

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

CRIMINAL APPLICATION NO.1724 OF 2017

IN

CRIMINAL APPEAL NO.1051 OF 2017

Punaji Walu Mengal ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Ganesh Gole i/b Shirodkar Ateet for the Applicant

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

CORAM: A.M. BADAR, J.

DATED: 8th JANUARY 2018

PC:-

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. Heard the learned advocate appearing for the applicant/accused. He argued that short sentence of 5 years is

imposed on the applicant and the applicant was on bail through out the trial. The applicant has not misused his liberty. The learned advocate further argued that even according to the prosecution case, there was scuffle between the applicant and the deceased and both the parties exchanged kick and fist blows, which ultimately resulted in death of Raju Agiwale.

3. The learned APP opposed the application by contending that the evidence of the Doctor shows that the deceased has suffered injury to his testicular causing death .

4. I have carefully considered the rival submissions and also perused the copies of deposition as well as the impugned judgment and order of conviction. The applicant/accused came to be convicted for the offence punishable under Section 304 II of the Indian Penal Code and he is sentenced to suffer Rigorous Imprisonment for 5 years apart from directing him to pay fine of Rs.3,000/- and in default, to suffer simple imprisonment for one month.

5. According to the prosecution case, applicant Punaji is friend of first informant Murlidhar Agiwale/father of deceased Raju Agiwale. After retirement of Murlidhar Aagiwale, applicant Punaji was helping him in processing claim for retiral dues. On the date of the incident, according to the prosecution case, present applicant Punaji, at the house of first informant Murlidhar made a claim that he is entitled for some amount for the work which is being done by him. This infuriated Raju Agiwale- son of first informant Murlidhar Agiwale. The scuffle followed and it is the case of the prosecution that the present applicant gave fist and kick blows to Raju Aagiwale (since deceased). The death as seen from the evidence of PW-5 Doctor Suresh Gholap was because of Testicular injury.

6. The questions which would fall for consideration while deciding the appeal will be whether, merely by inflicting fists and kicks during scuffle, intention or knowledge can be attributed to the present applicant or whether the case would

fall under section 323 of the Indian Penal Code.

7. At this stage, it needs to be noted that short sentence of imprisonment for 5 years is imposed on the applicant/accused. He was on bail during the pendency of the trial. Considering the pendency of appeal before this Court, the appeal filed by the present applicant may not be heard within a period of five years. The applicant is not having criminal antecedents. In this view of the matter, the following order.

ORDER

- i) The application is allowed.
- ii) Substantive sentence of imprisonment imposed on the applicant is suspended and he is directed to be released on bail on executing his P.R. Bond of Rs.15,000/- and on furnishing surety in the like amount.
- iii) The application is disposed of accordingly.

(A.M. BADAR, J)