

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPLICATION NO. 496 OF 2016
IN
CRIMINAL APPEAL NO. 77 OF 2016

Suraj Alias Pappu Bhimrao GhuleApplicant
V/s.
The State of MaharashtraRespondent

Mr. Satyam H. Nimbalkar Advocate for Applicant.

Mr. S. S. Pednekar APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : MAY 6, 2016.

PC :

Heard. This is an application under section 389 of Code of Criminal Procedure, 1973 seeking suspension of substantive sentence during the pendency of the appeal. Applicant herein happens to be accused no. 1 in Sessions Case No. 149 of 2012. He has been convicted for offence punishable under section 304 Part I of Indian Penal Code and sentenced to suffer rigorous imprisonment for a period of 10 years and fine of Rs. 10,000/- in default to suffer rigorous imprisonment for six months by 2nd Additional Sessions Judge, Satara in Sessions Case No. 149 of 2012 vide Judgment and Order dated

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25/08/2015.

2) Perused the evidence and findings recorded by learned Sessions Judge. It is seen from the records that P.W. 1 Ajit Shinde is the complainant in the present case and he has been declared hostile by the prosecution. P.W. 3 & P.W. 4 were examined by the prosecution as an eye witnesses and hence, it was a case of direct evidence. On the basis of the substantive evidence of P.W. 3 & P.W. 4, original accused nos. 2 & 3 have been acquitted. Learned Sessions Judge has recorded a categorical finding that there was paucity of light at the time of the incident and there was no opportunity to the eye witnesses to see the actual incident of assault. It is observed by the learned Sessions Judge as follows:

“Considering the distance between the spot and the entrance of the hotel, it can be said that, it was a considerable distance and the witnesses could not have seen the assailants, had there been no source of light. It should be noted that, on that day it was a No Moon Day as the witnesses have specifically stated that it was a 'Gatari Amavasya'.”

Learned Sessions Judge further observed that:

“In all these factual circumstances there could hardly be any visibility for the witnesses to notice the assailants and imbibe their features, unless there was sufficient source of light. Except P.W. No. 4 Sachin

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Bugad, the other witnesses have not stated in their statements that, they could see the assailants as there was source of light.”

3) It is pertinent to note that learned Sessions Judge has further observed that identification of the accused by the witnesses in the test identification parade and also before the court becomes doubtful. In view of the findings recorded by the learned Sessions Court, it appears that prosecution witnesses were not able to establish that it was the present applicant alone who could have caused homicidal death of the deceased. Moreover, the knife with which the deceased was allegedly assaulted was seized at the instance of the accused no. 3 under section 27 of the Indian Evidence Act. Applicant has made out a case for grant of bail during the pendency of the appeal. It is also submitted that applicant was an under trial prisoner and has almost undergone 4 years of imprisonment. It is not likely that the appeal may be heard in the near future.

4) In view of this, applicant deserves to be enlarged on bail. Hence, following order.

ORDER

(i) Application is allowed.

(ii) The substantive sentence imposed upon the applicant is hereby

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suspended. He be enlarged on bail on furnishing P.R. bond in the sum of Rs. 50,000/- with one or more solvent sureties in the like amount.

(iii) Applicant shall report to Court of Sessions, Satara once in six months on the date as specified by the Sessions Judge, till the conclusion of appeal.

(iv) Upon failure to attend any two consecutive dates, prosecution would be at liberty to seek cancellation of bail.

5) Application is allowed and disposed of in the above terms.

(SMT. SADHANA S. JADHAV, J.)