

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.995 OF 2016

IN

CRIMINAL APPEAL NO.703 OF 2015

Mahadev Waman Jagtap

Age about 53 years, Occu.Agriculturist,

R/a. Dalaj, Taluka. Indapur, Dist.Pune. ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

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Mr.D.G.Khamkar, Advocate for the Applicant.

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

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CORAM : A.M.BADAR J.

DATED : 28th FEBRUARY 2017.

ORAL ORDER :

1 This is an application for suspension of sentence and conviction moved by applicant/accused No.1 Mahadeo Waman Jagtap, who has been convicted for offence punishable under Sections 307 read with Section 34, 143, 147, 148 and 452 read with Section 34 of the Indian Penal Code (For short, "the IPC"). For the offence punishable under Section 307 read with Section 34 of the IPC, the applicant along with co-accused is sentenced to suffer rigorous imprisonment for seven years apart from payment

of fine of Rs.2,000/-. On every count also appropriate sentence is imposed on the applicant/accused.

2 Pleadings in the application show that suspension of conviction is sought on the ground that the applicant is working as a clerk in the office of Land record Ambegaon, Ghodegaon, Pune and his conviction is bad in law and not recorded as per evidence on record.

3 Heard learned Advocate for the applicant/accused. He argued that evidence of Ravsaheb (PW1) shows that the applicant had given blows of sword on him and particularly to his neck. However, the injury certificate proved by P.W.No.5 Dr.Madhavrao Naik-Nimbalkar does not show that there was any injury on the neck of P.W.No.1 Ravsaheb. The learned Advocate, therefore, argued that the offence cannot travel up to Section 307 of the IPC and the same can be a compoundable offence. It is further argued that the applicant/accused, was also injured in the incident in question, but the evidence of P.W.No.1 Ravsaheb does not show that the applicant/accused was injured in the incident. This implies that the genesis of the case of the prosecution is suppressed by the witness. It is further argued that the Investigating Officer is also not examined by the prosecution and, therefore, the applicant accused is entitled for suspension of conviction.

4 The learned Additional Public Prosecutor opposed the application by contending that the stay to the conviction cannot be retained in the matter.

5 I have carefully considered the rival submissions and also perused the evidence adduced by the prosecution. P.W.No.1 Ravsaheb Jagtap, in his statement before the Court has deposed that on 28/06/2003 at about 7.00 a.m. the applicant along with co-accused entered in his house and at that time they were armed with deadly weapon. It has further come in the evidence of P.W.No.1 Ravsaheb that the applicant, who was holding sword in his hand, given blow on his person, but he had warded off that blow. However, blow caused injuries to his left hand and right side of the neck. The evidence of P.W.No.1 Ravsaheb Jagtap further shows that the other inmates of the house were also assaulted by the applicant and co-accused. The evidence of Ravsaheb shows that the applicant had given blow of sword on the head of his father Rajaram Jagtap causing injury to left ear and left cheek. According to P.W.No.1 Ravsaheb because of this assault, he was admitted to Jahangir Hospital for a period of one month. He further deposed that as his father is about 90 years of age, he is unable to hear and speak and as such not in a position to give evidence.

6 It is seen that the evidence of injured P.W.No.1 Ravsaheb is corroborated by P.W.No.2 Dagdu Jagtap and P.W.No.3 Sou.Baby Jagtap. They have categorically stated about role of the present applicant in assaulting the inmates of the house.

7 P.W.No.5 Dr.Madhavrao Naik-Nimbalkar Medical officer of Primary Health Center, Bhigwan has proved injury certificate of P.W.No.1 Ravsaheb Jagtap. This witness has categorically deposed that injuries of Ravsaheb are possible by forcible assault. The injury certificate of Ravsaheb shows that he suffered incised wounds on his left hand and particularly wrist apart from abrasion.

8 Weapon of the assault was sword. The evidence of P.W.No.1 Ravsaheb shows that part of body chosen for giving the blow of the sword was head but he was successful in warding of the blow.

9 It is well settled that for the offence punishable under Section 307 of the IPC, there is no necessity of causing injuries capable of causing death. The intention coupled with overt act is essential. In the case in hand, the assault was with sword by trespassing the house of informant while armed with deadly

weapon like sword. Hence at this stage, it cannot be said that the offence would not travel up to one under Section 307 of the IPC.

10 So far as suspension of conviction is concerned, the position is well settled by catena of Judgments of the Honourable Supreme Court. In the matter of **Shyam Narain Pandey v. State of U.P.** reported in (2014) 8 SCC 909 after taking resume of entire law on the aspect, the Honourable Supreme Court has held that that the contention that the appellant will be deprived of his source of livelihood if the conviction is not stayed cannot be appreciated. It is further held that for the appellant, it is a matter of deprivation of livelihood, but he is convicted for deprivation of life of another person. Until he is otherwise declared innocent in appeal, the stain stands. It is apposite to quote the observation of the Honourable Apex Court in the said matter in paragraph Nos.9 to 13. They read thus :

9. It may be noticed that even for the suspension of the sentence, the court has to record the reasons in writing under Section 389(1) Cr.PC. Couple of provisos were added under Section 389(1) Cr.PC pursuant to the recommendations made by the Law Commission of India and observations of this Court in various judgments, as per Act 25 of 2005. It was regarding the release on bail of a convict where the sentence is of death or life imprisonment or of a period not less than ten years. If the appellate court is inclined to consider release of a convict of such offences, the public prosecutor has to be given an opportunity for showing cause in writing against such release. This is also an indication as to the seriousness of such offences and

circumspection which the court should have while passing the order on stay of conviction. Similar is the case with offences involving moral turpitude. If the convict is involved in crimes which are so outrageous and yet beyond suspension of sentence, if the conviction also is stayed, it would have serious impact on the public perception on the integrity institution. Such orders definitely will shake the public confidence in judiciary. That is why, it has been cautioned time and again that the court should be very wary in staying the conviction especially in the types of cases referred to above and it shall be done only in very rare and exceptional cases of irreparable injury coupled with irreversible consequences resulting in injustice.

10. In Ravikant S. Patil v. Sarvabhabhouma S. Bagali, a three-Judge Bench of this Court has held that the power to stay the conviction should be exercised only in exceptional circumstances where failure to stay the conviction would lead to injustice and irreversible consequences. In Navjot Singh Sidhu v. State of Punjab and another following Ravikant S. Patil case (supra), at paragraph-6, this Court held as follows:

6. The legal position is, therefore, clear that an appellate court can suspend or grant stay of order of conviction. But the person seeking stay of conviction should specifically draw the attention of the appellate court to the consequences that may arise if the conviction is not stayed. Unless the attention of the court is drawn to the specific consequences that would follow on account of the conviction, the person convicted cannot obtain an order of stay of conviction. Further, grant of stay of conviction can be resorted to in rare cases depending upon the special facts of the case.

11. In State of Maharashtra through CBI, Anti Corruption Branch, Mumbai v. Balakrishna Dattatrya Kumbhar referring also to the two decisions cited above, it has been held at paragraph-15 that:

15. the appellate court in an exceptional case, may put the conviction in abeyance along with the sentence, but such power must be exercised with great circumspection and caution, for the purpose of which, the applicant must satisfy the court as regards the evil that is likely to befall him, if the said conviction is not suspended. The court has to consider all the facts as are pleaded by the applicant, in a judicious manner and examine whether the facts and circumstances involved in the case are such, that they warrant such a course of action by it. The court additionally, must record in writing, its reasons for granting such relief. Relief of staying the order of conviction cannot be granted only on the ground that an employee may lose his job, if the same is not done.

12. In State of Maharashtra v. Gajanan and another and Union of India v. Atar Singh and another, cases under the Prevention of Corruption Act, 1988, this court had to deal with specific situation of loss of job and it has been held that it is not one of exceptional cases for staying the conviction.

13. In the light of the principles stated above, the contention that the appellant will be deprived of his source of livelihood if the conviction is not stayed cannot be appreciated. For the appellant, it is a matter of deprivation of livelihood but he is convicted for deprivation of life of another person. Until he is otherwise declared innocent in appeal, the stain stands.

11 In the wake of these observations made by the Honourable Supreme Court, case for suspension of sentence is not made out. The application is, therefore, rejected.

(A.M.BADAR J.)