



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4906 OF 2024
IN
CRIMINAL APPEAL NO. 665 OF 2023

1. Dnyaneshwar Venkat Chavan
2. Anusaya Dnyaneshwar Chavan
3. Sachin Dnyaneshwar Chavan

..APPLICANTS

VERSUS

State of Maharashtra

..RESPONDENT

....
Mr. A.K. Bhosle, Advocate for applicants
Mr. S.J. Salgare, A.P.P. for respondent – State
....

CORAM : R. G. AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : 13th JANUARY, 2025

PER COURT :

1. This is an application for suspension of substantive sentence imposed by learned Additional Sessions Judge, Omerga, Dist. Osmanabad in Sessions Case No. 21 of 2019 by judgment and order dated 26th May, 2023 convicting the applicants for the offences punishable under Sections 302, 307 and 342 read with Section 34 of the Indian Penal Code.

2. The case of the prosecution, in brief, is that there was dispute between the families of the applicants on one side and that of the injured witnesses on the other. The incident in question took place on the point of

cutting trees by one of the applicants, who was questioned by the injured witnesses. The incident took place on 14th May, 2019 in front of the house of the applicants. Deceased – Balaji had come to the spot of the incident and intervened. One of the convicts i.e. Tushar used axe in the assault on deceased – Balaji. The applicants assaulted the witnesses and deceased with sticks. Due to the injuries suffered in assault, Balaji died. The cause of death, as seen from the postmortem report, is ‘due to hemorrhagic shock to excessive bleeding due to fracture of frontal bone, parietal, occipital bone and mandibular bone, maxillary bone’. The applicants were charge-sheeted after the investigation was over and convicted as referred above.

3. Learned counsel for the applicants submits that the fatal blow was given by the convicted accused – Tushar, who is not before this Court, by use of an axe on the deceased. He submits that evidence of the eye witnesses show that the role attributed to the applicants is use of sticks and chilly powder by applicant – Anusaya Chavan. He submits that it is nowhere the prosecution case that the applicants had come with deadly weapons. Evidence goes to show that convicted accused – Tushar had gone inside the house, brought the axe and assaulted the deceased, and therefore, it cannot be said that the applicants and the said convict shared common intention. He submits that since no chilly powder was found on the person of the deceased or on the spot of the incident, it is debatable whether to accept the testimony of the

injured witnesses. The applicants are behind the bars for a period of more than five and half years. The applicants are having good case on merits. The appeal would take its own time, and therefore, the sentence be suspended by allowing the application.

4. The application is opposed by learned A.P.P. He submits that the case is based on testimony of the injured eye witnesses and other two witnesses. It is submitted that after assault, the applicants/convicts jumped on the deceased and the witnesses which show that they had intention to kill and cause grievous injuries. He submits that mere absence of chilly powder will not be sufficient to discard the testimony of the eye witnesses. He submits that the convict – Tushar used an axe in the assault and gave blow on the vital part of body of the deceased. He submits that it is not a fit case to suspend the sentence and hence the application be rejected.

5. Both the sides pointed out towards relevant evidence on record. Admittedly, the case is based on the testimony of the eye witnesses. It is also not in dispute that there was no enmity between the applicants and deceased – Balaji. Admittedly, the deceased had come to intervene in the quarrel between both the sides which lasted for considerable period. The role of assault by axe is attributed to accused – Tushar, who is not before this Court. The incident took place in front of the house of the applicants and injured

witnesses had come to the place of the applicants on the point of cutting tree from their field. The applicants have also suffered injuries in the said incident. Though one of the eye witnesses deposed that applicant – Anusaya sprinkled chilly powder, admittedly no chilly powder was found on the deceased or at the spot of incident. Evidence on record goes to show that the said convict – Tushar went inside his house and brought an axe, and therefore, it is debatable whether the applicants shared common intention with said Tushar to cause homicidal death.

6. The applicants are behind bars for a period of more than five and half years. The appeal will take its own time. Considering the role attributed to the applicants and the nature of weapons used by them, we are inclined to suspend the sentence and grant bail. Hence, the following order :-

The execution of substantive sentence of imprisonment imposed against the applicants vide judgment and order dated 26th May, 2023 passed by learned Additional Sessions Judge, Omerga, Dist. Osmanabad in Sessions Case No. 21 of 2019 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 each in the like amount.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)

SSD