

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.58 OF 2017

IN

CRIMINAL APPEAL NO.827 OF 2015

RAKHAMA GOVIND SHINDE & ANR.)...APPLICANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Yashodeep Deshmukh i/b. Mr.Subhash Hulyalkar, Advocate for the Applicants.

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

CORAM : A. M. BADAR, J.

DATE : 4th APRIL 2017.

P.C. :

1 This is an application by original accused nos.1 and 2 for suspension of sentence and releasing them on bail during pendency of their appeal filed by them. Initially, in all five accused persons were put up for trial and ultimately by the

impugned judgment and order dated 12th August 2015, the learned Additional Sessions Judge, Pune, was pleased to convict both applicants of offences punishable under Sections 307, 324, 341 read with 34 of the IPC. For the offence punishable under Section 307 read with 34 of the IPC, they both are sentenced to suffer rigorous imprisonment for 10 years, apart from payment of fine of Rs.5,000/- each, in default, they are directed to suffer rigorous imprisonment for one year. For the offence punishable under Section 324 read with 34 of the IPC, they both are sentenced to suffer rigorous imprisonment for one year along with payment of fine of Rs.1,000/- by each of them, and in default, to suffer rigorous imprisonment for one month. For the offence punishable under Section 341 read with 34 of the IPC, they are sentenced to suffer rigorous imprisonment for one month apart from payment of fine of Rs.500/-, and in default, to undergo rigorous imprisonment for seven days. Rest of the accused persons came to be acquitted by the learned trial court.

2 I have heard the learned advocate appearing for the applicants / accused. He vehemently argued that applicant no.1 Rakhama Shinde, being an aged person, is entitled to be released on bail considering his old age and ailments. So far as applicant no.2 is concerned, learned advocate argued that only one injury, and that too, which was not a grievous one, is attributable to this applicant / accused, and therefore, at the time of final hearing, it may reveal that the offence cannot travel up to the one punishable under Section 307 of the IPC. Various grounds are urged to discard the testimony of PW1 Dnyanoba Shinde – the First Informant in this case, as is not reliable, and the learned advocate for applicants / accused contended that entire evidence of the prosecution suffers from several infirmities and inconsistencies. My attention was drawn to the various paragraphs of the impugned judgment and order to buttress these submissions. In submission of the learned advocate appearing for the applicants / accused, the appeal may take its own time for final hearing and as such, both applicants / accused need to be released on bail.

3 The learned APP, by drawing my attention to the medical evidence adduced by the prosecution, contended that considering the nature of crime, applicants / accused are not entitled for bail.

4 I have carefully considered the rival submissions and I have also perused copies of deposition of prosecution witnesses as well as the impugned judgment and order. As noted in the opening paragraph, principal offence that is the one punishable under Section 307 of the IPC read with Section 34 thereof is held to be proved against both applicants / accused. If two or more persons intentionally do a thing jointly, it is just the same as if each of them had done it individually. Section 34 of the IPC deals with the principle of joint liability in the crime. If criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone. This principle will have to be kept in mind while considering the argument of the learned advocate for the applicants / accused that only one injury can be

attributable to the act of applicant no.2 / accused Sanjay Shinde, and that injury is not grievous in nature.

5 PW2 Bhanudas is the main victim of the crime in question. PW1 Dnyanoba – the Informant is his father. It is well established principle of criminal jurisprudence that evidence of an injured witness if found trustworthy can be acted upon to record conviction as being himself a victim of crime, there is no possibility that he will spare real culprits to rope in innocent persons. PW2 Bhanudas has stated before the court that when he was returning towards his home, on the way applicant no.2 / accused Sanjay obstructed him and applicant no.1 / accused Rakhama came running towards him. As per version of injured PW2 Bhanudas, applicant no.1 / accused Rakhama assaulted him on his neck and chest by one long iron blade (*katti*). He further deposed that applicant no.2 / accused Sanjay assaulted him by means of an axe on his abdomen. This witness has not attributed any role to rest of the accused persons, except that they came running towards him. Hence, at this stage, it is hard to believe

that this witness, who is not implicating rest of the accused persons, would speak a lie against involvement of both applicants / accused in causing injuries to him.

6 PW7 Baban Kolpe is stated to be one of the eye witnesses to the crime in question. This witness has stated that he had seen PW2 Bhanudas being assaulted by applicant no.1 / accused Rakhama by means of a long iron blade (katti) and by means of an axe by applicant no.2 / accused Sanjay. As per version of this witness, applicant no.1 / accused Rakhama gave blows of katti on chest, neck and abdomen of Bhanudas, whereas, applicant no.2 / accused Sanjay gave a blow of an axe on neck of Bhanudas.

7 PW5 Dr.Nachiket Purandare, M.S., consulting Vascular Surgeon of Pune hospital, had treated PW2 Bhanudas. He deposed, thus, in paragraph 2 of his evidence :

“2. On 28.10.2010, patient by name Bhanudas Shinde admitted to Poona hospital. The history narrated by patient was of assault by means of axe,

rod and sickle on 28.1.2010. He was given primary treatment at Vighnaharta hospital, Shirur. At the time of admission to Poona hospital, his pulse in left hand was missing, though right hand pulse was noticed. Due to missing pulse of the left hand, even the blood pressure could not be measured. I noticed multiple stab wounds on the occipital region, right lumbar region, left clavical region. The size of injury of occipital region was 3 cms. x 1 cm., the size of injury noticed on lumbar region was 3 cms. x 2 cms., and the size of injury of left clavical region was 0.5 cms. x 0.5 cms. The patient was shifted to intensive care unit. If immediate medical aid could not have been provided to the patient, he would have succumbed to the injuries.”

8 PW8 Dr.Bhausahab Pachundekar had given primary medical treatment to PW2 Bhanudas. He noticed following injuries on person of PW2 Bhanudas on the day of the incident :

“1) Contused lacerate wound (CLW) over left supra clacular fosa measuring 4 cms. X 1 cm. x cavity deep. Active bleeding present.

2) CLW over right side of para sternal region with open pneumo thorax size 3 x 1 cms. cavity deep.

3) CLW over left iliac crest size 3 x 1 cms.

4) CLW over occipital region size 4 x 1 cms.”

Apart from this, PW8 Dr.Bhausahab Pachundekar had also examined PW1 Dnyanoba Shinde and found that this witness had suffered CLW over right forearm measuring 4 x 1 x 1 cms. This witness found CLW over parieto occipital region of size 4 x 1 x ½ cms. on person of PW7 Baban Kolpe. PW7 Baban Kolpe had deposed that while separating the quarrel he sustained injury on his head.

9 This medical evidence which is reflected in foregoing paragraphs, at this stage, does not allow me to hold that injuries suffered by PW2 Bhanudas does not reflect necessary intention and knowledge as envisaged by Section 307 of the IPC. Evidence

of injured PW2 Bhanudas, *prima facie*, depicts that both applicants / accused had acted in league while causing injuries on PW2 Bhanudas. It cannot be said at this stage that applicant no.2 / accused Sanjay was not cognizant of the common intention of his companion applicant no.1 / accused Rakhama and therefore, Section 34 of the IPC is not attracted in this matter.

10 Nature and seriousness of offence is an important criteria while releasing the accused on bail. In the case in hand, the prosecuting party as well as accused persons are nearest relatives residing at the same village. Injured PW2 Bhanudas was almost done to death by both of them.

11 In this view of the matter, no case for suspension of sentence and releasing applicants / accused on bail is made out. Therefore the order :

i) The application is rejected.

(A. M. BADAR, J.)