

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:

NAGPUR BENCH : NAGPUR

Criminal Application [BA] No.1024 of 2016

[Laxman Vishwas Tidke Vs. State of Mah.]

Office Notes, Office Memoranda of

Coram, appearances, Court's orders

Court's or Judge's orders

or directions and Registrar's orders.

Mr. R. M. Daga, Adv., for the applicant.

Mr. Palshikar, APP for respondent.

CORAM : P.N. DESHMUKH, J.

DATE : 22nd December, 2016

This is an application by the accused - Laxman Tidke in Crime No. 115/2015 registered with Lonar Police

Station, District - Buldana, for the offences punishable under Sections 302 read with Section 34 of Indian Penal Code and Sections 4 and 25 of the Arms Act.

Inviting my attention to the contents of report, learned counsel for the applicant submitted that the applicant along with two co-accused persons is alleged to have assaulted deceased Maroti, and in the said assault, the applicant - Laxman is attributed with the role of assault by a sword, while co-accused Vinod, by a shovel and Vishwas by kicks and fist blows. Thereafter, by referring to the Post-Mortem Report, the learned counsel submitted that Injury No.3, which is on the head of deceased is a fatal injury, as, according to its corresponding injury over scalp mentioned in Column No.19 of the Post-mortem Report, brain matter was seen protruding out of said wound, which injury was possible by a shovel, the use of which object is attributed to co-accused - Vinod and said accused has already been granted bail by this Court.

In the background of above stated submissions, it is submitted that the application be allowed.

Learned APP has opposed the application by filing a reply on record and submitted that the deceased having sustained as many as thirty injuries, and cause of

death, as per Post-mortem report, is due to head injury and severe blood loss, there is no point in considering the individual injuries and also the role attributed to the applicant as stated in the report; but since the case is registered against all accused under Section 34 of Indian Penal Code, they all had a common intention to do away with deceased. The learned APP, therefore, submitted that the application is, thus, liable to be rejected.

Perusal of report reveals that relations between deceased, who was the brother of co-accused Vishwas were not cordial, and on the day of incident, in fact, they both had approached the complainant - Vitthal Nagre to find some settlement to the dispute between them. However, after meeting the complainant, when both of them were proceeding back, within five minutes, the complainant heard the shouts "Wachwa, Wachwa, Melo Re" and found the applicant - Laxman along with co-accused Vishwas and Vinod assaulting Maroti by sword and shovel. As per the report, Laxman was armed with a sword and Vinod, with a shovel. The report is silent on the specific assault, if any, made either by Laxman or by co-accused Vinod and on what part of body, as, according to the contents of report, all the three accused with arms as aforesaid started assaulting deceased on his head and legs, while co-accused Vishwas was assaulting by kick blows.

In the light of the facts stated in the report as aforesaid, and as applicant is alleged to have possessed sword, on perusal of injuries sustained by deceased which are mentioned in column 17 of the Post-mortem Report, it is seen that injuries 1 and 2, which are incised wounds, appear to have been caused by a sword on the head. Injury No. 3 also on the head is stated to be over middle of the scalp at parieto-parietal joint from where brain matter was coming out. Similarly, injury no.6 also on the head is on left parietal region. Both are contused, lacerated wounds and, thus, can be attributed to co-accused Vinod, who, according to the report, is stated to have assaulted deceased by a shovel. Said injuries correspond with internal injuries mentioned in para 19 of the Post-mortem report, which prima facie appear to have caused death of deceased.

Apart from injuries mentioned at Sr. Nos. 1 and 2 in Post-mortem Report as referred above, deceased also sustained as many as fifteen incised wounds, many of which are on non-vital parts of body, like wrist, ankle, fingers, right leg knee and shoulder. As such, those injuries cannot be ascribed to the cause of death of victim - Maroti. In that view of the matter and in view of the fact that co-accused Vinod, who is found to have assaulted deceased by a shovel, is released on bail by

this Court, case of applicant appears to be on the better footing than that of Vinod. Application is, therefore, liable to be allowed on the ground of parity with that of co-accused. In the result, application is allowed as per the order below:-

- [a]** The applicant shall be released on bail on his executing a Personal Bond in the sum of Rs. 50,000-00 [rupees fifty thousand only] with one surety in the like amount.
- [b]** While on bail and pending trial, the applicant shall attend Lonar Police Station, Distt. Buldana, once in three months, on the first day of each such month.
- [c]** While on bail and pending trial, the applicant – Laxman Vishwas Tidke shall not enter the territorial limits of village Raigaon, Tq. Lonar, Distt. Buldana and he shall forthwith submit a proof of his address where he proposes to stay, to the Investigating Officer, and in the event of change of such address in future, shall inform the same to the Investigating Officer.

Judge

