

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

CRIMINAL APPLICATION (APPA) NO.669 OF 2018
IN CRIMINAL APPEAL NO.595 OF 2017
(Rahul @ Pintu s/o Punam Ujainwal vs. The 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.
Shri A.D. Sonak, Additional Public Prosecutor for
respondent.

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

DATED : JULY 26, 2018

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

This application is filed by original accused
no.7 Rahul alias Pintu s/o Punam Ujainwal for
suspension of sentence of life imprisonment imposed
upon him by learned Additional Sessions Judge,
Khamgaon vide judgment dated 13/11/2017 in
Sessions Trial No.33/2016 for the offence punishable
under Section 302 of Indian Penal Code along with
sentence for other offences.

Shri Sirpurkar, learned Counsel for
applicant, submits that co-accused Vijay, who is original
accused no.2, is ordered to be released on bail on
suspending his sentence by this Court vide order dated
4/7/2018 and the case of applicant is similar to that of

original accused no.2 Vijay. It is contended that evidence of P.W.1 Rahul, sole eye witness in this case, has been disbelieved by this Court while considering application of co-accused Vijay and for that reason, learned Counsel has relied upon order dated 4/7/2018 passed by this Court in Criminal Application No.605/2018 filed by original accused no.2 Vijay s/o Raju alias Kailas Sarwan. It is further contended that the role attributed to applicant is similar to co-accused Vijay and since evidence of P.W.1 Rahul is disbelieved, applicant is entitled to be released on bail. It is submitted that sentence of other co-accused being accused no.4 Ram alias Bhagat and accused no.6 Kalu is also suspended and pending trial, applicant was on bail. It is prayed that application be allowed.

On the other hand, Shri Sonak, learned Additional Public Prosecutor for respondent, has opposed the application on the ground that involvement of applicant is established from the evidence of eye witness – P.W.1 Rahul, who is believed by trial Court. It is contended that as there is sufficient evidence against applicant, involvement of applicant is clearly established and, therefore, application be rejected.

In the background of arguments advanced by learned Counsel for the parties, we have perused evidence of P.W.1 Rahul, which reveals that incident took place on 4/1/2016 at about 9.45 p.m. at the weekly bazar at Khamgaon where he saw deceased Abhinav proceeding on his two wheeler and was intercepted by accused no.2 along with accused nos.1, 6 and applicant.

Some altercation took place and, therefore, deceased Abhinav started running towards one wine shop and was followed by accused. He has further deposed that accused no.2 gave blow on the back of deceased Abhinav by some pointed weapon and applicant as well as accused no.1 inflicted injuries by some weapons on his waist, due to which he fell down in front of wine shop and thereafter co-accused nos.4 and 6 caught hold of him and accused no.1 gave blows by knife on his chest and abdomen while applicant by sitting on the legs of deceased gave knife blows on his abdomen. P.W.1 Rahul has also deposed that in the course of same transaction, accused no.2 pierced screw driver in the stomach of deceased Abhinav, due to which his intestines came out.

While considering above stated evidence, role attributed to applicant is of his committing assault by knife on the abdomen of deceased Abhinav by sitting on his legs. Shri Sirpurkar, learned Counsel for applicant, has submitted that this is by way of omission. We have considered evidence of P.W.12 Dhakne, Investigating Officer, who has recorded statement of P.W.1 Rahul. However, such omission is not put to this witness. In that view of the matter, we do not find that at the time of trial, defence has proved this omission. In that view of the matter, we do not find that case of applicant is similar to the case of original accused no.2 Vijay whose application was allowed by this Court finding evidence of P.W.1 Rahul to be with material omissions.

However, we find substance while it is contended on behalf of applicant that evidence of P.W.1 Rahul, sole eye witness relied by prosecution, of his witnessing the incident is doubtful in view of evidence of defence witness Rajkishor, who though cited as witness, was not examined as witness for prosecution and was examined as a defence witness. From his evidence, we find that presence of P.W.1 Rahul at the time of incident is in fact doubtful as according to him, at the time of incident at 9.45 – 10 p.m. he and P.W.1 Rahul alias Sonu were together when he received phone call informing about quarrel of deceased Abhinav and accordingly both of them proceeded towards the spot. He further states that on their reaching the spot, number of persons had gathered and in the source of torch light, he could identify deceased Abhinav lying on the lap of Umesh Kadam (not examined). His evidence thus establishes fact of arrival of P.W.1 Rahul on the spot after the incident. In the circumstances, evidence of P.W.1 Rahul as eye witness is doubtful.

In that view of the matter and since co-accused Vijay, Ram alias Bhagat and Kalu are already released on bail, application is liable to be allowed as per order below :

Applicant/accused no.7 Rahul alias Pintu s/o Punam Ujainwal shall be released on bail on his executing a P.R. bond in the sum of Rs.50,000/- with one surety in the like amount. While on bail, applicant shall mark his presence with Police Station, Shivaji Nagar, Khamgaon on the first day of each month initially

for a period of six months and thereafter on first day of every quarter pending appeal.

The application is accordingly allowed.

JUDGE

JUDGE

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