



PA-530-2025

1

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION NO. 530 OF 2025
IN CRIMINAL APPEAL NO. 299 OF 2025

(Vishnu s/o Sheshrao Wayal & Ors. Vs. The State of Maharashtra)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. S.J. Salunke h/f Mr. N.B. Kalwaghe, Counsel for the
applicants/appellants.

Mr. A.B. Badar, A.P.P. for the non-applicant/respondent/State.

.....

CORAM : ANIL L. PANSARE AND
RAJ D. WAKODE, JJ.
NOVEMBER 4, 2025

The applicants have filed the application under Section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), for suspension of sentence, pending appeal, and for order of releasing them on bail. The applicants were tried for the offences punishable under Sections 302, 504 read with Section 34 of the Indian Penal Code (IPC). The Sessions Court, in Sessions Trial No. 238/2019, *vide* judgment dated 9/5/2025, held the applicants guilty for the offence punishable under Section 302 read with Section 34 of the IPC and sentenced them to suffer imprisonment for life. They were, however, acquitted of the offence punishable under Section 504 of the IPC.

2] Briefly stated, the facts of the case are that deceased Janardhan Wayal and Sheshrao Wayal were real brothers. Saraswati was their real sister. Sheshrao and Saraswati expired. The applicants are sons of Sheshrao. The relations between the families of Janardhan and

Sheshrao were strained because of a land dispute. Annasaheb is son of Janardhan.

3] On 11/2/2015, there occurred a quarrel between Annasaheb and applicant no.1 – Vishnu on account of a mutation entry. The brothers of Vishnu, viz., the other two applicants, also started quarreling. Janardhan took Annasaheb away from Vishnu and his brothers, i.e., the applicants. Thereafter, Annasaheb was proceeding towards village. At that time, the applicants followed him holding sticks in their hands. Janardhan and two others followed the applicants. At Holi Square, the applicants assaulted Annasaheb and hit him on head by means of sticks. Annasaheb sustained grievous injury on head. He fell down and expired. On next day, Janardhan lodged report with Police.

4] The trial Court, after having gone through the evidence, held applicants guilty of the offence.

5] We have, with the assistance of both the sides, gone through the evidence to ascertain whether the applicants are entitled for relief under Section 430 of the BNSS. We have heard Mr. S.J. Salunke h/f Mr. N.B. Kalwaghe, learned Counsel for the applicants, and Mr. A.B. Badar, learned A.P.P. for the non-applicant/State.

6] There are two eye-witnesses to the incident, namely, Chandrakala – wife of deceased (PW1), and Omprakash – son of Janardhan (PW2). In chief examination, both have stated about the incident saying that it occurred on 11/2/2015. Both the witnesses spelt out about the quarrel that occurred between the two families. They then deposed that the applicants caught

hold of Annasaheb at Holi Square and assaulted him by means of sticks. Annasaheb sustained head injury and fell down. The applicants fled away. Annasaheb died on the spot.

7] In cross-examination of first witness, it is brought on record that at the time of the incident, Annasaheb was surrounded by the applicants. The witness then deposed that she did not count as to how many blows were inflicted by sticks by each applicant. She then stated that she herself being lady, her father-in-law, i.e., Janardhan, being an old person, did not intervene in the incident. They, however, shouted. Many people gathered, but, by that time, Annasaheb had fallen down. She further deposed that since Annasaheb expired, he was not taken to hospital.

8] In cross-examination of PW2, it is brought on record that they were at a distance of around fifty feet and could see Annasaheb. They have seen the applicants beating Annasaheb by sticks. The defence had further substantiated the theory that Annasaheb was surrounded by the applicants and was beaten mercilessly by means of sticks. It is then re-iterated that since Janardhan was old aged and PW1 being lady, they did not intervene. So far as PW2 is concerned, he said that he being young, he also did not intervene because of fear.

9] Thus, the prosecution's version has been cemented in cross-examination of these two witnesses.

10] The learned Counsel for the applicants has invited our attention to the testimony of the doctor, who found that there was only one internal injury, viz.,

depressed fracture of left temporal and parietal region; the probable cause of death was due to head injury; and the injury was antemortem.

11] In cross-examination, it is brought on record that to cause such an injury, extreme force is required. It is also brought on record that if a person is beaten with three sticks, and eight to ten blows are given, then single injury may be possible. The witness also stated that in such case, multiple injuries are also possible.

12] The argument is that in the present case, only one injury is shown in postmortem and, therefore, the testimony of first two witnesses stands neutralized because they have deposed that all the three applicants have assaulted Annasaheb by means of sticks.

13] We do not find any substance in the aforesaid argument, inasmuch as, the defence itself has brought on record that even if a person is beaten by three sticks, and even if eight to ten blows are given, single injury is possible.

14] The learned Counsel for the applicant has relied upon a judgment of the Hon'ble Supreme Court in the case of *Purshottam and another Vs. State of M.P. [AIR 1980 SC 1873]* to contend that single injury is not possible, where there is attack by three persons.

15] We have gone through the said judgment. In the said case, the Supreme Court found it to be extremely improbable in ordinary course of human events that three blows simultaneously given by three different persons from different directions with sharp-edged weapons

would land with such precision and exactitude so as to cause a single wound as found by the doctor on the head of the deceased. Accordingly, the version of PW1 and PW2 therein was held to be inherently improbable and intrinsically incredible. The testimony was accordingly not believed.

16] Such is not the case here. Firstly, the attack is not by sharp-edged weapon. Here, the attack is by stick. It is nobody's case that the three applicants have hit Annasaheb on head at the same time or at different times at a single place. What has been stated by the witnesses is that Annasaheb was assaulted by the applicants by means of sticks. That being so, and in the light of the evidence of the doctor that single injury is possible even if several blows are inflicted by three persons by means of sticks, it cannot be said that the evidence of PW1 and PW2 is contrary to the medical evidence.

17] Further, motive behind the crime is also established, viz., strained relationship between two families and the manner in which Annasaheb has been assaulted. The evidence also show that the applicants have committed the crime with premeditation. They carried with them sticks and followed Annasaheb, surrounded him and mounted attack resulting into death on the spot. In the circumstances, we find it difficult to suspend the sentence.

18] Further, on the point of suspension of sentence, we may refer to a judgment of the Supreme Court in the case of *Om Prakash Sahni Vs. Jai Shankar Chaudhary and another* [2023 (6) SCC 123], wherein,

the Court, after taking note of the settled principles of law, held thus :

“33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not reappreciate the evidence at the stage of Section 389 of the CrPC and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach.”

19] Thus, the Court is under an obligation to see whether the case presented by the prosecution and accepted by the trial Court can be said to be a case in which ultimately the convict stands for a fair chance of acquittal. If the answer is in the affirmative, the sentence should be suspended.

20] In the present case, for the reasons stated above, we do not find that there are fair chances of acquittal, rather the evidence indicates otherwise.

21] That being so, there is no merit in the application. The same is accordingly rejected.

CRIMINAL APPEAL NO. 299/2025

22] Process the appeal for hearing in accordance with Rules.

(JUDGE)

(JUDGE)

Sumit