

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.444 OF 2015

IN

CRIMINAL APPEAL NO.430 OF 2015

ARUN RAMCHANDRA SHIRORE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.A.P.Mundargi, Senior Advocate, i/b. Mr.Hrishikesh Mundargi,
Advocate for the Applicant.

Mrs.M.R.Tidke, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 10th APRIL 2015.

P.C. :

1 The appeal filed by the applicant, challenging his conviction and the sentence imposed upon him, has already been admitted. By the present application, the applicant prays that the substantive sentence imposed upon him be suspended during the pendency of the appeal, and that, he be released on bail.

2 The applicant was prosecuted for having committed an offence punishable under Section 302 of the Indian Penal Code (IPC). However, after holding a trial, the learned Sessions Judge Nashik, found the applicant guilty only of the offence punishable under Section 304 (Part II) of the IPC, and convicted him of the offence punishable under Section 304 (Part II) of the IPC. The applicant has been sentenced to suffer Rigorous Imprisonment for 5 years and to pay a fine of rs.25,000/-, in default, to suffer Rigorous Imprisonment for 1 year.

3 I have heard Mr.Mundargi, the learned senior advocate for the applicant, in support of the present application. With his assistance, I have gone through the annexures to the application, which include the notes of depositions of the prosecution witnesses recorded during the trial. I have also been taken through the relevant part of the impugned judgment.

4 The case of the prosecution was that, because of some dispute, a scuffle took place between the applicant and Shamkant

– the deceased. That, the scuffle took place near a well, and that, in the scuffle, the applicant pushed the said Shamkant in the well. Shamkant appears to have fallen on iron foundation of the electric motor that was installed in the well. He appears to have died as a result of a head injury.

5 The learned Sessions Judge held that the deceased was the aggressor. The learned Sessions Judge held that the applicant was entitled to act in self defence. That is how, the learned Sessions Judge found the applicant not guilty of the offence punishable under Section 302 of the IPC. However, the learned Judge was of the view that when the incident occurred and when the scuffle was taking place, the applicant could have 'held the deceased tightly' and 'called his friends for help' and ought not to have pushed him in the well.

6 My attention has been drawn to the observations made in paragraphs 49 and 50 of the impugned judgment.

7 The applicant is said to be a practicing advocate. He was on bail during the trial. It is nobody's case that he had misused the liberty granted to him.

8 Arguable points needing serious consideration have been raised. In the ordinary course, the appeal cannot be heard within a short time.

9 The application is allowed.

10 Pending the hearing and final disposal of the appeal, the substantive sentence imposed upon the applicant shall be suspended and the applicant shall be released on bail in the sum of Rs.30,000/- with 1 surety in like amount.

11 Hearing of the appeal is ordered to be expedited.

(ABHAY M. THIPSAY, J.)