

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 815 OF 2017
IN
CRIMINAL APPEAL No. 477 OF 2016

Salim Karam Hussain Khan. ..Applicant.

Versus

Union Territory of Inida and Another. ..Respondents.

Mr. H. H. Ponda for the Applicant.

Mrs. P. H. Kantharia for Respondent No. 1.

Mr. S R. shinde, APP for the State.

Coram : RANJIT MORE &
SARANG V. KOTWAL, JJ.

Date : **July 25, 2017.**

P. C. :

1. Heard Mr. Ponda, the learned Counsel appearing for the Applicant, Mrs. Kantharia for Respondent No.1 and Mr. Shinde, the learned APP for the State.

2. By the impugned order, which is subject matter of above appeal, the Applicant is convicted for the offence punishable under section 302 of the Indian Penal Code, 1860 and sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.500/- in default to suffer further rigorous imprisonment for 15 days. The appeal has already been admitted and present application is taken out for bail pending appeal.

3. In order to prove its case, prosecution relied upon two sets of witnesses; first set of witnesses is with regard to incident that took place in dance bar and second set of witnesses is with regard to whom oral dying declaration was given by the deceased. PW-1, 4, 5 and 14 are claimed to have witnessed the actual incident and oral dying declaration was claimed to have been given to PW-2 and 3.

4. We have gone through the evidence of PW-1, 4, 5 and 14. They have not seen the actual incident of stabbing. So far as PW-2 is concerned he deposed that during the night between 21st and 22nd March 2014, Nilesh told him that he had gone to Spring Bar, there were three persons and out of them, one person assaulted him with knife. The deceased did not give name of the accused as assailant. He has also deposed that PW-3 told him in hospital that the Applicant was the assailant. However, in cross-examination this witness admitted that he has not stated before police the fact that PW-3 told him that Nilesh told him that the Applicant assaulted him.

5. So far as PW-3 is concerned, he stated that at 6.00 a.m. on 22nd March 2014, he and deceased were the only persons in the ICU, at

that time deceased told him that he actually went to Spring Bar, Daman from Dehaj, few people were sitting behind him in the bar, one of the persons, namely, Salim hit him on the stomach with sharp weapon. PW-3 however in cross-examination admitted that in statement given to police under section 161 of the Code of Criminal Procedure, 1973 he has stated that deceased told him that there were four assailants and one of them hit him with knife at Spring bar.

6. The Applicant is in custody since 2nd April 2014. The appeal is not likely to reach for final hearing in recent future. In the circumstances, we are of the opinion that case for bail is made out. Hence, we pass following order.

: O R D E R :

Pending final disposal of the above appeal, the Applicant be released on bail on executing PR bond of Rs.25,000/-with one or two sureties of like amount to the satisfaction of the trial Court. The Applicant shall remain present in this Court at the time of final hearing of appeal. Application stands disposed of.

[SARANG V. KOTWAL, J.]

[RANJIT MORE, J.]