



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

**CRIMINAL APPLICATION NO.4846 OF 2024 IN
CRIMINAL APPEAL NO.532 OF 2024**

Kishan Vithoba More

... APPLICANT

VERSUS

The State of Maharashtra

... RESPONDENT

.....
Mr. R.S. Banik, Advocate for applicant
Mrs. S.N. Deshmukh, A.P.P. for respondent
.....

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

DATE : 15th JANUARY, 2025

ORDER :

This is an application for suspension of substantive sentences imposed by learned Additional Sessions Judge, Biloli, District Nanded in Sessions Case No.63/2020, vide judgment and order dated 16/4/2024.

2. The case of the prosecution in brief is that, on 19/8/2020 around 9.00a.m., the applicant and his wife P.W.10

Sumanbai were quarreling with each other. The applicant assaulted his wife with stick. The deceased Mirabai, who was daughter-in-law of the applicant, intervened to rescue her mother-in-law i.e. P.W.10 Sumanbai. At that point of time, the applicant assaulted the deceased with stick. The acquitted accused No.1 Varsha More, who was another daughter-in-law of the applicant, also assaulted the deceased Miraiai. Due to the injuries suffered in the assault, Mirabai died. On completion of the investigation, the applicant and acquitted accused were charge-sheeted. After trial, the applicant came to be convicted and co-accused came to be acquitted.

3. It is submitted by learned Advocate for the applicant/ appellant, that, if we see the evidence of P.W.5 Gyaneshwar, who was the grandson of the applicant, he attributes role of assault to the acquitted accused also. According to the grandchild, the acquitted accused banged the head of deceased by holding her hair. The role attributed to the applicant/ appellant is assault by bamboo stick. He submits that, it is not clear from the medical evidence as to which injury proved fatal. He submits that, the applicant is 65

years of age and behind the bars for more than four and half years. He submits that the application be allowed.

4. The application is opposed by learned A.P.P. She submits that, if we see the evidence of P.W.5 Gyaneshwar and P.W.10 Sumanbai, who were the eye witnesses, it is clear that the applicant assaulted the deceased with stick. She submits that, the evidence of eye witnesses is corroborated by medical evidence. According to her, it has come in the evidence of the Medical Officer that the injuries on the deceased were possible by stick. She submits that, the learned Trial Court has rightly convicted and sentenced the applicant/ appellant. She submits that, the application be rejected.

5. We have perused the relevant evidence on record. Admittedly, the accused Varsha Navnath More has been acquitted by the learned Trial Court. There is no Appeal by State against the acquittal. Though there is Appeal against acquittal by brother of the deceased, the evidence of P.W.5 Gyaneshwar shows that, the acquitted accused assaulted the deceased by holding her hair and banging her head with the

wall. The said witness attributes the role to the applicant/ appellant with assault by stick. If we see the evidence of P.W.10 Sumanbai, who is the wife of the applicant/ appellant, she attributes assault by the applicant/ appellant on deceased by stick. Though the evidence of Medical Officer show that the injury on deceased was possible by assault by stick. There is no concrete and clear evidence to show which injury suffered by the deceased proved fatal. The applicant is 65 years of age and there is no possibility that the appeal will be heard finally in near future. In these facts and circumstances of the case, we proceed to pass the following order :

ORDER

(i) The Criminal Application is allowed.

(ii) Pending the appeal, the substantive sentences of imprisonment imposed upon the applicant by learned Additional Sessions Judge, Biloli, District Nanded in Sessions Case No.63/2020, vide judgment and order dated 16/4/2024 to stand suspended and the applicant be released on bail on his

executing P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) with one surety in the like amount.

(iii) Fees of learned Advocate Mr. R.S. Banik, who is appointed for applicant through Legal Aid, is quantified at Rs.7000/- (Rupees seven thousand) for the purpose of this application.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-`