

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1137 OF 2016

IN

CRIMINAL APPEAL NO.25 OF 2016

DNYANESHWAR DEORAM GOVARDHANE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Aniket Nikam, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : P N. DESHMUKH, J.

DATE : 27th SEPTEMBER 2016.

P.C. :

1 This application is filed by applicant for suspension of substantive sentence imposed upon applicant by the learned Sessions court for the offence punishable under Section 304(II) of IPC and for his release on bail. Heard learned counsel for applicant and learned APP at length. With their assistance, I have perused the notes of evidence.

2 Learned counsel for applicant had submitted that out of four eye witnesses relied upon by the prosecution, evidence of none of these witnesses can said to be convincing, establishing involvement of applicant, as the evidence of complainant establish that at the time of incident, she was at some other place, and as such, cannot witnessed the incident of assault on her deceased husband.

 While analyzing evidence of witness PW6 Suresh Dhering it is contended that if he was an eye witness to the incident, there was no reason for him to not to disclose name of applicant as assailant of deceased, when he had accompanied his deceased brother to hospital as in the history of assailant given by him to the doctor, he has stated assault by “unknown persons” which evidence is further found corroborated by the evidence of PW8 Dr.Sagar Mandlik, who has recorded the history as aforesaid. It is further submitted that evidence of PW3 Shivaji Govardhane does not find corroboration as other eye witnesses namely Sharad Tukaram and Suresh Popat are not examined, who had also taken the deceased to hospital. Similarly, by referring to the evidence of PW5 Varsha Deringe – daughter of deceased, it is submitted that her evidence is full of improvements. In the background of evidence as aforesaid, it is submitted that application is liable to be allowed for want of sufficient evidence to establish his involvement in the present crime.

3 It is further contended that even otherwise, case of applicant is at par with that of accused nos.2 and 3 who are released on bail by this court and it is thus contended that application is liable to be allowed on this count also.

4 Learned APP on the other hand has opposed the application contending that there is direct evidence of eye witnesses establishing involvement of applicant in the present crime and by referring to paragraph 23 of the impugned judgment, it is submitted that involvement of applicant is established as blood of group of deceased was found on the clothes of applicant, though applicant had, admittedly, not sustained any injury on his person, for which no satisfactory explanation is put forth. It is, thus, contended, that application be rejected.

5 Record reveals that earlier, criminal Application being Criminal Application No.52 of 2016 was filed by applicant for suspension of substantive sentence and for bail along with original accused nos.2 and 3. However, said application was not pressed and as such, by order dated 4th February 2016, this court considered application for accused nos.2 and 3 and allowed the same. It thus appears that at that stage, applicant has not pressed his application for suspension of substantive sentence and

bail, and as such present application is now duly considered.

6 In the line of arguments advanced by learned counsel for both sides, from the evidence of complainant PW1 Kamal Dheringe, wife of deceased, it has come on record that in a religious ceremony which was observed in their village on 12th February 2014, applicant along with co-accused Sopan and Nitin were present, when applicant, who was armed with wooden log of babul tree, gave a blow on the head of her husband due to which, he fell down. According to her, at that time, accused nos.2 and 3 also beat her husband by wooden rod of babul tree and by giving fist blows. From the evidence of PW1 Kamal Dheringe, thus, she claims to be an eye witness of assault on her husband by all the accused. However, on perusal of her cross-examination, she has admitted that at the time of incident, she was present at the house of one Ananda Raoji Govardhane, whose house is situated near temple of Lord Maruti, for preparing religious food. Though she, for want of knowledge, has denied if said temple of Lord Maruti is situated at a distance of one kilometer from the place where the religious ceremony of offering food was in progress, had admitted that when she was present in the house of Ananda Govardhane, some children came to her and told her that her husband had fallen down. In that view of the matter, evidence of PW1 Kamal,

posing her to be an eye witness to the incident of assault, does not appear to be convincing, as her husband as per information given to her by such children, had already fallen down when she was not on the spot.

7 Considering evidence of PW5 Varsha, though she also claims to be a witness to the incident when she has deposed that she along with her brother, mother PW1 Kamal and deceased had been to the spot where food was being offered, and her deceased father was serving religious food to the persons who had come there, when quarrel took place between her father, applicant and co-accused, when co-accused nos.2 and 3 caught hold of her father and applicant assaulted on his head from front side by a rod(log) of babul tree. This witness appears to have materially improved her evidence, as has further deposed, that she had stated in her statement recorded by police that applicant gave such blow by wooden log on the head of her father from front side, however she is unable to assign any reason why no such fact is mentioned in her statement. Evidence of PW11 Nisar Sayyad, Investigating Officer, established that when he recorded statement of PW5 Varsha, she has not stated that applicant beat deceased Ramhari from front side.

8 On considering evidence of third eye witness PW6 Suresh Dheringe it reveals that he has stated that there was some altercation of words between applicant and deceased Ramhari, when co-accused

nos.2 and 3 caught hold of deceased and applicant hit wooden log on his head, due to which he fell down and thereafter co-accused nos.2 and 3 manhandled him by fist blows and kick blows, while deceased was shouting for help and fell unconscious. In his cross-examination he denied fact of he being not present at the time of incident and has further admitted that initially deceased was taken to hospital of Dr.Pawar at Village Sanjegaon and from there to Vakratund Hospital at Nashik, where he, along with others, who had accompanied deceased to the hospital, had given history of assault to doctor, that some unknown persons made assault on deceased Ramhari. Thus, I find substance when it is contended on behalf of applicant that if PW6 Suresh was really a witness to the incident of assault, there was no reason for him to state history of assault by unknown persons.

9 Above evidence of stating of history of assault by unknown persons is further found substantiated by the evidence of PW8 Dr.Sagar, working at Vakratunda hospital, Nashik, when he has stated that while he was on duty Ramhari was brought in hospital in injured condition by his relatives who informed that he was subjected to assault by some unknown persons.

10 Considering above stated evidence, thus, the case of prosecution of applicant committing assault upon deceased does not appear to be full proof. Moreover, from the evidence on record, it is found that at the time of incident, deceased was under the influence of liquor as revealed from further evidence of Dr.Sagar and in the evidence of PW1 Kamal, it has come on record that at the spot there was a platform prepared for preparing food and for keeping cooking utensils. Also a stove was prepared with the help of stones. While according to evidence of PW10 Dr.Rajendra Dusane, who has performed postmortem report, had in turn admitted that injuries sustained by deceased as mentioned in column no.19 are possible by hard and blunt object including by wooden rod, by which he was confronted in the court at the time of recording his evidence. However, in his cross-examination, he has admitted that he was never confronted with any such wooden log by police to ascertain if such injuries were possible by the wooden log and had stated that the injury sustained on head of deceased was in the nature of hole. Learned counsel for applicant had thus contended that if the case of prosecution is to be accepted about applicant causing assault by wooden log, such type of injury in that case is not possible. In the line of submissions as aforesaid, when further evidence of Dr.Rajendra is perused, he has

admitted that the injury sustained by deceased is possible if a person falls on a projecting stone as in that case he would sustain a piercing injury on his head. He has further admitted that such injury is also possible if a person falls on his head on an open iron pipe and has admitted that injuries mentioned in column no.17 of the postmortem notes are simple in nature and are possible by falling on hard and blunt object or on ground.

11 Having considered the above discussed evidence, and since it is also found that the case of applicant is not materially different than that of co-accused nos.2 and 3 who are already released on bail, I find no reason to reject the application, more particularly, when admittedly pending trial, applicant was on bail and it is no case of prosecution that while on bail, applicant had misused liberty granted to him. In that view of the matter, following order is passed :

- i) Applicant shall be released on bail on his executing P.R.Bond in the sum of Rs.50,000/- with one surety in like amount or two sureties in the sum of Rs.25,000/- each.

- ii) While on bail, applicant shall mark his presence with Wadiwarhe Police Station, District Nashik, once in three months, on the first day of such month, pending appeal.
- iii) Applicant shall provide proof of his residence to the Investigating Officer and change in address in future, if any, to the concerned police station.
- iv) Application is allowed in above terms.

(P. N. DESHMUKH, J.)