



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

**CRIMINAL APPLICATION NO.827 OF 2024 IN
CRIMINAL APPEAL NO.181 OF 2024**

Dnyanehwar Kushinath Kale ... APPLICANT

VERSUS

The State of Maharashtra ... RESPONDENT

.....
Mr. Satej S. Jadhav, Advocate for applicant
Mr. S.D. Ghayal, A.P.P. for respondent
.....

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

DATE : 30th JANUARY, 2025

ORDER :

This is an application for suspension of sentence awarded by learned Additional Sessions Judge, Court No.7, Aurangabad in Sessions Case No.102/2021 by judgment and order dated 31/1/2024, convicting the applicant/ appellant for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life with fine of Rs/10,000/-, in default to suffer simple imprisonment for six months.

2. In short, it is the case of the prosecution that, there was dispute between the deceased and the applicant/ appellant on the point of use of water from the common well situated in the field. The applicant/ appellant is the nephew of the deceased. The agricultural land of the applicant/ appellant and deceased are adjacent to each other. On 12/12/2020, between 12.00 and 12.30 p.m., a quarrel took place between the applicant/ appellant and the deceased. In the said quarrel, the applicant/ appellant hit on the head of deceased from the back side of spade. Due to the said assault, the deceased fell down and succumbed to the injuries. The incident was reported to the police and crime came to be registered against the applicant/ appellant. After filing the charge sheet, the applicant/ appellant came to be tried and convicted and sentenced as stated above.

3. It is submitted by learned Advocate for the applicant/ appellant that, even if the evidence on record is accepted as it is, it is clear that there was no intention to kill the deceased. Had there been intention to kill the deceased, the applicant/ appellant would have used sharp side of the spade.

There is no evidence in respect of previous quarrel or incidence between them. The applicant/ appellant is behind the bars for more than four years and the appeal would take its own time to come up for final hearing. The applicant was aged 20 years at the time of the incident. The learned Advocate for the applicant/ appellant ultimately urged for allowing the application.

4. The application is opposed by learned A.P.P. He submits that, the deceased suffered grave injuries and died because of the said injuries. He submits that, the submission of learned Advocate for the applicant/ appellant cannot be accepted and the application be rejected.

5. There is no dispute that the quarrel had taken place due to the dispute in respect of common well water. The assault is from the back side of the spade. It is needless to state that, spade is used for agricultural operations. We see merit in the submission of the learned Advocate for the applicant/ appellant that had the applicant intended to kill the deceased, he would have assaulted from the sharp side of the spade. It would be debatable whether the offence under

Section 302 of the Indian Penal Code would be made out. The applicant/ appellant is behind the bars for more than 4 years. The appeal will take its own time to come up for final hearing. Hence, the order :

ORDER

- i) The criminal application is allowed.
- ii) Pending the appeal, the execution of the substantive sentence of imprisonment imposed upon the applicant by learned Additional Sessions Judge, Court No.7, Aurangabad in Sessions Case No.102/2021 by judgment and order dated 31/1/2024 to stand suspended and the applicant/ appellant be released on bail on his execution P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) with one surety in the like amount.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-