

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.51 OF 2017

IN

CRIMINAL APPEAL NO.26 OF 2017

MANGESH KAMALAKAR SALVI & ORS.)...APPLICANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Harshad Sathe, Advocate for the Applicants.

Mr.P.H.Gaikwad-Patil, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 29th MARCH 2017.

P.C. :

1 This is an application for suspension of sentence and releasing applicants / accused on bail during pendency of the appeal filed by them before this court which is already admitted for final hearing. Applicants were original accused nos.1, 2 and 3 before the trial court. They are convicted for offences punishable under Section 307, 326, 324, 323 read with 34 of the IPC. For the

offence punishable under Section 307 of the IPC, they are sentenced to suffer rigorous imprisonment for 5 years, apart from payment of fine of Rs.15,000/- by each of them, and in default, to undergo simple imprisonment for six months, by each of them. Lesser sentence has been awarded on other counts and as all sentences are directed to run concurrently, it is not necessary to mention those lesser sentences on other counts separately. In addition, applicant / accused no.1 is also convicted of the offence punishable under Section 3 read with 25 of the Arms Act and applicants / accused nos.1 and 2 are further convicted of offences punishable under Sections 5 read with 27 of the Arms Act.

2 Heard the learned advocate appearing for applicants/ accused. He argued that considering the time of the incident in question, evidence regarding identification of applicants / accused in the wake of enmity between the prosecuting party and accused persons is highly doubtful. The learned advocate further argued that evidence of the victim of the crime in question shows that initially he had been to the house of Temkar after the alleged

assault and for reaching the house of Temkar he had crossed pendal of Ganpati idol. It is further argued that Prasad Patil was not present in the village when the incident took place but the victim has stated that he was taken to hospital by Prasad Patil. It is further argued that evidence of panch witnesses is also doubtful because they were away from the village. Therefore, in submission of learned advocate appearing for applicants / accused, applicants are falsely implicated in the crime in question because of the past enmity.

3 The learned APP opposed the application by contending that offence has been rightly held to be proved by the learned trial court.

4 The principal offence proved against the applicants / accused is one punishable under Section 307 of the IPC with the aid of Section 34 of the IPC.

5 Injured PW3 Vivek Surve has deposed that when he along with PW2 Rajesh Arekar were sitting in the jetty at about 7.45 p.m. of 8th September 2013, applicants / accused came there and at that time, applicant / accused no.1 Mangesh Salvi was armed with a gun. Injured PW3 Vivek Surve further deposed that applicant / accused no.1 Mangesh fired at him from the gun whereas applicant / accused no.2 Sachin More assaulted him by means of a weapon like a sword. He further deposed that applicant / accused no.3 Aniruddha Salvi assaulted him by means of fist and kick blows. He, therefore, ran away and took shelter in the house of Iqbal Temkar. Similar is the version of the incident coming on record from mouth of PW2 Rajesh Arekar.

6 Though evidence of PW3 Vivek Surve and PW2 Rajesh Arekar shows that injured PW2 Vivek was assaulted repeatedly by means of a weapon like sword and by means of fist and kick blows apart from fire of gun shot at him by Mangesh, evidence of PW9 Dr.Nitin Chavan who had examined the injured PW3 Vivek, shows

that Vivek had suffered only one incised wound from right angle of mandible which according to the Medical Officer was of simple nature. Apart from this, evidence of PW9 Dr.Nitin Chavan shows that injured PW3 Vivek had suffered lacerated wound on left hand middle finger and ring finger apart from fracture of left hand middle finger. This injury, in opinion of PW9 Dr.Nitin Chavan is attributable to shooting.

7 It is argued by the learned advocate for applicants / accused and not disputed by the learned APP that the gun from which a shot was fired was not recovered during the course of investigation. What was recovered, according to the prosecution case, is a butt of the gun. Though evidence of injured victim PW3 Vivek shows that he was assaulted by the butt of the gun and repeated blows from the weapon like sword, apart from fist and kick blows by applicant / accused no.3 Aniruddha, medical evidence adduced by the prosecution does not corroborate the version of injured PW3 Vivek Surve and eye witness PW2 Rajesh Arekar on this aspect.

8 Keeping in mind the past enmity between both the parties, the question for consideration at the time of final hearing would be, whether the offence falls under Section 307 of the IPC or it is some lesser offence than the one punishable under Section 307 of the IPC. Though it is well settled that for making out the offence punishable under Section 307 of the IPC, causing of injury is not at all relevant and what is material is an intention coupled with an overt act; intention of the accused can be gathered from all surrounding circumstances. The intention is a mental state. In the case in hand, though it is the case of the prosecution that applicants / accused persons were holding dangerous weapons such as gun and sword, injuries attributed to the gun shot are on the palm aspect of the victim whereas there is only one simple injury caused to victim which is attributable to weapon like a sword. With this medical evidence, it will have to be decided whether applicants / accused though armed with deadly weapons really intended to commit murder of the victim PW3 Vivek Surve.

9 Considering the nature of evidence and particularly, injuries suffered by the victim as well as the fact of short sentence imposed on applicants / accused, I am of the opinion that they deserve liberty during pendency of the appeal filed by them. Therefore, the order :

- i) The application is allowed.
- ii) Substantive sentence of imprisonment imposed upon the applicants / accused is suspended and they are directed to be released on bail, on their executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in like amount, by each of them.
- iii) As a condition of this order, applicants / accused should report to jurisdictional Police Station once in two months i.e. on first Monday of first month, during pendency of the appeal.
- iv) Applicants / accused should not contact the victim of the crime or eye witnesses who have deposed against them before the trial court.

v) Applicants / accused should not indulge in commission of any crime during pendency of this appeal.

(A. M. BADAR, J.)