

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO.4 OF 2017
IN CRIMINAL APPEAL NO. 3 OF 2017
(Tukaram Janrao Parise vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Shri S.V. Sirpurkar, Advocate for applicant/appellant.
Shri A.D. Sonak, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH AND
M.G. GIRATKAR, JJ.

DATED : JUNE 27, 2018

Heard Shri Sirpurkar, learned Counsel for
applicant/appellant and Shri Sonak, learned Additional
Public Prosecutor for respondent.

This application is filed by applicant for
suspension of sentence imposed upon him by learned
trial Court vide judgment dated 16/11/2016 in Sessions
Trial No.65/2014 by which he is convicted for the
offence punishable under Section 302 of Indian Penal
Code and sentenced to suffer life imprisonment and to
pay fine of Rs.5000/- and in default, to undergo
imprisonment for six months.

Shri Sirpurkar, learned Counsel for
applicant, has submitted that from the evidence of P.W.4
Shilpa, wife of deceased Gajanan and star witness relied
by prosecution being eye witness, though prosecution
can be said to have established incident of assault by
applicant on deceased Gajanan, there is no overt act

attributed to applicant since as per eye witnesses' account it is a case of single blow on head. By referring to evidence of P.W.5 Sunil Parise, who is another witness relied by prosecution, it is submitted that his evidence is not reliable as there are material omissions and by referring to the injuries mentioned in post mortem report, it is submitted that none of the injuries is fatal. It is, therefore, contended that pending appeal, application be allowed since, even otherwise, applicant is in Jail from the date of incident, i.e. 15/4/2014 when he came to be arrested.

Shri Sonak, learned Additional Public Prosecutor relying upon evidence of two eye witnesses has submitted that there is direct evidence against applicant and prayed that since their evidence is corroborated by the medical evidence, application be rejected.

It appears to be the case of prosecution that P.W.4 Shilpa was residing along with deceased Gajanan opposite to the house of applicant Tukaram, who is elder brother of deceased Gajanan. In the night of 15/4/2015, quarrel took place between deceased Gajanan and complainant Shilpa on some count wherein P.W.1 Janrao, father of deceased Gajanan, intervened and in the course of same transaction, deceased Gajanan indulged in scuffle with his father Janrao, due to which Janrao fell down and received injuries. In the meantime, applicant, who was residing across the road, arrived in the house of deceased Gajanan and finding that deceased Gajanan had indulged into scuffle with

their father Tukaram, gave blows by stick on the head and eye of deceased Gajanan, due to which he sustained bleeding injuries, to which he succumbed while under treatment in the Hospital at Amravati.

In the background of case of prosecution as aforesaid, evidence of P.W.4 Shilpa though establishes involvement of applicant as an assailant of her deceased husband, it is noted from her evidence that incident took place in a scuffle between deceased Gajanan and his father wherein applicant intervened and in the course of same transaction, committed assault on head of deceased Gajanan due to which he suffered head injury and died.

Evidence of P.W.5 Sunil though corroborates the version of P.W.4 Shilpa to some extent, his evidence appears to be full of material omissions as can be seen in para 4 of his cross-examination.

In that view of the matter, there appears no corroboration to the evidence of P.W.4 Shilpa except for injuries as stated in the post mortem report. Perusal of injuries sustained by deceased Gajanan would reveal that he had sustained five injuries, out of which two are abrasions, one injury on the occipital lobe, which is a lacerated one and other two lacerated wounds on lips and forehead respectively.

Having considered the evidence of P.W.4 Shilpa of applicant committing assault on finding deceased Gajanan indulged in scuffle with their father and as applicant, even otherwise, is found to have given one blow on head of deceased Gajanan, prima facie we find that case of prosecution would not fall under

Section 302 of Indian Penal Code, but may attract lesser punishment. The weapon used also cannot be termed to be dangerous as weapon involved in the incident is bamboo stick, which is 3½ in length.

In view of above facts, application is allowed as per order below :

The sentence imposed upon applicant by learned trial Court stands suspended. Applicant shall be released on bail on his executing a P.R. bond in the sum of Rs.50,000/- with one surety in like amount.

While on bail, applicant shall mark his presence with Police Station, Chandur Bazar on the first day of each month initially for a period of six months and thereafter on first day of every quarter pending appeal.

JUDGE

JUDGE

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