

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPLICATION NO.184 OF 2018
IN
APPEAL NO.122 OF 2013

Sanjay Jaysing Algude	..	Applicant
Versus		
The State of Maharashtra	..	Respondent

Mr. Yug Mohit Chaudhry with Payoshi Ray for applicant
Mr. J.P.Yagik, APP for respondent No.1
Mr.Uday Warunjikar for intervenor – original complainant.

CORAM : B.R. GAVAI &
B.P.COLABAWALLA, JJ

DATE : 20th February 2018

P.C.:

1. This is an application for suspension of sentence and grant of bail during the pendency of appeal. The applicant along with three others have been convicted for offences punishable under section 302 read with 34 Indian Penal Code. It is the case of prosecution that the accused Nos. 1 and 2 while riding a motor cycle came at Aanganwadi, wherein the deceased Shantaram was sitting. It is the further case of the prosecution that the accused No.2 who was riding the motor cycle gave dash on the leg of Shantaram. Shantaram sustained grievous injuries. When he was bending, accused No.1 stabbed him with knife. Thereafter accused Nos. 3 and 4 came there and starting exhorting (kill Shantaram do not leave

him).

2] The application is vehemently opposed by the learned APP and Mr. Warunjikar, learned Counsel appearing for the original complainant to assist the prosecution. It is submitted that there are four eye witnesses who implicate the present applicant.

3] The P.W.-1, Dattatray is first informant and brother of deceased. The other eye witnesses are one Kondiram Sodmise, P.W.4, P.W.-5 Manisha wife of deceased, P.W.-7 Pralhad uncle of the deceased. As held by the Apex Court in the case of Niranjana Singh & Anr. Vs. Prabhakar Rajaram Kharote, reported in **1980 (2) S.C.C. 559** detailed elaboration of evidence at this stage will have to be avoided. However, perusal of the evidence of four witnesses would reveal that the consistent version given by them is that first the accused Nos. 1 and 2 came on the spot. Accused No.2 was riding motor cycle and gave dash to deceased on his leg and accused No.1 stabbed the deceased. Accused Nos. 3 and 4 came there thereafter and exhorted that the accused No.1 should kill deceased and not leave him.

4] It will be relevant to refer to the following observations of the

Hon'ble Supreme Court in the case of Jainul Haque Vs. State of Bihar, reported in (1974) 3 S.C.C. 543:-

“... the evidence of exhortation is, in the very nature of things a weak piece of evidence. There is quite often a tendency to implicate some person, in addition to the actual assailant, by attributing to that person an exhortation to the assailant to assault the victim. Unless the evidence in this respect be clear, cogent and reliable, no conviction for abetment can be recorded against the person alleged to have exhorted the actual assailant. The evidence adduced at the trial in respect of the part alleged to have been played by the appellant is contradictory and far from convincing.”

5] In the present case all the eye witnesses are interested witnesses. In the cross examination of these witnesses previous enmity is also brought on record. It is further to be noted that in the evidence of P.W.-4 who is a Panch in inquest panchanama, the initial version given by P.W.-1 Dattatray while recording the inquest was implicating only accused Nos.1 and 2. It would thus be seen that the possibility of the subsequent implication of present accused/applicant who is father of the main accused, at this stage, cannot be ruled out.

6] In any event, the only role attributed to the present applicant is of exhortation. It is not even the case of the prosecution that all the four accused came together. Even according to prosecution witnesses, the accused Nos. 1 and 2 came on motor cycle and

thereafter, the present applicant along with accused No.3 came on the spot. There is no evidence brought on record with regard to common intention. As such, whether the conviction of the present applicant with the aid of Section 34 of IPC can be sustained or not is also the question.

7] The applicant was on bail during the trial. No material is placed on record to show that the present applicant has misused the liberty. The only ground pressed in service is that the son of the present applicant who has been released on parole is absconding.

8] The interest of prosecution can be protected by imposing stringent conditions on the applicant for being released on bail.

9] The applicant Sanjay Jaysing Algude, therefore, is directed to be released on bail on his furnishing security in the sum of Rs.25,000/- with one or more sureties in the like amount. It is however made clear that the solvent surety to be provided would be of blood relatives of the present applicant. The applicant shall not, during the pendency of appeal, enter the jurisdiction of Phaltan police station. The applicant shall intimate the address of his place of residence during the pendency of appeal to the Phaltan police station

and shall report to the police station of the area in which he resides on every first and third Monday of every month between 8.00 and 10.00 a.m.

10] Application is disposed of.

(B.P.COLABAWALLA, J)

(B.R.GAVAI, J.)