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IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
CRIMINAL APPLICATION (APPA) NO. 853/2018
IN
CRIMINAL APPEAL NO.595/2017

(Suraj Ishwar Sarwan vs. The State of Maharashtra:Th.P.S. Shivajinagar)

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

Court's or Judge's order

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Mr S.V. Sirpurkar, Advocate for applicant
Mr. A.D.Sonak, APP for respondent-State

CORAM : P.N. DESHMUKH &
MRS. SWAPNA JOSHI, JJ.
DATED : 11th September, 2018.

Heard.

2. Original accused no.1/applicant-Suraj Ishwar Sarwan, has filed this Application seeking suspension of sentence imposed upon him by the judgment dated 13.11.2017 passed in Sessions Casel No.33/2016 by the learned Additional Sessions Judge, Khamgaon, convicting him along with others, for offence punishable under section 302 of the IPC and directing to suffer imprisonment for life and to pay a fine of Rs. 3000/- in default , to suffer R.I. for six months. The applicant was also convicted for the other offences.

3. Mr. S.V.Sirpurkar, learned counsel for the applicant contended that all other co-accused who were also convicted, were released on bail pending the Appeal. He further contended that by allowing their Application suspending sentence, this Court had already evaluated the evidence of Rahul (PW1), sole eye witness and had noted that his presence at the time of the incident on the spot was doubtful. In support

of his submissions as aforesaid, the learned counsel has referred to earlier order of this Court passed in favour of co-accused-Rahul @ Pintu Ujainwal and other orders.

4. Mr. A.D.Sonak, learned APP has opposed the Application on the ground that there is a direct evidence against the applicant.

5. In the background of submissions advanced on behalf of the applicant as aforesaid, perusal of order passed by this Court dated 26th July 2018 suspending the sentence of co-accused -Rahul, it is observed by this Court that the evidence of PW1- Rahul, the sole witness is not convincing as according to him, on 4.1.2016 at about 9.45 pm, at the weekly *bazar* at Khamgaon, he saw Abhinav proceeding on his two wheeler and was intercepted by original accused no.2 along with accused no.1,2 and 6. Some quarrel took place due to which deceased started running towards one wine shop and was chased by co-accused/original applicant nos. 2 and 6. Rahul has further deposed that accused no.2 gave a blow on Abhinav's back due to which he fell down and thereafter co-accused nos.4 and 6 caught hold of him and applicant /ori. accused no.1-Suraj inflicted injuries by some weapon on the chest and abdomen while co-accused Rahul assaulted by knife blows by sitting on the legs of the deceased. The evidence of PW1 further reveals that accused no.2 in the course of same incident pierced screw driver in the abdomen of deceased- Abhinav due to which his intestine came out.

6. From the earlier order, it is noted that evidence of Rahul (PW1) with regard to co-accused Rahul @ Pintu, is by way of omission and, as such, co-accused Vijay was granted bail. Similarly, this Court, while

considering the evidence of eye witness-Rahul, noted that same is doubtful as his presence on the spot at the time of incident itself is doubtful, when he has deposed that at about 9.45 to 10.00 pm. when he was along with defence witness-Rajkishor, who though is cited as a witness, was not examined as witness by prosecution and was then examined as a defence witness and deposed that when he was with Rahul, he had received phone call informing him about some quarrel with deceased-Abhinav and accordingly both of them proceeded to the spot. The evidence of Rahul further reveals that on their reaching the spot, they found that number of persons had already gathered and that deceased-Abhinav was lying on the lap of one Umesh Kadam (not examined). This Court, having considered evidence as aforesaid, then held that presence of Rahul on the spot at the time of incident is doubtful as when he reached the spot, deceased-Abhinav was already found lying on the lap of Umesh. Except for evidence of Rahul as aforesaid, there is no other eye witness to the incident. As all other co-accused are already released on bail on suspending their sentences, we find that the Application is liable to be allowed on merits as well as on parity as case of applicant appears to be at par with other co-accused, who were already released on bail. Hence, the following order:

7. The applicant– Suraj Ishwar Sarwan, shall be released on bail on his executing a PR bond in the sum of Rs. 50,000/- with one surety in the like amount. When on bail, the applicant shall mark his presence with Police Station Shivajinagar, 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 allowed in above terms.

JUDGE

JUDGE

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