



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

906 CRIMINAL APPLICATION NO. 3950 OF 2024
IN APEAL/880/2024

Lahu S/o Ashok Bhil

VERSUS

The State Of Maharashtra And Another

...

Mr. Rupesh A. Jaiswal - Advocate for Applicant

Mrs. U. S. Bhosale - APP for Respondent/State

...

CORAM : R. G. AVACHAT
AND
NEERAJ P. DHOTE, J.

DATED : 14th JANUARY, 2025

PER COURT : -

1. This is an Application for suspension of substantive sentence imposed by the learned Additional Sessions Judge, Amalner, Dist. Jalgaon, in Sessions Case No. 02 of 2023, convicting the Applicant-Appellant for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life with fine of Rs. 500/-, in default, to suffer simple imprisonment for 15 days.

2. The case of the prosecution, in brief, is that, on 02.10.2022, the applicant and deceased consumed liquor and thereafter fought with each other on account of their wives. In the fight, the Applicant gave blow by his leg to the private part of the deceased which proved fatal. The PW2 – Dilip Velsingh Saste (Pawra), brother of the deceased lodged

report against the unknown person. Crime was registered and during the investigation, statement of PW5 – Amit @ Munna Ravindra Pawar (who had seen the applicant and deceased together before the death) came to be recorded. On completion of the investigation, the Applicant/Appellant was charge-sheeted and after the trial, the Applicant came to be convicted.

3. It is submitted by the learned Advocate for the Applicant that, if we appreciate the evidence of PW5 - Amit @ Munna Ravindra Pawar, who was examined as the eye-witness and who had lastly seen the applicant and deceased, his statement under Section 161 of the Code of Criminal Procedure was recorded after three days from the date of incident. The said witness doesn't disclose about the incident to anyone and suddenly Police approaches him and records his statement. It goes to show that, he was a got up witness. He submits that even if PW5 - Amit @ Munna Ravindra Pawar is to be believed, his evidence shows that, the incident was out of the quarrel, therefore, the offence, if any, would fall under Section 304 Part-II of the Indian Penal Code. The applicant was young by age i.e. 29 years of age at the time of incident. The Applicant is behind the bars for more than two and half (2½) years. The Appeal would not come up for final hearing in the near future and hence, the application be allowed.

4. The application is opposed by the learned APP. She submits that PW5 - Amit @ Munna Ravindra Pawar is the eye-witness, who had lastly seen the Applicant with the deceased. The post mortem report shows the cause of death as '*death due to cardiorespiratory arrest due to traumatic injury to scrotum & rupture of left and right Testis due to Neurogenic shock*', which indicate that, with full force the Applicant hit on the private part of the deceased. This shows his intention. She submits that, whether the offence would fall under Section 304 Part – II of the Indian Penal Code is the aspect to be considered at the time of final hearing. She submits that the Application be rejected.

5. Undoubtedly, the case is based on circumstantial evidence. The star witness of the prosecution is PW5 - Amit @ Munna Ravindra Pawar. Undisputedly, his statement is recorded after three days from the date of incident. He admits in cross-examination that he did not disclose the incident to anyone and only when the Police approached him at his house at the school, his statement was recorded. This aspect *prima facie* gives force to the submission of learned advocate for the applicant that he is the got up witness. Even if we accept that he had lastly seen the Applicant with the Deceased, according to this witness, after the Applicant and Deceased consumed liquor, they fought with each other on account of their wives. This shows that the incident of death was the result of fight. No weapon was used in the assault. The injury was on the private part of the deceased. It is debatable as to

whether the applicant was having any intention to kill the deceased and whether PW5 - Amit @ Munna Ravindra Pawar had really witnessed the incident. The Applicant is aged about 30 years. The Appeal would take its own time. Under such circumstances of the case, we proceed to pass the following order.

ORDER

- [i] The Application is allowed.
- [ii] The substantive sentence imposed upon the Applicant by the learned Additional Sessions Judge, Amalner, Dist.Jalgaon, in Sessions Case No. 02 of 2023, convicting the Applicant-Appellant for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life with fine of Rs.500/-, in default, to suffer simple imprisonment for 15 days, is suspended during the pendency of the present Appeal.
- [iii] The Applicant be released on bail on his furnishing P. R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only) with one surety in the like amount.
- [iv] Bail before the Trial Court.

6. Criminal Application stands disposed of accordingly.

[NEERAJ P. DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE

SG Punde