



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

CRIMINAL APPLICATION (APPA) NO. 1130 OF 2024
IN
CRIMINAL APPEAL NO. 668 OF 2024

Rajkumar S/o. Patiram Chaudhari Vs. 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. A.D. Tote, Advocate (appointed) for the Applicant/Appellant.
Mr. H.R. Dhumale, APP for the Respondent/State.

CORAM : ANIL L. PANSARE AND RAJ D. WAKODE, JJ.
DATE : 22nd DECEMBER, 2025.

The present applicant/appellant is praying for suspension of sentence and release on bail during the pendency of the present appeal. The present appellant has approached this Court being aggrieved by the judgment and order dated 20th May, 2022, passed by the learned Sessions Judge, Gondia, in Sessions Case No.54/2020, thereby convicting the present appellant for the offence punishable under Section 302 of the Indian Penal Code, 1860, and sentenced him to undergo life imprisonment with a fine of Rs.50,000/-, and in default of payment of fine, to further undergo rigorous imprisonment of two years. The aforesaid appeal is already admitted by this Court.

2. The gist of the prosecution case is as follows:

That on 3rd February 2020, the present appellant/original accused pressed the neck of the deceased, who was the brother of PW-1 Shivcharan Choudhari, and inflicted blow on the left side of the deceased's abdomen with

an iron hook, as a result of a verbal squabble, in the presence of relatives and other eyewitnesses to the incident. Accordingly, PW-1 set the law in motion by lodging First Information Report. Upon completion of the investigation, charge-sheet was filed. The Trial Court framed the charge, to which the appellant pleaded not guilty. After considering the entire evidence on record, the Trial Court held the present appellant guilty of the offence. Aggrieved by the said judgment, the appellant has preferred the present appeal before this Court.

3. Before we consider the present application on its merits, we would rely upon the judgment of the Hon'ble Apex Court in ***Om Prakash Sahni v. Jai Shankar Chaudhary and Another [2023 (6) SCC 123]***, wherein the Hon'ble Apex Court, after considering various earlier judgments, laid down guidelines for suspension of sentence during the pendency of an appeal, wherein the accused is convicted under Section 302 of the IPC. We would rely upon the aforesaid principles of law as enunciated by the Hon'ble Apex Court in paragraph 33 of the said judgment, which is reproduced below:

“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.”

4. Thus, we endeavoured to find out whether the case presented by the prosecution and accepted by the learned Trial Court can be said to be a case in which the convict/present appellant has fair chances of acquittal. If the answer to the aforesaid question is in the affirmative, as a necessary corollary, we will have to allow the present application and suspend the sentence.

5. The prosecution case against the appellant was based upon direct evidence i.e. the eyewitness testimony. The prosecution has examined in all four eyewitnesses to the aforesaid incident, viz., PW-1 Shivcharan Choudhari, his wife PW-6 Sulochana, PW-2 Gayatri, the wife of the deceased, and PW-5 Janardhan. All the eyewitnesses have specifically stated in their depositions that the appellant had caught hold of the neck of the deceased and inflicted blows with an iron hook on the left side of the abdomen. The aforesaid eyewitnesses clearly deposed that the appellant had asked the deceased to call the invitees from the village for dinner, which the deceased

refused. This refusal led to a scuffle, culminating in the assault by the appellant on the deceased.

6. A perusal of the cross-examination of the aforesaid witnesses reveals that the appellant has admitted his presence at the spot of the incident. The suggestions put forth on behalf of the appellant to the witnesses were to the effect that the appellant had intervened to stop quarrel between the deceased Surajlal and his brother PW-1 Shivcharan, and that during the said intervention, the deceased became enraged and struck a blow with a crowbar on the head of the appellant. It was further suggested that the appellant protested the assault and, in the process, the deceased fell on the ground and sustained injuries. The aforesaid suggestions though do not help the appellant to explain the injuries on the body of the deceased, however, help the prosecution to bring home the guilt of the accused, as he himself admitted his presence at the spot of the incident in front of the eyewitnesses.

7. The injuries on the person of the deceased were noted by PW-8 Dr. Aglave, who conducted the post-mortem examination and recorded the following injuries:

“i) Stab wound with oozing of blood on left infra-scapular region of 0.5 cm diameter in size and deep in nature.

ii) Abrasion of 3 mm on neck (below angle of right mandible).

iii) There is collection of air on left side below left mandible to left iliac arrest and laterally up to spine and medially up to sternal area (subcutaneous emphysema) noted on palpation.”

PW-8 Dr. Aglave also found following injuries mentioned in column 20-Thorax:-

- “a) On left subclavian area stab wound seen with puncture of subcutaneous tissue, muscles.*
- b) Injury visualised on both inner and outer surface.*
- c) Pleural puncture (stab injury) seen on left lung, posteriorly.*
- d) Shows stab wound of 0.4 cm in diameter and deep around of size 1.5 cm depth on posterior.”*

8. PW-8 Dr. Aglave specifically deposed that the injuries noted in the post-mortem report at Exhibit 39 were ante-mortem in nature and were sufficient, in the ordinary course of nature, to cause the death of Surajlal. PW-8 Dr. Aglave also expressed his opinion in the query report that the injuries found on the person of the deceased could have been caused by the weapon produced by the appellant pursuant to the disclosure statement made in the presence of PW-7 Hansraj Vaidhya. Thus, the medical evidence clearly supports and corroborates the prosecution case.

9. Further corroboration of the prosecution case is forthcoming from the scientific evidence viz. the Chemical Analyser's reports. The CA report at Exh.10/1 depicts that the jacket worn by the present appellant at the time of the incident was having bloodstains. The aforesaid bloodstains were of human origin and of blood group 'B'. The CA report at Exh.10/3 indicates that the blood group of the deceased was also 'B'. Thus, the presence of bloodstains of blood group 'B', matching that of the deceased Surajlal, on the jacket of the

appellant further fortifies the prosecution case, particularly in the absence of any plausible explanation offered by the appellant for the presence of such bloodstains.

10. Thus, in our considered opinion and for the reasons stated above, we do not, *prima facie*, find that there are fair chances of acquittal of the appellant. The present application, therefore, stands rejected.

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11. The Registry shall prepare paper book at the earliest and list the appeal for final hearing in accordance with the Rules. The appellant may also file private paper book, if so advised.

(RAJ. D. WAKODE, J.)

(ANIL L. PANSARE, J.)

Vijaykumar