

Rane

* 1/4 * Appln-704-2017 (sr.909)
Friday, 16.6.2017

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 704 OF 2017
IN
CRIMINAL APPEAL NO. 377 OF 2017

Mangesh Datta Gade

.....Applicant

V/s.

State of Maharashtra

.....Respondent

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Mr. Satyavrat Joshi a/w. Mr. Sumant R. Deshpande,
Advocate for the applicant.

Mrs. G.P. Mulekar, APP for State, respondent.

**CORAM :- SMT. V.K. TAHILRAMANI, &
SANDEEP K. SHINDE, JJ.**

DATE : 16 June, 2017.

P.C. :-

1. Heard learned Counsel for the applicant, who is original accused no.3 and learned APP for State.

2. The applicant has been convicted under Section 302 Indian Penal Code for causing death of Maruti Halkunte alias Dorya. The applicant is now seeking bail.

3. There are two eye-witnesses to the incident, P.W.2, Sunil and P.W.3, Raju. Sunil has stated that on 21st March, 2014 when he was sitting alongwith the deceased, the present applicant alongwith four co-accused came to the spot. One of the co-accused, Rakesh had a sickle tucked at the waist. Rakesh came from behind and started assaulting Dorya with the sickle. When P.W.2 Sunil tried to stop, Rakesh, Rakesh pushed him away, due to which, Sunil fell down. Sunil has stated that, at that time, the applicant picked up a stone. Sunil pushed the applicant due to which, the stone instead of falling on the head of Dorya, it fell on his back. One of the co-accused assaulted Sunil. Thereafter, all the accused ran away. The evidence of P.W.3-Raju is on similar lines as that of P.W.2-Sunil.

4. The Learned Counsel for the applicant, submitted that defence witnesses were examined and the

evidence of D.W.2-Sachin and D.W.3-Sagar totally demolishes the evidence of two eye-witnesses. He pointed out that, both these defence witnesses have taken the deceased to the Hospital. However, they do not mention about any of the accused persons assaulting the deceased.

5. We have carefully perused the evidence of D.W.2-Sachin and D.W.3-Sagar. Both these defence witnesses have come to the spot of the incident after the incident was over. Both these witnesses have stated that, they heard a lady shouting. Hence, they went running to the spot. There, they saw Dorya lying in an injured condition. Thus, the evidence of both these defence witnesses in no way demolishes the evidence of P.W.2 and P.W.3. The Learned APP, in addition, pointed out that the evidence of the pancha witness to the spot shows that the stone with which the applicant assaulted the deceased was weighing about 8 to 9 kgs. Moreover, it is pertinent to note that after Rakesh assaulted the deceased with a sickle, thereafter, the applicant assaulted the deceased with a stone. Initially, the applicant wanted to assault the

deceased on the head, however, as P.W.2 Sunil pushed him, the stone fell on the back of the deceased. Looking to the fact that the applicant has assaulted the deceased after co-accused, Rakesh assaulted the deceased a number of times with a sickle shows that the applicant shared the common intention with co-accused, Rakesh.

6. Looking to all the above facts, we are not inclined to grant bail to the applicant, though, he was on bail, pending trial. The Application is rejected.

(SANDEEP K. SHINDE, J)

(SMT. V.K. TAHILRAMANI, J)