

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPLICATION NO.678 OF 2016  
IN  
CRIMINAL APPEAL NO.427 OF 2016**

**Vijay Saavitra Gaikwad )...Applicant**

**V/s.  
State OF Maharashtra )...Respondent**

Smt. Yogini Ugale, Advocate for the Applicant.

Mr. S.V.Gavand, APP for the Respondent - State.

**CORAM : A. M. BADAR, J.**

**DATE : 16<sup>th</sup> JANUARY 2017.**

**P.C. :**

This is an application for suspension of sentence and releasing the applicant-accused on bail during the pendency of appeal. Applicant-accused is convicted of the offences punishable under Sections 307 and 498A of the IPC. He is sentenced to suffer rigorous imprisonment for 10 years for offence punishable under Section 307 of IPC.

2 Heard learned counsel appearing for the applicant-accused. She argued that injury on PW.1 was found to be simple

injury by P.W.7 Dr. Ameya. Injured was not hospitalised. Weapon of offence was not identified by panch witnesses. In the spot panchanama, weapon of offence was not recovered but subsequently, from the same place it is stated to have been recovered at the instance of the applicant-accused.

3           The learned APP opposed the application by contending that blood of the victim was found on the clothes of the applicant-accused. The injured has named the applicant as assailant.

4           I have carefully considered rival submissions and also perused the impugned judgment and order apart from statements of witnesses. It is the case of the prosecution that applicant-accused had subjected P.W.1 Mrs. Anusaya Gaikwad to cruelty and on 19.12.2012 attempted to commit murder by slashing her neck by means of razor.

5           This is a case of a single victim and a single accused. The main thrust of the learned counsel for the applicant-accused is on the self inflicted injury as P.W.7 Dr. Ameya in his cross-examination is stated to have accepted the fact that such kind of

injury can be a self-inflicted injury. The injured was taken to the hospital soon after the incident and she was found to have suffered injury of size 7 X 1 cm, muscle deep superficial to platysma. Injury was on the neck of P.W.1 Anusaya Gaikwad. In paragraph 5 of her deposition, she has stated the mode and the manner in which she was assaulted by the applicant-accused. For proving offence punishable under Section 307 of IPC, causing of injury is not at all required. What is required is intention coupled with an overt act. One is unable to read the mind of another and, therefore, intention is gathered on the basis of surrounding circumstances. Weapon of offence, and seat of injury are relevant considerations for inferring the intention. In the case in hand, seat of injury is neck, weapon is razor and part of body chosen to inflict wound is neck. Therefore, prima-facie at this stage, it is not possible to conclude that offence alleged was not falling under Section 307 of IPC.

6            Though panch witnesses have not identified the weapon of the offence, the Investigating Officer P.W.10 Govind Gambhire has identified the same. At this juncture it is not

possible to disbelieve version of the Investigating Officer and there is no legal requirement that recovery must be vouched of pancha witnesses.

7           In this view of the matter, considering the nature of offence, and the circumstances in which it was committed, no case for suspension of sentence and releasing applicant on bail is made out. Application is rejected.

8           Hearing of the appeal is expedited.

**(A. M. BADAR, J.)**