit Dorle

....Applicant

Versus

The State of Maharashtra and Another

.....Respondents

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Shri. Nilesh S. Ghanekar h/f. Shri. Chaitanya C. Deshpande, Advocate
for the Applicant

Smt. Uma S. Bhosale, APP for the Respondent / State.

Shri. R. O. Awsarmol, Advocate for Respondent No.2

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WITH

CRIMINAL APPLICATION NO. 294 OF 2025

IN

CRIMINAL APPEAL NO. 57 OF 2025

1] Dnyaneshwar @ Dnyanba S/o. Kisanrao Borgad

2] Maroti s/o Vitttral Dorle

.. Applicants

Versus

The State of Maharashtra and Another

.. Respondents

.....

Shri. Nilesh S. Ghanekar, Advocate for the Applicants

Smt. Uma S. Bhosale, APP for the Respondent / State.

Shri. R. O. Awsarmol, Advocate for Respondent No.2

.....

WITH

CRIMINAL APPLICATION NO. 340 OF 2025

IN

CRIMINAL APPEAL NO. 67 OF 2025

1] Vithal Namdeo Ghongade

2] Ambadas @ Babusha Namdeo Ghongade

3] Namdeo Tukaram Ghongade

.. Applicants

Versus

The State of Maharashtra and Another

.. Respondents

.....

Shri. N. S. Ghanekar h/f. Shri. Balasaheb N. Magar and Shri. Jagdish V. Deshpande, Advocate for the Applicants

Smt. Uma S. Bhosale, APP for the Respondent / State.

Shri. R.O. Asarmol, Advocate for Respondent No.2

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**CORAM : R. G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

Dated : FEBRUARY 18, 2025

COMMON ORDER :-

. These are the Applications for Suspension of substantive Sentence imposed by learned Additional Sessions Judge-2, Hingoli on the Applicants by Judgment and Order dated 10.01.2025 in Sessions Trial No.123/2019. The operative part of the said Judgment and Order reads as under :-

“ORDER

1. All the accused are hereby convicted for the offence punishable under Section 143 of the Indian Penal Code vide Section 235(2) of the Criminal Procedure Code, and sentenced to suffer rigorous imprisonment for six months each and to pay a fine of Rs.10,000/- (Rs. Ten thousand) each and in default of payment of fine, to undergo rigorous imprisonment for two months.

2. All the accused are hereby also convicted for the offence punishable under Section 147 of the Indian Penal Code vide Section 235(2) of the Criminal Procedure Code, and sentenced to suffer rigorous imprisonment for two years each and to pay a fine of Rs.15,000/- (Rs. Fifteen thousand) each and in default of payment of fine, to undergo rigorous imprisonment for three months.

3. All the accused are hereby also convicted for the offence punishable under Section 148 of the Indian Penal Code vide Section 235(2) of the Criminal Procedure Code, and sentenced to suffer rigorous imprisonment for three years each and to pay a fine of Rs.25,000/- (Rs. Twenty five

thousand) each and in default of payment of fine, to undergo rigorous imprisonment for six months.

4. All the accused are hereby also convicted for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code vide Section 235(2) of the Criminal Procedure Code, and sentenced to suffer life imprisonment each and to pay a fine of Rs.50,000/- (Rs.Fifty thousand) each and in default of payment of fine, to undergo rigorous imprisonment for one year.

5. Out of the amount of fine, Rs.300,000/- (Rupees Three lakh only) be paid to the wife of deceased namely Meera Shankar Dorle after its realization, as a compensation, after appeal period is over.

6. All the accused persons are entitled for set off under Section 428 of Cr.PC. for the period which they had already undergone in the jail.

7. Muddemal property described in Muddemal Receipt Exh.02, being worthless, be destroyed, after the period of appeal is over in accordance with law, except mobiles.

8. All the mobiles described in Muddemal Receipt at Exh.02, be given to the concerned persons, if not given on suprutnama, after the period of appeal is over and after due verification.

9. The substantive sentence of all accused persons shall run concurrently.

10. The copy of judgment be given to all the accused, free of costs.

11. A copy of this judgment, be sent to the District Magistrate, Hingoli for information and necessary action."

2. The case of the Prosecution, as seen from the papers on record, is that, Deceased Shankar Laxman Dorle, who was the son of Laxman Ganpati Dorle – Informant, was assaulted by the Applicants and Co-convict in the agricultural field on 21.05.2019 in the evening. Deceased was assaulted by Axe. Deceased succumbed to the injuries

suffered in the assault at the hands of Applicants and Co-convict. The incident was witnessed by Sister of Deceased, who was examined as PW5 - Gangasagar W/o Navnath Dange. The Informant, when came to the agricultural field, saw his son in dead condition and saw the Applicants / Appellants proceeding from the said field with Axe in the hand of Accused No.1 – Ganesh Dorle. The matter was reported to the police and the crime for the offence punishable under Sections 143, 147, 149, 302 of the Indian Penal Code came to be registered with Hingoli Police Station. After completion of the investigation, the Applicants and Co-convict came to be Charge-sheeted and after the Trial, they came to be convicted.

3. It is submitted by learned Advocate for the Applicants / Appellants that though PW5 - Gangasagar Navnath Dange – the Sister of Deceased claims to be the Eye witness to the incident, her Statement was recorded on the 7th day from the incident. He submits that the FIR is lodged by the father of Deceased, who is no more and, therefore, the FIR was exhibited in the evidence of the Policeman, who recorded his Statement. The Applicants / Appellants were on bail during the Trial. The Appeals would not come up for hearing in the near future and therefore, the Applications be allowed.

4. The Applications are opposed by the learned APP. She submits that FIR is not an encyclopedia. The absence of name of Sister of

Deceased in the FIR, who was the Eye Witness to the incident, cannot be the ground to discard the case of Prosecution. The presence of the witnesses on the spot of incident is established on the basis of CDR's. The C.A. Report shows the blood on the clothes of the Applicants as well as on the weapon. Evidence of Medical Officer shows number of injuries on Deceased which were possible by the use of Axe. She submits that the Applications be rejected.

5. Learned Advocate for Respondent No.2 / Victim adopts the submissions made by learned APP. He adds that there was brutal assault by the Convicts and due to the injuries Deceased died. There is no reason to disbelieve the Eye Witness. He submits that the Applications be rejected.

6. The evidence of Medical Officer, who is examined as PW6 - Dr.Sanjivan S/o Narayanrao Lakhmawar, shows the following external injuries :-

“(1) Chop injury present on forehead above 2.8 cm. Right eye brow, obliquely placed with size 6 c.m. x 4.5 c.m. x cavity deep, with both ends acute with lateral end distal than medial end, clean cut margins with upper margin undermined and lower margin beveled with protuberance of size 7 c.m. x cavity deep with underlying cranial bone fractured with exposure of brain matter to exterior, red.

(2) V-shape chop injury present on occipital area of scalp 2.2 c.m. above occipital incised looking lacerated wound present over left occipito parietal region, about 9 c.m. from the left mastoid admeasuring 9 c.m. x 2 c.m. x cavity deep with

margins clean cut with upper margin undermined and lower margin beveled and both ends acute red.

(3) *Linear contusion right leg bluish red.*

(4) *Multiple bruise abrasion on right iliac region in an area of 9 c.m. x 3 c.m. of ranging sizes of 3 c.m. x 3 c.m., 3.5 c.m. x 3 c.m. red."*

. The cause of death is '*hemorrhagic and shock as a result of head injury*'.

7. It is not in dispute that the name of PW5 - Gangasagar Navnath Dange, who is examined as the Eye Witness to the incident of assault on Deceased does not reflect in the FIR. The Report was lodged by her father. It is true that the FIR is not an encyclopedia, however, admittedly the Statement of PW5 - Gangasagar W/o Navnath Dange was recorded on the 7th day from the incident, though her evidence shows that she was present when Police had come to the crime scene. If she is to be believed, there would have been several injuries on the dead body. However, there were four (4) injuries. This *prima facie* falsifies the testimony of PW5 - Gangasagar W/o Navnath Dange. The blood stained clothes of the Applicants / Appellants and CDR's would be *prima facie* insufficient to maintain the Conviction.

8. All the above aspects show that, the Applicants / Appellants have a good case on merits. They were on bail during the Trial. In this view of the matter, we proceed to pass the following order.

ORDER

(i) Criminal Application Nos.368 of 2025, 294 of 2025 and 340 of 2025 are allowed.

(ii) The substantive sentence imposed by learned Additional Sessions Judge-2, Hingoli in Sessions Trial No.123/2019 by Judgment and Order dated 10.01.2025 on the Applicants namely Ramkishan Pandit Dorle, Dnyaneshwar @ Dnyanba S/o. Kisanrao Borgad, Maroti s/o Vittrral Dorle, Vithal Namdeo Ghongade, Ambadas @ Babusha Namdeo Ghongade, Namdeo Tukaram Ghongade is suspended during the pendency of their Appeals.

(iii) Applicants namely Ramkishan Pandit Dorle, Dnyaneshwar @ Dnyanba S/o. Kisanrao Borgad, Maroti s/o Vittrral Dorle, Vithal Namdeo Ghongade, Ambadas @ Babusha Namdeo Ghongade, Namdeo Tukaram Ghongade be released on bail on furnishing PR. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only) each, with one surety in the like amount each.

(iv) Bail before the Trial Court.

(v) Criminal Applications stand disposed of accordingly.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)

GGP