

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

CRIMINAL APPLICATION (APPA) NO.611/2018

IN

CRIMINAL APPEAL NO.351/2018

Pritam s/o Gulabrao Wahane

...Versus...

The State of Maharashtra, through P.S.O. Police Station Ambazari, Nagpur

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

Court's or Judge's orders

Shri C.R. Thakur, Counsel applicant
Shri H.R. Dhumale, APP for non-applicant

**CORAM : R.K. DESHPANDE AND
ARUN D. UPADHYE, JJ.**

DATE : 16/07/2018

1. Applicant, the sole accused is convicted for the offence punishable under Section 302 of Indian Penal Code and is sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for six months.

2. With the assistance of the learned Counsels appearing for the parties, we have gone through the evidence on record and the findings recorded by the Sessions Court. The conviction is based upon the oral testimony of P.W.9 – Atul Achut Sabnis, who is a Senior Police Inspector. In his evidence, he claims that he was attached to Ambazari Police

Station as a Senior Police Inspector from 3/9/2016 to June, 2017 and was on duty on the date of incident which occurred on 20/3/2017 at about 9:30 p.m. at Pandharabodi which is at a distance of about one and half kilometer from Ambazari Police Station. He states that upon receiving wireless message at about 9:30 p.m. in the Police Station Ambazari he proceeded to the spot of incident where he found that one boy aged about 25 to 30 years was beating one old man aged about 85 to 90 years by stick. One iron cot was lying on the person of that old man. The witness claimed that P.I. Borade apprehended the said boy who was beating the old man. In the cross-examination, he states that he reached the spot of incident within 5 to 7 minutes and thereafter came back to the police station but he did not lodge the report of the incident in the police station. The accused was apprehended on 21/3/2017 at 2:12 hours.

3. *Prima facie*, we do not find any corroboration to his testimony by other witnesses. Though the arrest of the accused at the time shown under arrest panchanama is not disputed, *prima facie*, the cross-examination of this witness itself has made his presence on the spot very doubtful. The offence was not registered at his instance. It was registered at the instance of the complainant - Chandan Gajbhiye (P.W.1) the son of the deceased. The other witnesses have turned hostile and the Chemical Analyzer's report is also not supported to the case of the prosecution.

4. In view of the above, we find that *prima facie* case is made out for suspension of sentence and release of the accused on bail. Hence, we pass the following order.

ORDER

(i) Criminal application is allowed. The sentence imposed upon the accused under Section 302 of Indian Penal Code along with fine is hereby suspended.

(ii) The applicant/accused be released on bail upon his furnishing P.R. Bond in the sum of Rs.15000/- with two solvent sureties in like amount. The accused shall attend the Police Station Ambazari once in every fortnight and before leaving the Nagpur City, if at all he wants, the information shall be furnished to the Police Station Ambazari.

(Arun D. Upadhye, J.)

(R.K. Deshpande, J.)