

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. REVISION APPLICATION NO.235 OF 2018

Sunita Ashok Kiwade & Ors.

.. Applicants

Vs.

The State of Maharashtra & Anr.

.. Respondents

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Mr.Aniket Nikam i/b. Mr.Aashish I. Satpute, Advocate for the Applicants.

Ms.P.N. Dabhokar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : JUNE 8, 2018.

P.C. :

The applicants are arrayed as accused in connection with C.R.No.211 of 2007, which was registered with Nigdi Police Station. Initially, the offences were registered Sections 143, 146, 147, 148, 149 and 324 of Indian Penal Code (IPC). Investigation was conducted by the police and charge – sheet was filed before the competent Court.

2 The prosecution case is that on 17th May, 2007, the accused formed unlawful assembly and were armed with weapons like sword, iron rod and sticks and assaulted the complainant and

other witness. Accused gave blows of sword on head of complainant as a result she sustained injuries. On completing investigation charge – sheet was filed.

3 While the case was pending before the Court of the Judicial Magistrate First Class, Pimpri, an application was preferred by the complainant stating that the case under Section 307 of Indian Penal Code read with Section 120B of IPC is made out from the material on record and hence, said charge be added and the case be committed to the Court of Sessions having jurisdiction to try the said case. The said application was rejected on 6th August, 2014. the same order was challenged by complainant before Sessions Court by preferring Revision Application which was partly allowed, setting aside the above order and remanding the matter back for decision on merits. Thereafter, application was heard again. The application was partly allowed. Charge for the offence under Section 307 of IPC was added. The case was committed to Sessions Court.

3 Subsequently, an application was preferred by the accused before the Sessions Court seeking discharge from offence punishable under Section 307 of IPC. The said application

has been rejected by order dated 1st March, 2018. Being aggrieved by the said order, the applicants-accused have approached this Court.

4 Mr.Nikam, learned counsel appearing for the applicants submits that it was a free fight and there are cross cases against each other. It is submitted that taking the case of the prosecution as it is, no offence under Section 307 of IPC is made out. The injuries which are reflected in the medical certificate does not show whether the injury is grievous or simple. It is further submitted that there was no recovery of weapons which were allegedly used by the accused for assaulting the complainant and other witness. Cross FIR has been registered against the complainant and witness at the instance of one of the accused in the present case. It is submitted that in the said case the offence under Section 324 of IPC is registered. He pointed out the FIR as well as the medical certificate and submitted that the said evidence does not attribute that accused had intended to kill the injured. The prosecution had initially thereafter charged the accused for the offence punishable under Section 324 and there was no reason to add Section 307 of IPC. The intention has to be gathered from the charge-sheet *qua* the statements of the

witnesses. It is further submitted that the role of assaulting by weapons is attributed to two accused whereas there are several persons impleaded as accused who were not attributed any overt-act of assaulting the witnesses by alleged dangerous weapons. It is submitted that to proceed with the case under Section 307 of IPC, there has to be sufficient material and merely on inferences the accused cannot be prosecuted for serious offences. It is submitted that the accused be discharged from offence under Section 307 of IPC and matter be remanded to Court of learned Magistrate.

5 Learned APP pointed out the contents of the FIR as well as the medical certificate. It is submitted that the complainant was admitted in the hospital on 17th May, 2007 and she was hospitalized atleast till 27th May, 2017. It is submitted that the complainant had sustained CLW over a frontal region which is a vital part of the body and the nature of the weapons viz. sword and iron rod used in the commission of offence clearly attributes the intention to the accused that they attempted to murder, and, therefore, the charge under Section 307 is applicable in the present case. It is also submitted that the complainant had also sustained injury in the nature of contusion

in right periorbital region, contusion over left arm lateral aspect of size 6 c.m. X 4 c.m. Blunt trauma to head, chest in lower aspect and back. She submitted that the appreciation of evidence is required to be done at the stage of trial and in exercise of power under Section 482 of Cr.P.C. or 397 of Cr.P.C., this Court cannot enter into roving inquiry. Reading First Information Report coupled with the medical evidence, the prosecution has *prima facie* made out a case to proceed against the accused under Section 307 of IPC. She further submitted that complainant in FIR has categorically stated that one of the accused have stated at the time of assault that she should be killed.

6 Mr.Bardeshkar, learned counsel appearing for the complainant-Respondent no.1 supported the arguments of learned APP. In addition to that it is submitted that clear role has been attributed to each of the accused. They were armed with dangerous weapons and had assaulted the complainant on the vital part of the body which shows that there was an intention to commit murder. He reiterated that the applicability of Section 307 will be tested in evidence and in the event the trial Court finds that the charge under Section 307 is not made out, it will be open to the trial Court to decide the case in accordance with law

or even acquit the accused for the said offence. However, the evidence on record cannot be appreciated at this stage. The respondent has also tendered written submissions, which are taken on record. Complainant relied on photograph of head injury and CT Scan Report. However, without going through the said documents, the documents which are part of charge - sheet statement of the complainant, other witnesses and the medical evidence is on record. I have gone through the documents. The FIR was registered at the instance of the complainant. Specific overt-act has been attributed to the accused. Some of them were armed with dangerous weapons. The complainant had sustained two injuries which are referred hereinabove. She was hospitalized and her statement came to be recorded in the hospital. The statement of the complainant and the other witness is supported by medical evidence. Looking in to the version of the complainant, the other documents on record and the medical case papers, I am of the opinion that this is not the stage to appreciate evidence. The documents on record will have to be looked into to proceed with the matter. *Prima facie*, material on record is sufficient to proceed with said charge. The trial Court will be at liberty to take appropriate decision after conducting the trial. The complainant had earlier preferred an application before the

learned Magistrate stating that the charge under Section 307 is made out and the case be committed to the Court of Sessions. The said application was allowed and the case was committed to the Court of Sessions. The said order was not challenged at that point of time. The submissions advanced by the learned counsel for the applicant cannot be appreciated at this stage. The intention has to be gathered *prima facie* from the record. In the circumstances, no case is made out to interfere in the order passed by the Sessions Court. The application, is, therefore, rejected. It is made clear that this Court has not expressed any view on the merits of the trial and the trial Court shall proceed with the trial in accordance with law. Criminal Revision Application stands disposed of.

(PRAKASH D. NAIK, J.)