

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.192 OF 2016
IN
CRIMINAL APPEAL NO.517 OF 2015

1) Arjun Dattatray Khandekar
2) Vasant Dattatray Khandekar ... Applicants
(Org.Accused 3 & 4)
Vs.

The State of Maharashtra ... Respondent

with
CRIMINAL APPLICATION NO.1239 OF 2015
IN
CRIMINAL APPEAL NO.517 OF 2015

1) Madhukar Maru Khandekar
2) Krishna Sahdeo Khandekar ... Applicants
(Org.Accused 9 & 10)
Vs.

The State of Maharashtra & Ors. ... Respondents

Mr.P.B. Pasbola with Mr.Bhavesh Thakur i/b Mr.Rahul Arote for the
Applicants

Mr.Arfan Sait, APP, for Respondent - State

CORAM:SMT. V.K. TAHILRAMANI &
MRS.MRIDULA BHATKAR, JJ.

DATE: NOVEMBER 29, 2016

P.C. (Per Mrs.Mridula Bhatkar, J.):

1. The applicants in Criminal Application No.192 of 2015 are original accused Nos.3 and 4 whereas the applicants in Criminal Application No.1239 of 2015 are original accused Nos.9 and 10. These applicants/accused were convicted by judgment and order dated 17.4.2015 by the learned additional Sessions Judge, Mangaon, District Raigad for the offence punishable mainly under sections 302 and 149 of the Indian Penal Code.

2. It is the case of the prosecution that the accused and the deceased were having two political factions in the village and there was a constant rivalry amongst those two groups. On 7.4.2012, a religious ceremony was publicly conducted in the temple, where persons from the two groups met in the temple and the accused attacked the group of the deceased, viz., Nathuram. Accused Nos.3 and 4 caught hold of Nathuram and accused No.1 stabbed him when PW2 and PW3 came to rescue the deceased. At that time, accused No.10 and others caught PW2 and he was stabbed by one of the accused. Accused No.10 Krishna thereafter caught PW3 and accused No.9 hit him with a musical instrument i.e., Taal made of brass. Nathuram succumbed to the injuries. Other three persons

were injured. Thereafter, nearly 17 persons were prosecuted and tried and all were convicted for the offence under section 302 r/w 149 of the Indian Penal Code and some of them were convicted for offence under section 307 so also under section 323 r/w section 149.

3. Mr.Pasbola, the learned Counsel for the Applicants, has submitted that the case of accused Nos.3 and 4 and accused Nos.9 and 10 is to be considered separately as a specific role is attributed to these accused persons. He submitted that the discrepancy in the evidence of PW2, PW3, PW4 and PW5, who claimed to be eye witnesses, is to be taken into account. He submitted that accused Nos.9 and 10 were not given a role of holding the deceased but as per the evidence of PW2 and PW3, accused Nos.3 and 4 held the deceased Nathuram and Prakash Khandekar stabbed Nathuram. He submitted that after going through the evidence of the eye witnesses and the police personnel PW4, there is confusion as to whether all these eye witnesses had an opportunity to see the actual stabbing or not as the actual assault has taken place either in the Gabhara of the temple or the Sabha Mandap of the temple. He further pointed out that the distance between the Gabhara and the Sabha Mandap is 70' and the temple was crowded. It definitely affects the visibility of the

actual incident. He argued that the evidence of PW2 and PW3 is doubtful mainly on the point that their statements were not recorded immediately on the next day i.e., on 8.4.2012 but they were recorded on 23.4.2012. Thus, chances of manipulation of names by PW2 and PW3, cannot be overruled. In the cross-examination of PW2, he has admitted the omission of the name of the accused No.10 in attributing the role of holding PW2. He further submitted that all the accused were on bail on bail during the trial. Hence, the applicants be released on bail.

4. Learned Prosecutor while opposing the bail applications, has submitted that a bail application of the co-accused is rejected by this Court as it is an offence under sections 302 r/w 149 of the Indian Penal Code. He submitted that all the accused are convicted under sections 302, 307 r/w 149 of the Indian Penal Code and the role attributed to the present accused is the same which was attributed to the other accused whose bail application was rejected.

5. We have perused the evidence of PW2, PW3 and PW4 so also considered the submissions of Mr.Pasbola, the learned Counsel for the applicants and the order passed by this Court dated 10.9.2015 in

Criminal Application No.1029 of 2015 in Bail application NO.517 of 2015, wherein one of us (Smt.V.K. Tahilramani, J.) was a member of the Bench. The accused are punished not only under section 302 but also under section 149 of the Indian Penal Code. The incident has taken place in broad daylight. Considering that the roles attributed to each of the accused are the same and also in view of the earlier order of this Court rejecting the bail application of the co-accused, we reject these bail applications.

(MRIDULA BHATKAR, J.)

(V.K. TAHILRAMANI, J.)