

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1291 OF 2016

IN

CRIMINAL APPEAL NO.541 OF 2016

SHAHU RAMAKANT SARVGAUD

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.A.P.Mundargi, Senior Counsel, i/b. Mr.Ritesh Thobde, Advocate
for the Applicant.

Ms.V.S.Mhaispurkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 18th JANUARY 2017.

P.C. :

1 This is an application by convicted accused no.5 for releasing him on bail by suspending the sentence imposed upon him by the learned Additional Sessions Judge, Pandharpur, in Sessions Case No.21 of 2008 decided on 28th July 2016. The applicant / accused along with co-accused was prosecuted for offences punishable under Sections 143, 147, 148, 307, 326, 323, 504, 506 read with 149 of the IPC so also under Section 135 of

the Maharashtra Police Act. Ultimately, on trial, he along with two co-accused are convicted for offences punishable under Sections 143, 147, 148, 324 read with 149, 307 read with 149, 504 read with 149 and 506 read with 149 of the IPC. For the offence punishable under Section 307 read with Section 149 of the IPC, the applicant / accused is sentenced to suffer rigorous imprisonment for 10 years apart from payment of fine of Rs.2,000/-, in default, to undergo further simple imprisonment for 1 year. It is not necessary to mention sentences imposed on other counts because all sentences are directed to run concurrently.

2 Heard the learned senior counsel appearing for the applicant / accused. By drawing my attention to orders dated 30th August 2016 and 7th October 2016 passed in Criminal Application Nos.1035 of 2016 and 1120 of 2016 respectively, the learned senior counsel argued that both co-accused i.e. accused no.1 Sunil Sarvgaud and accused no.6 Ravindra Sarvgaud are released on bail by this court. The learned senior counsel further argued that according to the prosecution case, the applicant / accused had

assaulted PW5 Pravin @ Wetal and evidence of PW11 Dr.Prakash Narote as well as PW12 Dr.Maruti Takale goes to show that PW5 Pravin @ Wetal had suffered only simple injury. This, according to the learned senior counsel does not reflect intention on the part of the applicant / accused which is requisite for proof of the offence punishable under Section 307 of the IPC. The learned senior counsel further argued that applicability of the principle of vicarious liability is also seriously in dispute because the incident in question, according to the prosecution case, took place in front of the house of accused no.1 Sunil Sarvgaud and this incident has also resulted in lodging cross FIR and prosecution of the prosecuting party at the instance of accused in this case.

3 The learned APP opposed the application by contending that the crime in question is serious and initially the doctor had certified the injury caused by the present applicant / accused as grievous injury. The learned APP further argued that the prosecution has proved common object and therefore individual role of the applicant / accused pales into insignificance.

4 I have carefully considered the rival submissions and also perused the deposition of witnesses as well as impugned judgment and order of the learned Additional Sessions Judge. The incident in question allegedly took place on 8th June 2007 at about 4.45 p.m. in front of the house of accused no.1 Sunil Sarvgaud. It is the case of prosecution that members of the prosecuting party were proceeding towards Gopalpur for playing cricket and at that time they were accosted by accused persons in front of the house of accused no.1 Sunil Sarvgaud. They were then assaulted by means of sticks, iron rod and an axe. Role attributed to the present applicant / accused in this unlawful assembly which indulged in rioting is that of assaulting PW5 Pravin @ Wetel by means of an axe.

5 PW11 Dr.Prakash Narote is a Medical Officer working with Municipal Hospital, Pandharpur. His evidence shows that Pravin @ Wetel had suffered CLW of size 2 cm x bone deep on occipital region. This witness deposed that the injury was simple in nature caused by hard and blunt object. PW12 Dr.Maruti

Takale of I.C.U. Hospital, Pandharpur, deposed that PW5 Pravin @ Wetal suffered CLW over occipital region of size 2x2x1 inch apart from abrasion over the chest. There was swelling of brain of PW5 Pravin @ Wetal. However, in cross-examination, PW12 Dr.Maruti Takale admitted that injuries on Pravin @ Wetal were simple in nature.

6 For making out an offence punishable under Section 307 of the IPC, the requirement is that of an intention coupled with some overt act. Causing of wounds to the victim is not at all essential. However, seat of injury and nature of weapon are relevant circumstances to infer the intention. In the case in hand, though it is alleged that the applicant / accused was holding an axe, injury found was a contused lacerated wound of simple nature. It was caused by hard and blunt object as disclosed by PW11 Dr.Prakash which prima facie shows that sharp edged side of the axe might not have been used for inflicting the said wound. That apart, the place of incident is front portion of house of accused no.1 Sunil Sarvgaud. Simple injuries to all alleged

victims of the crime in question also puts a question mark on the intention part of the crime. With this, when two other co-accused are already granted bail by this court, by suspending their sentence, I see no reason to deny liberty to the present applicant / accused. As such the order :

- i) The application is allowed.
- ii) Substantive sentence imposed upon the applicant / accused is suspended and he is directed to be released on bail on executing P.R.Bond in the sum of Rs.20,000/- with 1 surety in like amount.
- iii) While on bail, the applicant / accused shall mark his presence to City Police Station, Pandharpur, once in three months on first day of each month, initially for nine months, and thereafter, once in six months, pending appeal.

(A. M. BADAR, J.)