

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 29 OF 2016
IN
CRIMINAL APPEAL NO. 29 OF 2016

Datta Namdeo Shinde	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Pawan Mali, Advocate for the applicant.
Mr. Rajesh More, APP, for the State.

CORAM: SMT. SADHANA S.JADHAV, J.
DATE : 4th February, 2016.

P.C.

This is an application under Section 389 of Cr.P.C. The applicant herein was charged for having committed the offence punishable under Section 302 of Indian Penal Code in Sessions Case No.49 of 2010. The learned Addl. Sessions Judge, Pune, vide judgment and order dated 31.8.2015 has convicted the accused for the offence punishable under Section 304 Part II of Indian Penal Code and sentenced him to suffer R.I. for six years and fine of Rs.1,000/- in default R.I. for three months. The appeal is admitted.

2. The learned counsel for the applicant submits that the applicant

was on bail during the pendency of the trial and hence he deserves extension of the same relief during the pendency of the appeal.

3. The learned APP has vehemently submitted that the applicant herein was charged for the offence punishable under Section 302 of IPC. PW-1 Laxmi happens to be an eye-witness. PW-1 Laxmi has deposed before the Court that there used to be quarrels between the wife of the applicant and her maid-servant on account of filling water at the common water tank. As far as the incident is concerned, PW-1 has stated as follows :-

“My husband tried to persuade the accused by saying that it was not proper on the part of his wife to have a frequent quarrel with me otherwise he would give complaint. Accused started to abuse my husband and also started to beat him. I raised shouts but no one came to rescue. I had tiffin with me. When accused was beating my husband I gave a blow of tiffin on the head of accused. Then accused left my husband and gave a kick blow on my stomach. Due to that blow I fell down. Then accused was beating to my husband by fist and kick blows. Again I woke up and again I tried to separate the accused but in vain. He continued beating my husband by fist and kick blows.”

This evidence would be sufficient to show that the accused had not used

any weapon to assault the deceased. It appears to be a sudden quarrel. The evidence would further indicate that initially, there was verbal altercation. The wife of the deceased had assaulted the accused with a tiffin box and this had further enraged the accused. He had assaulted the deceased with fist and kick blows. In these circumstances, it cannot be said that the accused had knowledge that an assault with fist and kick blows would result into death.

4. The learned counsel for the applicant has drawn attention of this Court to para 17 of the judgment where the learned Sessions Judge has relied upon statement of PW-1 recorded under Section 154 of Cr.P.C. In fact, FIR would be a corroborative evidence and cannot be relied upon. However, it appears from the observations of the learned Sessions Judge that as far as the incident is concerned, there is material discrepancy in the narration given in the first information report and the testimony before the Court. In any case, the applicant is sentenced to a short-term sentence of six years. This Court is hearing Criminal Appeals of the year 1996 and hence it would not be possible to take up this Criminal Appeal for final hearing in the near future. In view of the observations made hereinabove, the applicant deserves to be enlarged on bail during the pendency of the appeal. Hence the following order :-

ORDER

- (i) The application is allowed.
 - (ii) The substantive sentence imposed upon the applicant is hereby suspended. He be enlarged on bail. Same bail, fresh bonds.
 - (iii) The applicant shall be released upon depositing the fine amount before the trial Court.
 - (iv) The applicant shall report to the Court of Addl.Sessions Judge, Pune, once in six months on the date specified by that Court.
 - (v) In case of failure to attend that Court on any two consecutive dates, the prosecution shall be at liberty to apply for cancellation of bail.
 - (vi) Parties to act on an authenticated copy of this order.
- Application stands disposed of.

(SMT.SADHANA S.JADHAV, J.)