IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.718 OF 2017
IN
CRIMINAL APPEAL NO.227 OF 2017

Shri Raju Appasaheb Patil & Anr. .....Applicants
V/s.
The State of Maharashtra .....Respondent

Mr. Dilip Bodake with Mr. Sharad Bhosale , Advocates for Applicants.
Ms. M.H.Mhatre , APP for Respondent-State.

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

DATE : July 13, 2017.

P.C. :

Heard learned counsel for the applicants-original accused nos.1 and 2 and the learned APP for the State.

2 It is the prosecution case that both the applicants on 21.7.2012 at about 12.30 p.m. assaulted Mahadeo Kurane. Applicant-Accused No.1-Raju and applicant-accused no.2-Suraj assaulted Mahadeo Kurane with sickle and stick respectively. Mahadeo Kurane

sustained 12 injuries. Cause of his death is head injury.

3 There are 3 eye witnesses to the incident, i.e., P.W.1-Manisha, P.W.2-Manoj and P.W.3-Shevanta. All of them have deposed about the role played by both the applicants, i.e., of assaulting Mahadeo Kurane.

4 The learned counsel for the applicants submitted that the applicant-accused no.2 was armed with stick which cannot be said to be deadly weapon and hence, it cannot be stated that he has committed offence under Section 302 of IPC. As far as this argument is concerned, it is seen that it is a case of conviction with the aid of Section 34 of IPC. Evidence on record clearly shows that both the applicants-accused shared common intention in assaulting Mahadeo Kurane to cause his death. In addition, according to P.W.7-Dr. Yojana, injury nos.1 and 2 caused on the head of Mahadeo Kurane were caused by hard and blunt object. These injuries are as under:

> *"(1) CLW, inverted L shaped, measuring 6.5 x 1.5 cm x bone deep and 2.5 x 1.5 cm x bone deep exposing to frontal bone.*

(2) CLW, inverted Y shaped, measuring 11 & 12 cm x 2 cm x bone deep over right parietal and occipital region, 2-3 cm above right ear."

Internal injuries relating to the aforesaid two external injuries are as under:

"*(i) Head - Extensive Haematoma measuring approximately 15 x 20 cm over frontal, right parietal and right occipital region.*

(ii) Skull - Displaced fracture over left frontal bone, extending continuously over mid-frontal, right parietal and right occipital region, exposing to brain.

(iii) Brain – Coverings torn over fractured sites.

– Brain matter exposed through displaced pieces of fracture bone.

– Brain contused and lacerated corresponding with injury nos.1 & 2 of col.no.17."

5 Thus, we find no merit in the contention that applicant-accused no.2-Suraj, who assaulted Mahadeo Kurane with stick had no intention to cause the death of Mahadeo.

6 Prima-facie, we are convinced that both the accused shared common intention to cause the death of Mahadeo Kurane.

7 Looking to the evidence on record, we are not inclined to grant bail. The application is rejected.

(SANDEEP K. SHINDE, J) **(SMT. V.K. TAHILRAMANI, J)**