

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPLICATION NO. 52 OF 2016
IN
CRIMINAL APPEAL NO. 25 OF 2016

1) Dynaneshwar Deoram Govardhane
2) Sopan Deoram Govardhane
3) Nitin Deoram GovardhaneApplicants

V/s.

The State of MaharashtraRespondent

Mr. Aniket Nikam for Applicant
Mrs. A. A. Mane APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : FEBRUARY 4, 2016.

PC :

Heard. This is an application under section 389 of Code of Criminal Procedure, 1973 seeking suspension of substantive sentence imposed upon the applicants in Sessions Case No. 116 of 2014. Applicants were charged with offence under section 302 and 504 r/w 34 of Indian Penal Code, however, learned Sessions Judge has convicted the accused for offence punishable under section 304 (II) r/w 34 of Indian Penal Code vide Judgment and Order dated 28/12/2015.

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2) Learned counsel for the applicants, at the threshold submits that he would not press for application for bail of applicant no. 1 for the time being. In view of this, the court is to consider the evidence against applicant nos. 2 & 3.

3) Perused notes of evidence. It prima facie appears that on the date of incident a religious function was in progress. Deceased Ramhari was serving the food to the people. There was an altercation as accused no. 1 had questioned the deceased as to why he is serving the food in the religious function. It further appears from the evidence of P.W. 1 Kamal Dheringe who happens to be wife of deceased that the accused persons were annoyed with the fact that the deceased had attended the religious function to have food. According to her, accused no. 1 was having a wooden rod of Babool in his hand. He hit with wooden rod on the head of deceased Ramhari. Accused nos. 2 & 3 i.e. applicant nos. 2 & 3 had made her husband fall down and that thereafter accused nos. 2 & 3 had also beaten her husband by wooden rod of Babool and also with fist and kick blows. It is elicited in the cross-examination that at the relevant time, some children had come to her and informed her that her husband had fallen down. Certain discrepancies are

brought on record in the cross-examination.

4) P.W. 6 Suresh Dheringe happens to be real brother of the deceased. He has admitted in his testimony that when the deceased was initially taken to the hospital, they had informed the doctor that there was an assault by unknown persons.

5) Learned counsel for the applicants submits that in view of this it cannot be said that witness has been an eye witness or that anybody had seen deceased being assaulted by the applicants. Learned counsel for the applicants has further drawn the attention of this court to the evidence of Dr. Sagar Mandlik who has stated in the cross-examination that when the patient was being admitted in the hospital, many relatives were present. They had informed that Ramhari was assaulted by some unknown person. That at the time of admission, he was under the influence of alcohol. Blood sample was sent to Metro Police Pathology for examination. Quantity of alcohol was found at 131 mg. He had brought on record the report of blood examination. In fact, the report was brought by the accused and P.W. 8 was confronted with the same. Dr. Vijay Pwar who had taken deceased to Vakratund Hospital has been declared hostile by the prosecution. Learned counsel for the applicant

submits that applicants were on bail during the pendency of trial and therefore they deserve to be enlarged on bail during the pendency of appeal. Learned Sessions Judge has sentenced the applicants to rigorous imprisonment for 10 years. It cannot be said that it is a short term sentence and therefore, liberty is granted to withdraw the application of applicant no. 1 for the time being. Rest of the arguments of learned counsel pertain to appreciation of evidence which can be done at the stage of final hearing. At this stage, evidence of P.W. 1 cannot be ignored, however, there was no reason for any person to be armed with Babool stick at the time of religious function.

6) Taking into consideration the evidence on record and submissions advanced across the bar, applicant nos. 2 & 3 deserve to be enlarged on bail. As far as applicant no. 1 is concerned, learned counsel for the applicant is at liberty to prepare private paper-book and submit the same within 4 weeks from today. Office to verify the paper-book along with record and proceedings. Liberty to mention the matter for final hearing after the paper-book is ready and record and proceedings are received.

ORDER

(i) Application of applicant no. 1 is disposed of as not pressed for

the time being.

- (ii) The substantive sentence imposed upon the applicant nos. 2 & 3 is hereby suspended and they be enlarged on same bail, fresh bonds.
- (iii) Applicants shall attend the court of sessions Nashik, once in six months, as directed by the Sessions Court, till the conclusion of appeal.
- (iv) Upon failure to attend any two consecutive dates, prosecution would be at liberty to seek cancellation of bail.
- (v) Application stands disposed of.
- (vi) Parties to act on authenticated copy of this order.

(SMT. SADHANA S. JADHAV, J.)