

THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.48 OF 2018
WITH
CRIMINAL APPEAL NO.27 OF 2018**

Santosh Ramgonda Patil ... **Applicant**
V/s.

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

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Mr.V.V.Purwant with Mr.Sachin Deokar i/b. V.V.Phataate, Advocate
for the Applicant.

Mr.V.V.Gangurde, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 5th FEBRUARY 2018.

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of the appeal filed by him.

2 The applicant/accused is convicted of the offence 304(I) of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for five years apart from directing him to pay fine of Rs.One lakh and in default to under further rigorous imprisonment for one year.

3 Heard the learned Advocate appearing for the applicant/accused. He drew my attention to the evidence of eye-witnesses namely P.W.No.1 Kashappa @ Kashinath Nandure and P.W.No.2 Moglai and argued that evidence of both these eye witnesses does not reflect commission of offence punishable under Section 304 Part I of the Indian Penal Code. The offence can at the most travel to the one punishable under Section 323 of the Indian penal Code. The learned Advocate further argued that the prosecution has failed to bring on record the report of postmortem examination of the deceased and the even autopsy surgeon is not examined.

4 The learned Additional Public Prosecutor opposed the application by contending that the intention of the applicant to kill Nagnath is writ-large from the fact that two or three blows of blows were given on the back of the deceased.

5 I have carefully considered the rival submissions and also perused the copies of depositions of prosecution witnesses as well as the impugned Judgment and Order of conviction.

6 The incident in question, as deposed of P.W.No.1 Kashappa and P.W.No.2 Moglai, has taken took place in the fish market. The deceased Nagnath got a push from the applicant/accused Santosh Patil. After a brief quarrel, according

to the prosecution case, applicant/accused Santosh Patil gave a kick blow to Nagnath causing his fall and then the applicant/accused has stated to have given two or three blows by his right elbow below the neck on the back side of Nagnath and Nagnath died on 31/8/2013.

7 The prosecution has not proved postmortem report and has not examined the autopsy surgeon. P.W.No.4 Dr.Shivanand Hiremath has only referred the deceased Nagnath to the Neurosurgeon. What injury was caused to the deceased is not reflected from evidence of P.W.No.4 Dr.Shivanand Hiremath.

8 In the wake of this evidence, the question which will entail for adjudication is whether by giving two or three blows of elbow on the deceased whether the applicant/accused had intended to cause his death with a requisite knowledge.

9 Be that as it may, short sentence of imprisonment for five years is imposed on the applicant/accused. Averments against the applicant/accused has come on record from the evidence of eye witness are to the effect that the applicant had hit the deceased with a kick blow and two or three blows of elbow. In this view of the matter, the applicant who was on bail during the pendency of the trial deserves to be released on bail as the record does not reflect any misuse of liberty by him. Therefore, the Order:

- (i) The application is allowed.
- (ii) The substantive sentence of imprisonment imposed on the applicant/accused is suspended and he is directed to be released on bail in the sum of Rs.15,000/- and on furnishing surety in the like amount.
- (iii) The application is disposed of accordingly.

(A.M.BADAR J.)