

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1120 OF 2016

IN

CRIMINAL APPEAL NO.541 OF 2016

SUNIL DIGAMBAR SARVGAUD

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.A.PMundargi, Senior Advocate, a/s. Mr.Ritesh Thobde, Advocate for the Applicant.

Ms.V.S.Mhaispurkar, APP for the Respondent - State.

CORAM : P N. DESHMUKH, J.

DATE : 7th OCTOBER 2016.

P.C. :

1 Original accused no.1 Sunil has filed this application for suspension of substantive sentence and for grant of bail. Applicant is found convicted for the following offences :

OFFENCE	PUNISHMENT
Section 143 of IPC	S.I. for 6 months and to pay a fine of Rs.1,000/-, in default, to suffer S.I. for 1 month

Section 147 of IPC	S.I. For 1 year and to pay a fine of Rs.1,000/-, in default, to suffer S.I. for 3 months
Section 148 of IPC	S.I. For 2 years and to pay a fine of Rs.1,000/-, in default, to suffer S.I. for 3 months
Section 307 r/w. Section 149 IPC	S.I. For 10 years and to pay a fine of Rs.5,000/-, in default, to suffer S.I. for 1 year
Section 324 r/w. Section 149 IPC	S.I. For 3 years and to pay a fine of Rs.5,000/-, in default, to suffer S.I. for 6 months
Section 504 r/w. Section 149 IPC	S.I. For 1 year and to pay a fine of Rs.1,000/-, in default, to suffer S.I. for 3 months
Section 506 r/w. Section 149 IPC	S.I. For 1 year and to pay a fine of Rs.1,000/-, in default, to suffer S.I. for 3 months

All the sentences are directed to run concurrently.

2 Heard learned counsel for applicant and learned APP. It is submitted that according to the case of prosecution, applicant has committed assault on Nitin, Avdhut @ Suresh and one Vikas by sword and axe. However, neither of these witnesses are certified to have sustained grievous injuries. For that purpose, learned counsel for applicant has invited attention to evidence of injured witnesses and of Medical Officer, and has submitted that from the evidence on record, no case for the offence punishable under Section 307 of IPC is made

out. It is also pointed out from the documents on record that there are counter cases involving applicant and injureds in this case and complainant, and as this court vide its order dated 30th August 2016 has suspended sentence imposed upon co-accused Ravindra Sarvgaud, allegations against whom are also similar to that of applicant, applicant be released on bail, who, even otherwise, was on bail pending trial.

3 Learned APP opposed the application on the ground that there is direct evidence of injured eye witnesses which is corroborated by doctor's evidence and has further submitted that from evidence of PW5 Vetel Tondse and PW3 Vishal Sarvgaud it is also established that due to political rivalry, relations between applicant and complainant were not cordial, and thus, there was motive for applicant to open assault upon complainant and his men. It is, therefore, contended that, in the background of facts as aforesaid, application be rejected.

4 Involvement of applicant is found from the evidence of PW6 Nitin Sarvgaud and PW1 Suresh Kamble @ Avdhut. Nitin has stated that on the day of incident when he along with his friends were

going to play cricket, applicant along with 15 other co-accused committed assault on them. According to his evidence, assailants were armed with weapons like swords, axe and iron rod. Applicant assaulted on his left hand with sword and by axe on head of Suresh, and had also assaulted Charudutt by iron rod. Thus, at the time of incident, applicant was found armed with three different weapons and in the course of same transaction, has committed assault by three different weapons on three persons i.e. on him by sword on left hand, on head of Suresh by axe and by iron rod on head of Charudutt, which evidence itself creates doubt in the case, as deposed by Nitin.

5 Evidence of Suresh @ Avdhut is similar when he has stated that when they were proceeding to play cricket, applicant along with other co-accused instigated saying “mara toda, eka ekala sodu naka, tukade kara.” In the course of same transaction, applicant committed assault by blunt side of sword upon Nitin on his left hand and upon him on his head and right hand, and also upon one Vikas Kamble by sword on right palm. Admittedly, Vikas is not examined by prosecution. Evidence of Suresh @ Avdhut implicates applicant having caused assault as aforesaid by sword, while as stated aforesaid, Nitin has attributed applicant with weapons like axe and iron rod. Evidence of

Dr.Maruti Takale, who has examined Suresh @ Avdhut on the day of incident, has certified that said injured had sustained CLW over occipital region 1x1½ inch, abrasion at right lumbar region over the back and contusion left upper arm admeasuring 2x1 inch, which injuries are said to be possible by sticks and iron pipe and has further admitted that injuries sustained by Suresh @ Avdhut as well as other injurers who are examined by him on that day, were simple and possible by fall on rough surface.

6 Evidence of Dr.Prakash Narote (PW11) reveals that he had examined injured Nitin almost two months after the incident i.e. on 23rd August 2007 and found him to have sustained contusion 3 x 3 cm over left wrist and abrasion 2 x 2 cm over left elbow, both by hard and blunt object, which are stated to be simple in nature.

Said Medical Officer has also examined Vikas Kamble, who is not examined by prosecution, who is stated to have sustained cut injury 6 x deep muscle over left palm, which is also stated to be simple in nature.

7 This court had already considered fact of counter cases registered against both sides as from further evidence of PW1

Avdhut – complainant, it has come on record that accused no.1 has also filed a cross complaint against complainant in this case, wherein, they are charge-sheeted.

8 Even otherwise, on considering case of prosecution, from evidence of Dr.Prakash, it further reveals that apart from PW2 Amar there are other injureds like Vikas Kamble, Pradeep Sarvagod, Vitthal Tondse, Sujit Eknath, who are medically examined by PW11 Prakash. However, none of these injureds are examined as witnesses, who are certified to have sustained simple injuries except, PW5 Pravin alias Wetel, who on clinical examination though is found to have sustained simple injury on occipital region, on his further examination by Dr.Maruti is certified to have sustained injury, which in the absence of medical treatment is stated to be fatal.

9 In that view of the matter, and as applicant was stated to be on bail pending trial, and as it is no case of prosecution that he has misused liberty granted to him, application is liable to be allowed by suspending sentence imposed upon applicant and by granting bail pending appeal, as per order below :

- i) Applicant shall be released on bail on his executing P.R.Bond in the sum of Rs.20,000/- with 1 surety in like amount.
- ii) While on bail, applicant shall mark his presence to City Police Station, Pandharpur, once in three months on first day of each month, initially for nine months, and thereafter, once in six months, pending appeal.

(P. N. DESHMUKH, J.)