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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.102 OF 2019 IN
APPEAL NO.1260 OF 2013

Santosh Parvati Gaikwad ...Applicant
vs.
State of Maharashtra ...Respondent

Mr.Sachin S. Thombare for the applicant
Mr.Ajay Patil, APP for the respondent-State

CORAM : A.S.OKA, &
A.S.GADKARI, JJ.
DATE : JANUARY 31, 2019

P.C.:

1 This is an application for suspension of sentence imposed under the Judgment and Order dated 22nd August 2013 pending the hearing of the Appeal.

2 The applicant is original accused No.2. It is the case of the prosecution that the applicant and other accused persons were under a belief that the deceased had teased their sister and therefore, on 24th October 2010 between 9.00 p.m to 9.30 p.m., the accused persons assaulted Shivaji in his house with iron rods and iron instrument/gadget used for fixing wheel of a bullock cart (Otacha Khila). Laxman-P.W.No.1 the elder brother of the deceased saw the appellant and other accused persons coming out of the house with said weapons in their hands. Initially, crime under section 324 of the Indian

Penal Code was lodged. The statements of some of the witnesses were recorded by the Investigating Officer. Shivaji was admitted to Sasoon Hospital. Shivaji succumbed to injuries on 1st November 2010. Section 302 of the IPC was added to the said crime. The evidence of Mr. Pandurang - P.W.No.12, the Investigating Officer clearly indicates that after adding section 302 to the said crime, he further recorded the statements of witnesses and in the supplementary statements or additional statements, the witnesses have narrated the fact about holding of weapons by the accused persons.

3 The evidence of P.W.No.1 indicates that due to belief that the deceased had teased the sister of the appellant and other accused persons, with a view to teach a lesson to the deceased, they assaulted him. The Autopsy Surgeon in his testimony has mentioned about seven injuries suffered by the deceased. Out of the said seven injuries, prima facie it appears to us that the three injuries were serious in nature and rest of the injuries are of contusion or abrasions. As noted earlier, Shivaji died after gap of about 7 days after admission in the hospital. Prima facie, it appears to us that the appellant and other accused persons did not have intention of committing murder of Shivaji and only with a view to teach a lesson they assaulted him on the date and time of the incident. The applicant has undergone sentence for a period of 8 years and more.

4 In view of the above, substantive sentence imposed upon the applicant can be suspended and the applicant can be released on bail.

5 Hence, we dispose of the application by passing the following order:

(i) During the pendency of the appeal, substantive sentence is suspended and applicant be released on bail on furnishing P.R.Bond in the sum of Rs.50,000/- with one or two solvent sureties in the like amount.

(ii) After he is released on bail, the applicant shall attend the Rajgad Police Station, Pune once in a three months i.e first Saturday of the quarter between 11.00 a.m to 1.00 p.m.

(A.S.GADKARI,J.)

(A.S.OKA,J.)