

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application (APPA) No.489 of 2017

In

Criminal Appeal No.445 of 2016

Anand Aadtani,
Aged about 29 years,
Occupation – Nil,
R/o Plot No.47,
“Shivshakti”, Kasturba Nagar,
Jaripatka, Nagpur.

... Applicant/
Original A-1
(In Jail)

Versus

State of Maharashtra,
through Police Station Officer,
Police Station – Jaripatka,
District Nagpur.

... Non-Applicant

Shri Subodh Dharmadhikari, Senior Advocate, assisted by
Shri Charuhas Dharmadhikari, Advocate for Applicant.
Shri S.M. Ukey, Additional Public Prosecutor for Non-Applicant.

Coram : R.K. Deshpande & Manish Pitale, JJ.

Dated : 19th September, 2017

Oral Order :

1. In Sessions Trial No.350 of 2013, the applicant, who was the accused No.1, is convicted in Crime No.179 of 2013 for the offence punishable under Section 302 of the Indian Penal Code (IPC) and sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/-; in default, to suffer further rigorous imprisonment for three months.

2. This application is for suspension of sentence and release of the applicant-accused on bail on such conditions which this Court may deem fit in the facts and circumstances of this case.

3. Shri Subodh Dharmadhikari, the learned Senior Advocate, assisted by Shri Charuhas Dharmadhikari, Advocate appearing for the applicant-accused, invited our attention to para 4 of the judgment of the Sessions Court narrating the incident, which is reproduced below :

“[4] It is further case of the prosecution that in night on the same day, parents of Kanchan had attended one marriage dinner party at Hotel Tuli. While returning from Party again Kanta enquired about her well-being on phone. Again Kanchan was weeping on phone and insisting to take her back. Immediately the couple reached at her house. Outside of her house there occurred exchange of words between accused persons and her parents. During altercation, Kanchan forcibly sat her father on the driver seat. Accused No.1 Anand came, gave jerk to Kanchan and took out a domestic knife which was concealed with him and gave multiple stabs on the chin, cheek and neck of the father of Kanchan. Immediately he was taken to the hospital where he was declared dead.”

According to Shri Dharmadhikari, at the most, this would be a case falling within Exception 4 to Section 300 of IPC. He submits that in the aforesaid background, there cannot be premeditation and it was a sudden fight in the heat of passion without there being any intention to commit an act of murder.

4. The Sessions Court has narrated the injuries suffered by the deceased, who was the father-in-law of the elder brother of

the applicant-accused. In this respect, it is urged that the number of wounds caused during the occurrence is not decisive factor, but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a heat of anger. Shri Dharmadhikari invited our attention to the judgment of the Apex Court in the case of *Surinder Kumar v. Union Territory, Chandigarh*, reported in *AIR 1989 SC 1094*. The relevant portion of the judgment, contained in paras 6 and 7, is reproduced below :

“6. *Exception 4 to Section 300 reads as under :*

Exception 4 : Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken under advantage or acted in a cruel or unusual manner:

Explanation: It is immaterial in such cases which party offers the provocation or commits the first assault.”

“7. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly. ...”

5. Shri Dharmadhikari further submits that the applicant is aged about 29 years and has passed his final examination of Chartered Accountant with good result. He submits that the applicant appeared in the State Common Entrance Test in law held in 2016 and secured 78 out of 150 marks in the said

Entrance Test and is admitted in LL.B. Course run by the Central India College of Law. In these facts and circumstances, according to him, the applicant is entitled to suspension of sentence and release on bail.

6. Shri Ukey, the learned Additional Public Prosecutor appearing for the non-applicant/State, strongly opposed the application and placed reliance upon the decision of the Apex Court in the case of *Anwari Begum v. Sher Mohammad and another*, reported in (2005) 7 SCC 326, wherein the Apex Court has laid down the guidelines in para 8 as under :

“8. There is a need to indicate in the order reasons for prima facie concluding why bail was being granted, particularly where an accused was charged of having committed a serious offence. It is necessary for the courts dealing with application for bail to consider among other circumstances, the following factors also before granting bail, they are:

1. The nature of accusation and the severity of

punishment in a case of conviction and the nature of supporting evidence;

2. *Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant;*

3. *Prima facie satisfaction of the court in support of the charge.*

Any order dehors of such reasons suffers from non-application of mind as was noted by this Court in Ram Govind Upadhyay v. Sudarshan Singh, Puran v. Rambilas and in Kalyan Chandra Sarkar v. Rajesh Ranjan.”

The learned Additional Public Prosecutor also relied upon the other decisions of the Apex Court in the case of *Kishori Lal v. Rupa and others*, reported in (2004) 7 SCC 638; and *Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi)*, reported in AIR 2008 SC 2889.

7. The Sessions Court has recorded the findings in para 30 of its judgment as under :

“[30] So from the testimony of medical witness and other evidence on record it is established that the act of multiple blows by means of knife inflicted by accused No.1 with force on the vital parts of the deceased i.e. chest, neck etc. by which the death is caused, is done with the intention of causing bodily injury to Ramesh Chandi and thus the injuries intended to be inflicted were as per medical testimony were sufficient in the ordinary course of nature to cause death of deceased Ramesh Chandi. This is not the case of one or two blows. It is the case of multiple stab injuries with force as per medical opinion on the body of deceased. The PW 1 deposed that the accused No.1 took out weapon which was concealed on his back side. It was the premeditated and calculated act. No case of sudden provocation at the instance of the deceased to the accused. PW 4 Kanchan identified the Article-A as same weapon which was used by accused No.1 for assaulting her father.”

Though the applicant is in jail since last two years and was also

on bail during the pendency of the trial, in our view, the question as to whether the applicant has taken undue advantage or acted in a cruel or unusual manner without premeditation, is required to be considered on merits and it would be improper for us to record even any prima facie finding in that respect, keeping in view the findings recorded by the learned Judge of the Sessions Court. The decision relied upon by Shri Dharmadhikari sets aside the conviction and sentence and it is not in the matter of grant of bail or suspension of sentence.

8. In the matter of conviction under Section 302 of IPC, it is in exceptional cases that such benefit can be granted and merely because the accused was on bail during trial and did not misuse liberty cannot be a ground. We do not find any such exceptional case. Hence, keeping in view the guidelines laid down by the Apex Court in the decisions cited by the learned Additional Public Prosecutor, the application is required to be dismissed.

9. The criminal application is dismissed. Since the paper-book is ready, the appeal be placed for final hearing on 13-11-2017, keeping in view the age of the accused.

(Manish Pitale, J.)

(R.K. Deshpande, J.)

Lanjewar