

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.371 OF 2017
IN
CRIMINAL APPEAL NO.115 OF 2017

Yashwant Kamalu Hindola,
Age 27 years, Occ. Business,
R/o.Village Olman, Post Borgaon,
Tal.Karjat, Dist.Raigad,
presently lodged at Taloja Jail, Navi Mumbai. Applicant

versus

The State of Maharashtra
through Sr.P.I. Neral Police Station,
District Raigad vide CR No.16 of 2014 Respondent

Mr.Neville D. Deboo i/by A.B.Bhoir for applicant.
Mr.V.B.Konde-Deshmukh, APP, for State.

CORAM : RANJIT MORE AND
PRAKASH D. NAIK, JJ.

DATE : 9th October 2017

PC :

1. This is an application for suspension of sentence and grant of bail pending the appeal preferred by the applicant. The applicant has been convicted for an offence punishable under Section 302 of Indian Penal Code and has been sentenced to suffer imprisonment for life.

2. The prosecution case is that the deceased Harishchandra Dumbhela is the brother of first informant. The house of the accused is in the farm of informant. On 14th February 2014, PW-8 requested the deceased to allow him to construct a house in the field of the informant and the deceased. When the deceased and PW-8 had gone for inspection of the land, the mother of accused had objected to it. There was an altercation between them. In the same night, the informant heard noise of quarrel. When he came out, he saw Harishchandra (deceased) was lying on the floor and the accused was standing there with an iron rod in his hand. It is also the prosecution case that mother of the deceased is the eye witness to the incident who intervened at the time of assault.

3. The prosecution examined about ten witnesses. The mother of the deceased PW-7 is an eye witness to the incident. PW-1 is the brother of the deceased. From the evidence of PW-1 it is apparent that he is not the eye witness to the actual incident of assault. He has deposed that Harishchandra told him that the accused had assaulted him with iron rod on his abdomen and chest. He saw contusion mark on the abdomen and chest of Harishchandra. The injured was taken to hospital on the next day.

4. From the cross-examination, the defense has brought on record the omission in respect to the fact that said witness (PW-1) had stated in his statement that the deceased had informed him that the accused had assaulted him on his chest. The said version was not appearing in the statement. PW-7 has deposed that the accused

delivered a blow on Harishchandra by iron rod. He was trying to give another blow, which was prevented by her. The injured was taken to the hospital on the next day. From the evidence of PW-5, it appears that he is the medical officer who had examined the witness. He has stated that the injured was not having any external injury or external bleeding. He also deposed that the person accompanying him told that one person gave fist blow on the stomach of Harishchandra. PW-6 is the medical officer who conducted the post mortem. On external examination he noted two abrasions. On internal examination, he referred to the fracture to 7th rib, contusion in the left lung. He further stated that the cause of death was perforation peritonitis associated with blunt to chest.

5. On perusal of this evidence, it is apparent that a single blow was given by the accused to the deceased. There was no external injury visible. The injured was taken to hospital on the next day. Therefore, the deceased succumbed to the injury. From the nature of evidence and in the light of nature of injuries, prima facie, it appears that the case may fall under Section 304, Part-II of Indian Penal Code and not under Section 302 of IPC.

6. The applicant is in custody since 20th February 2014. In the aforesaid circumstances, the sentence can be suspended pending appeal and bail can be granted to the applicant. It is clarified that observations made in this order are prima facie in nature and the same are made only for considering the application for suspension of sentence.

7. Hence, we pass following order :

ORDER

- (i) Pending Criminal Appeal No.115 of 2017, the applicant be released on bail on his furnishing PR bond of Rs.25,000/- with one or two sureties of like amount to the satisfaction of the Trial Court;
- (ii) The applicant shall report to Neral Police Station, District Raigad, once in a month, viz on 25th of each month, and shall remain present in this Court at the time of final hearing of appeal;
- (iii) Criminal Application No.371 of 2017 stands disposed of.

(PRAKASH D. NAIK, J.)

(RANJIT MORE, J.)

MST