

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.119 OF 2017

IN

CRIMINAL APPEAL NO.68 OF 2017

PRAVIN PRABHAKAR MOHITE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Amit Ghag, Advocate for the Applicant.

Mr.Vinod Chate, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 7th SEPTEMBER 2017

P.C. :

1 This is an application by applicant / accused no.2 for suspending the sentence imposed upon him by the learned trial court and for releasing him on bail. He has been convicted of offences punishable under Sections 307 and 325 of the IPC by the learned trial court vide the impugned judgment and order dated 22nd November 2016 passed in Sessions Case No.21 of 2004.

2 Heard the learned advocate appearing for the applicant / accused. He pointed out paragraph 14 of the impugned judgment and contended that the incident in question took place at the house of accused persons and it was the prosecuting party which assaulted accused persons. The learned advocate further submitted that in cross case, prosecution witnesses are also convicted. According to the learned advocate for the applicant / accused, evidence on record does not reveal commission of offence punishable under Section 307 of the IPC and therefore, the applicant / accused who is convicted for the offences punishable under Sections 307 and 325 of the IPC needs to be released on bail.

3 The learned APP opposed the application by contending that a day earlier to the incident in question, there was quarrel between both parties which has resulted in filing complaints against each other with police authorities. According to the learned APP, the incident in question occurred in a preplanned manner and accused persons have committed murder

of two persons and caused injuries to three prosecution witnesses. Therefore, the applicant / accused does not deserve to be released on bail.

4 I have carefully considered the rival submissions and also perused copy of the impugned judgment and order as well as copies of deposition of prosecution witnesses and other material placed on record.

5 The incident took place at village Wanavashi on 10th March 2004. According to the prosecution case, present applicant / accused and co-accused formed an unlawful assembly and indulged in rioting which ultimately resulted in commission of murder of Tukaram Jadhav and Anant Jadhav apart from causing injuries to prosecution witnesses Shailesh Jadhav, Surendra Jadhav and Vasant Jadhav.

6 After due trial, the learned trial court came to the conclusion that the prosecution has failed to prove that accused

persons including the present applicant committed the alleged offence in furtherance of their common object. As such, individual liability for the act came to be assessed by the learned trial court. So far as the present applicant / accused is concerned, the learned trial court came to the conclusion that he has assaulted PW1 Shailesh with an intention to commit his murder. Accordingly, the applicant / accused came to be convicted of offences punishable under Section 307 so also under Section 325 of the IPC.

7 According to the prosecution case, the applicant / accused attempted to commit murder of PW1 Shailesh. Evidence of this witness shows that on the day of the incident, at about 6.30 p.m., he heard shouts of his father and saw his father being assaulted by a co-accused. As per version of PW1 Shailesh, then the present applicant / accused assaulted him by means of a sickle. Except this, nothing more is stated by injured witness namely PW1 Shailesh, so far as the present applicant / accused is concerned.

8 Injured PW1 Shailesh was then referred to Rural hospital, Dapoli, where PW10 Dr.Anuja Belose examined him. Her evidence shows that injuries on person of PW1 Shailesh Jadhav were of simple nature caused by hard and sharp object.

9 Evidence of PW1 Shailesh Jadhav is conspicuously silent regarding number of blows, seat of injury etc. Evidence of PW10 Dr.Anuja Belose attending Medical Officer shows that injuries suffered by PW1 Shailesh were simple in nature. It is well settled that to justify conviction under Section 307 of the IPC, it is not essential that bodily injuries capable of causing death should have been inflicted. Intention coupled with overt act is sufficient to justify conviction under this Section. Intention can be gathered from surrounding circumstances such as weapon used, seat of injury, number of blows etc. In the case in hand, evidence of PW1 Shailesh against the present applicant / accused is as vague as it can be because he has only stated that the present applicant / accused also assaulted him by means of scythe.

10 The learned trial court in paragraph 14 has considered and recorded how the incident in question took place. As observed by the learned trial court, evidence on record does not disclose that accused persons assembled together making preparations to use criminal force or violence. The learned trial court further observed that evidence does not disclose that accused persons were aggressor. It further observed that evidence on record demonstrates that PW1 Shailesh, his father Anant, his uncle Vasant, his brother Surendra and grandfather Tukaram formed an unlawful assembly armed with deadly weapons and went to the house of accused persons. These observations coupled with discussion in foregoing paragraphs requires me to consider the application favourably, and therefore the order :

- i) The application is allowed.
- ii) Substantive sentence imposed upon the applicant / accused is suspended and he is directed to be released on bail on his executing P.R.Bond in the sum of Rs.15,000/- and on

furnishing surety in like amount.

iii)As a condition of this order, the applicant / accused should not contact the prosecution witnesses or members of family of deceased person and should not extend any threat, promise or inducement to them. He should not commit any crime while enjoying liberty under this order.

(A. M. BADAR, J.)