

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1161 OF 2019
IN
CRIMINAL APPEAL NO. 953 OF 2019

Devdas Parshuram Jadhav

... Applicant/Appellant

Vs

The State of Maharashtra

... Respondent

...

Mr.Prashant Thombre for the applicant.

Ms.P.N. Dabholkar, APP, for the respondent-State.

...

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 18th JULY 2019.

P.C. :

The applicant faced allegations under section 307. Upon trial, through Judgment, dated 17th June 2019, the Additional Sessions Judge, City Civil & Sessions Court, Gr. Bombay, convicted the applicant and sentenced him to undergo, among other things, three years rigorous imprisonment. The record reveals that the applicant was in judicial custody for eight months pending the trial. Upon pronouncement of Judgment, the trial Court suspended the sentence for a limited period to enable the applicant to file the appeal. Now, the learned counsel for the applicant submits that the period granted by the trial Court is about to expire.

2. After going through the record, I reckon that it is a family dispute.

But the injury one of the victims suffered seems grave. In that context, the trial Court convicted the applicant under Section 325, instead of under Section 307, of Indian Penal Code.

3. The learned APP has strongly objected to the suspension of sentence and the applicant's enlargement on bail. After taking me through the doctor's evidence, she has contended that the injuries were grave and that the offence certainly attracts Section 307 of IPC.

4. I reckon the trial Court has given more importance to *mens rea*, that is guilty mind, than to the nature of injury, to convict the applicant under Section 325 instead of Section 307 of IPC. At any rate, this issue can be agitated during the final hearing. As the applicant has already served eight months of the sentence imposed, I reckon it serves the interest of justice to suspend the sentence and enlarge the applicant on bail subject to these conditions:

ORDER

- (i) Criminal Application is allowed.
- (ii) Substantive sentence imposed on the applicant/accused is suspended, and he is directed to be released on bail on his executing P.R. Bond for Rs.20,000/- and on furnishing two sureties in the like amount.
- (iii) The applicant/accused should not contact the first informant or victim, or any other witness, or any member of the victim's family in any manner, pending this appeal.
- (iv) The applicant's failure to abide by these conditions shall entail the prosecution to apply for cancellation of bail granted to the applicant/accused.

- (v) Criminal Application is, accordingly, disposed of.

(DAMA SESHADRI NAIDU, J.)