

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1545 OF 2017

IN

CRIMINAL APPEAL NO.926 OF 2017

VILAS ANIL GAIKWAD

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Ms.Nagma Tandon, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 20th 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. The applicant/accused has been convicted of offences punishable under Sections 307, 332, 353 and 427 of the Indian Penal Code and different sentences have been imposed on him on each count, the highest one being for the offence punishable under Section 307 of the Indian Penal Code i.e. for 7

years. All substantive sentences are directed to run concurrently. Hence, it is not necessary to point out sentence imposed on the applicant/accused on other counts by the learned trial court.

2 Heard the learned Advocate appearing for the applicant/accused. She took me through the evidence adduced by the prosecution and contended that except three police personnel, all other private witnesses turned hostile, and therefore, no offence is proved. The learned Advocate further argued that PW9 Police Inspector Sitaram Dubal arrested the applicant /accused from near his house and this fact is suspicious because description of the applicant/accused was not given to him. Injured PW1 Suhas Barge had not described the applicant/accused to anybody else. The learned Advocate took me through the evidence of PW7 Dr.Kaustubh Prabhune to demonstrate that for a minor injury such as chopping of thumb, hospitalization from 15th November 2009 to 29th November 2009 was not necessary. The learned Advocate further argued that there was no injury on the back, and therefore, evidence of PW1 Suhas Barge is unreliable.

3 The learned APP opposed the application by
contending that crime in question is serious.

4 I have carefully considered the rival submissions and
also perused the copies of deposition of prosecution witnesses as
well as the impugned judgment and order of conviction and the
resultant sentence.

5 The case in hand is a case of an attempt to commit
murder of a policeman on duty. PW1 Suhas Barge, Police
Constable, is the victim of the crime in question. On the day of
the incident i.e. on 15th November 2009, he was on bandobast
duty. One lady had informed him that a person is creating ruckus
at Tadiwala Road. PW1 Suhas Barge then, as stated by him before
the court, went to Tadiwala Road and saw the applicant/accused
armed with a sickle in his hand. When PW1 Suhas Barge
attempted to apprehend him, he threatened PW1 Suhas Barge to
kill and then gave forceful blows of sickle on him. Evidence of
PW1 Suhas Barge shows that he had warded off the blows, but

still, one blow landed on his back, whereas the other blow resulted in chopping of his thumb of left palm.

6 While in the witness box, PW1 Suhas Barge has categorically identified the applicant/accused as perpetrator of the crime in question and there is no material in the cross-examination to demonstrate that this is a case of mistaken identity. It is well settled that evidence of the injured witness is required to be accepted if it is found trustworthy as the injured witness does not have any reason to falsely implicate some other person as perpetrator of the crime. It needs to be noted that this is a case of a single victim and a single accused and as such, PW1 Suhas Barge has no reason to falsely implicate anybody else in the crime in question. There is no such material elicited from the cross-examination of the injured witness.

7 Generally, people at large, are insensitive to the crime even if it happens in their presence. In this view of the matter, the fact that other persons including the lady who had directed PW1

Suhas Barge to go to Tadiwala Road, turned hostile, is of no consequence. Evidence of the injured witness is sufficient on this aspect.

8 Though PW9 Police Inspector Sitaram Dubal is cross-examined on the aspect as to how he had apprehended the applicant/accused, this cross-examination pales into insignificance because of dock identification of the applicant/accused by PW1 Suhas Barge.

9 In order to make out the offence punishable under Section 307 of the Indian Penal Code, even causing actual wounds is not necessary. What is necessary is intention coupled with an overt act. In the case in hand, as seen from evidence of PW1 Suhas Barge, successive blows were dealt on him by the applicant/accused when he tried to apprehend the applicant/accused. Evidence of PW7 Dr.Kaustubh shows that PW1 Suhas Barge was having injury on his back apart from amputation of his left thumb.

10 Considering the nature of offence and the fact that an attempt was made to kill a policeman on duty by the present applicant/accused, no case for bail is made out.

11 The application is, therefore, rejected.

(A. M. BADAR, J.)