

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 991 OF 2019
IN
CRIMINAL APPEAL NO. 728 OF 2019

Kalpana Kailas Bhumkar ... Applicant/Appellant
V/s.

The State of Maharashtra ... Respondent

CRIMINAL APPLICATION NO. 821 OF 2019
IN
CRIMINAL APPEAL NO. 759 OF 2019

Pradip Kailas Bhumkar and Ors. Applicants
V/s.

The State of Maharashtra ... Respondent

Mr. Prashant Chintaman Mohite for applicant in APPA/991/2019 and Appellant in APEAL/728/2019.

Mr. Sharad Ghadge for applicant in APPA/821/2019 and Appellant in APPEAL/759/2019.

Mr. S.R. Agarkar – APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J
DATED : 26TH AUGUST 2019.

P.C. :

1. Heard.
2. These are applications filed under Section 389 of Cr.P.C. The applicants herein are seeking suspension of substantive sentence imposed upon them by the Additional Sessions Judge, Pandharpur in Sessions Case No. 31 of 2014, vide judgment and order dated 20th

April 2019 thereby convicting the applicants for the offences punishable under Sections 307, 324 and 326 read with Section 34 of Indian Penal Code and sentencing them to suffer R.I. for 12 years and to pay fine of Rs. 10,000/- each for the offence punishable under section 307 read with section 34 of Indian Penal Code. The appellants are also convicted for the offence punishable under section 326 read with 34 of Indian Penal Code and sentenced to suffer R.I. for 6 years and to pay fine of Rs. 5,000/-, each. For the offence punishable under section 324 of Indian Penal Code they are sentencing to suffer R.I. for 2 years and to pay fine of Rs. 2,000/-, each. The appellants are in custody since 20th of April 2019. The appellant in Criminal Appeal No. 728 of 2019 happens to be the mother of the appellants.

3. Perused the notes of evidence, more particularly, the deposition of the injured Shrikrishna and the substantive evidence of the Doctor who had examined Shrikrishna i.e. PW-5 Dr. Girnar Gavali. According to PW-6 Shrikrishna on the date of incident i.e. on 19th of May 2019 at about 11.00 p.m. the accused Prashat had called him from his house they had demanded the money which was lent to the brother of PW-6 i.e. an amount of Rs.3,00,000/-. When the witness denied the accused Kalpana had caught hold of the witness and thereafter, Prashant has given a blow of fighter on the back portion of his head. When he failed down her two sons Amar and Prashant alias Ganesh had attacked him with a knife. One of the accused Amar and Ganesh who are appellants in Criminal Appeal No. 759 of 2019 had amounted assault upon him with a knife, when he was drawing to save himself from the blow, one of the blow had landed on his thigh and he had

sustained a injury, thereafter, he was rescued by the family members.

4. PW-5 Dr. Girnar Gavali has proved the injury certificates which is at 'Exhibit- 42' which shows that the injured had sustained two simple injuries on his back and one grievous injury on his left thigh. Doctor has not stated as to whether the said injury was sufficient in the ordinary course of nature to cause death.

5. In view of this, it could not be said that the said injury was dangerous to life, the recovery of knife is from accused Prashant who had allegedly assaulted the injured with a fighter. There is no recovery of knife at the instance of either Amar or Prashant alias Ganesh. The learned counsel for the appellants submits that action would fall at the most under section 326 of Indian Penal Code, moreover, it is seen that there is only one injured person. However, the learned Judge has convicted them for the offence punishable under sections 307 and 324 as well as section 326 of Indian Penal Code.

6. It is pertinent to note that PW-3 and PW-4, who happen to be Panchas for recovery of weapons clothes seizures are declared hostile by the prosecution.

7. Be that as it may, the appellants were on bail during the pendency of the trial and have not committed breach of any conditions imposed upon them. Hence, the following order:-

ORDER

- i) The Criminal Applications are allowed.
- ii) The substantive sentence imposed upon the applicants vide judgment and order 20th April 2019 dated by the Additional Sessions Judge, Pandharpur is hereby suspended.
- iii) The applicants be enlarged on bail on furnishing P.R. bonds in the sum of Rs.30,000/- each, (Rupees Thirty Thousand Only) and one or more sureties in the like amount.
- iv) The applicants shall cause their presence before the learned Additional Sessions Judge, Pandharpur once in six months on the date assigned by the learned Additional Sessions Judge, Pandharpur.
- v) Upon failure to attend any two consecutive dates, the the learned Additional Sessions Judge, Pandharpur shall make report to the High Court and the prosecution would be at liberty to seek cancellation of bail.
- vi) The applications stand disposed of.

(SMT. SADHANA S. JADHAV, J)