

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.49 OF 2016

IN

CRIMINAL APPEAL NO.703 OF 2015

MAHADEO WAMAN JAGTAP

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

WITH

CRIMINAL APPEAL NO.815 OF 2015

RAOSAHEB RAJARAM JAGTAP & ANR.

)...APPLICANTS

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Shri D.G.Khamkar, Advocate for the Applicant in Criminal Application No.49 of 2016.

Shri A.R.Patil, APP for the Respondent – State.

Shri Rupesh Zade, Advocate for the Appellant in Criminal Appeal no.815 of 2015.

CORAM : ABHAY M. THIPSAY, J.

DATE : 5th APRIL 2016.

P.C. :

1 Heard Shri D.G.Khamkar, the learned counsel for the applicant. Heard Shri A.R.Patil, the learned APP for the State.

2 The applicant and three others have been convicted by the Additional Sessions Judge, Baramati, of offences punishable under Sections 307 of the IPC read with Section 34 of the IPC, as also Sections 143, 147 and 148 of the IPC, and Section 452 of the IPC read with Section 34 of the IPC. They have been sentenced to suffer imprisonment for various terms. The highest sentence that has been awarded is in respect of offence punishable under Section 307 of the IPC read with Section 34 of the IPC, which is of Rigorous Imprisonment for a period of 7 years. The substantive sentences have been directed to run concurrently. The appeal filed by the applicant and the other accused has already been admitted.

3 The applicant and the other accused had applied for suspension of sentences during the pendency of the appeal, and though the sentences imposed upon the co-accused have been suspended by this court, the prayer of the present applicant for suspension of sentences was rejected (Criminal Application No.859 of 2015 decided on 3rd September 2015) (Coram : A.R.Joshi, J.). The applicant has made the present application again seeking suspension of the sentences on the ground that certain relevant aspects of the matter were not pointed out to the court when the applicant's previous application was rejected. The learned counsel for the applicant pointed out that a cross case had been registered out of the same incident and that the accused in the cross case have also been convicted, though only in respect of offence punishable under Section 324 of the IPC.

4 The accused in the cross case have also filed an appeal challenging their conviction and the sentences imposed upon them. That appeal has been admitted and the substantive sentences imposed upon those accused have been suspended.

5 It has already been observed that even the sentences imposed upon the other appellants in the present appeal have been suspended. A distinction was made in case of the present applicant because he appears to be the one who had used a sword and had given a blow on the neck of one Rao Saheb, which fell on the right wrist of the said Rao Saheb, causing a very serious injury to him.

6 The accused in the cross case are also alleged to have used similar weapons and one of them had used a sword.

7 The parties drawn to a fight are not expected to measure the force which they use and the nature of injuries sustained by one of them, would be, largely, a matter of chance. Simply because one of the members in the other party sustained a more serious injury, a totally different treatment cannot be given to the present applicant. It is a fact that, that the accused in the cross case had also been convicted, but they have been released on bail, pending the final disposal of the appeal filed by

them, was not pointed out to this court when it rejected the applicant's previous application.

8 The application is allowed.

9 Pending the hearing and final disposal of the appeal, the substantive sentences imposed upon the applicant shall stand suspended; and the applicant shall be released on bail in the sum of Rs.30,000/-, with 1 surety in like amount, or two sureties in the sum of Rs.15,000/- each, on the condition that the applicant shall attend the concerned Police station on the first Sunday of every alternate month, till the disposal of the appeal.

(ABHAY M. THIPSAY, J.)