



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4119 OF 2024
IN CRIMINAL APPEAL NO. 902 OF 2024

1. Nilkanth Jagannath Patil
2. Somnath Honyappa Swami
3. Hanmant Havgi Swami
4. Shankar Sangappa Swami
5. Amrut Aneppa Biradar
6. Shivaji Ramchandra Madne
7. Ganesh Nagnath Hatte
8. Shankar Sidram Hatte
9. Suresh Madhavrao Kavtage
10. Jagannath Hanmantrao Patil
11. Subhash Sangappa Hatte
12. Sunil Baburao @ Malikarjun Patil

..APPLICANTS

VERSUS

1. State of Maharashtra
2. Kamalbai Maroti Suryawanshi
3. Madhukar Maroti Suryawanshi
4. Sunil Maroti Suryawanshi
5. Anil Maroti Suryawanshi

..RESPONDENTS

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Mr. R.S. Deshmukh, Senior Advocate a/w Mr. Raman Dodiya, Advocate i/b
Mr. V.A. Chavan and Mr. D.R. Deshmukh, Advocates for applicants
Mrs. S.N. Deshmukh, A.P.P. for respondent no.1 – State
Mr. S.S. Palnitkar, Advocate for respondent nos. 2 to 5

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CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ
DATE : 07th JANUARY, 2025

PER COURT :

1. This is an application for suspension of sentence imposed by learned Additional Sessions Judge, Biloli, Dist. Nanded in Sessions Case, No. 11 of 2016 thereby convicting all the twelve applicants for the offence punishable under Sections 302, 143, 147, 148, 149 and 324 of the Indian Penal Code ('I.P.C.'), Sections 3(1)(10) and 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('SC & ST Act') and under Section 7(1)(D) of Human Rights Act.

2. The case of the prosecution, in brief, is that on 19th November, 2015 at about 08:00 a.m., when the informant – Chandrakant was sitting on the platform in the village, the applicants came there and abused him on his caste. Applicant No.9 – Suresh assaulted the informant by stone. By hearing the chaos, deceased – Maroti, brother of the informant and one other came on the spot. The deceased and the said person were assaulted with stick and stones. Due to injury on head, the deceased died. The incident was reported to the concerned police station and crime vide C.R. No. 35 of 2015 came to be registered against the applicants for the offences punishable under Sections 302, 143, 147, 148, 149 and 324 of the I.P.C., Sections 3(1)(10) and 3(2)(5) of the SC & ST Act, 1989 and Section 7(1)(D) of the Human Rights Act.

3. It is submitted by learned counsel for the applicants that there is delay of ten hours in reporting the incident to the concerned police station. There was counter case which was lodged by the applicants, was first in point of time and crime was registered against the opposite side vide C.R. No. 34 of 2015. He submits that only one injury on the forehead proved to be fatal. He submits that the case of the prosecution falsifies as the injuries suffered by the deceased and the witnesses were simple in nature. The second injury suffered by the deceased was in the nature of abrasion. He submits that the counter case which arise out of the crime reported by the applicants was compromised before the concerned Court. The medical evidence shows that the deceased had consumed alcohol and according to the medical officer, the injuries suffered by the deceased were possible if he falls down. The applicants were on bail during trial and there is no likelihood that the appeal would be heard in near future and, therefore, the application be allowed.

4. The application is opposed by learned A.P.P. and learned counsel for the informant. They submit that the case is based on testimony of the eye witnesses, who were examined as PW 1 to 5. The defence has given different suggestions to the witnesses which show that they were not firm on their defence. Since one of the accused in the counter case was their relative, the case was compromised. The death was attributed to all the applicants. They submit that the application be dismissed.

5. There is no dispute that there was case and counter case. Initially the F.I.R. was lodged by the applicants. The case arising out of the said counter case resulted in acquittal of the accused therein by way of compromise. Though according to the prosecution, the assault was by all the applicants, who were twelve in number, there were only two injuries on the deceased. It is the case of the prosecution that one stick was held by one of the accused and one stone was pelted by accused no.9. It is debatable whether the accused had any common object to commit murder. In medical evidence, the doctor had found alcohol in the body of the deceased and he has expressed possibility that the said injuries of the deceased may be possible if he falls down. The other witness had suffered simple injuries.

6. The applicants were on bail during trial and there is no possibility that the appeal would be heard in near future and hence, we proceed to pass the following order :-

The execution of substantive sentence of imprisonment imposed against the present applicants to stand suspended pending the appeal. The applicants be released on their executing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) each with one surety in the like amount.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

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