

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1103 OF 2019
IN
CRIMINAL APPEAL 893 OF 2019

Jagdish Rajesh Khevra and Anr. .. Applicants.

Versus

The State of Maharashtra .. Respondent

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Mr. S.V. Marwadi a/w Mr. N.M. Nadar for the Applicants.
Ms. J.S.Lohokare, APP for the Respondent/State.

CORAM: P N. DESHMUKH, J.

DATED : 27th SEPTEMBER, 2019.

P.C:-

This application is for suspension of sentence and for bail by accused, who came to be convicted for the offence under Section 304(ii) of Indian Penal Code and are sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.10,000/-. Appellants are also convicted for the offence under Section 338 of Indian Penal Code and 187 of Motor Vehicle Act.

2. It is the case of prosecution that on 29th February, 2012 at 8.00 p.m., complainant alongwith deceased Kunda and two persons were traveling on one motorcycle who were chased by both the applicants on their motorcycle and they were insisting the complainant and the occupants to stop their motorcycle. However, since applicant Laxman who was riding the motorcycle, did not stop it, accused slapped him from the running motorcycle and in the course of same transaction appellant Jagdish kicked the motorcycle occupied by the complainant and driven by Laxman, due to which, complainant and deceased fell down from the motorcycle. While both the male friends of their motorcycle and the appellants flee away from the spot, due to fall from motorcycle, Kunda died sustaining head injury. On the basis of report by complainant Sarita, offence came to be registered. Both the appellants are convicted as aforestated.

3. Learned Counsel for appellants submitted that no intention can be attributed to the appellants for causing death of deceased Kunda and as thus, contended that since appellants are imposed with lessor sentence of two years, application be allowed. Both the appellants are young, aged 22 and 20 years of their age.

4. Learned APP opposed the application contending that there is a direct evidence establishing their involvement in the present crime.

5. Evidence of Sarita as well as of Laxman and Shailesh who was driving the motorcycle, is corroborating to each other on the point of appellants chasing them by their motorcycle and slapping Laxman while he did not stop the motorcycle inspite of their directions. Their evidence also established a fact of appellant Jagdish kicking motorcycle occupied by complainant, deceased as well as Laxman and Shailesh due to which, both female occupants of the motorcycle fell down causing death of Kunda. However, from the evidence as stated aforesaid, though applicant's involvement is established, it is found that from the evidence, it can not be said that either of the appellants had intention of causing murder of any occupants of another motorcycle.

6. In that view of the matter and since the applicants were on bail, pending trial, and since the conviction has already suspended by the Trial Court, application is liable to be allowed

subject to appellants paying amount of fine imposed upon them, if not already paid, as per order.

ORDER

(a) Appellant Jagdish Rajesh Khevra and Sachin Ravi Patkar shall be released on bail, involving in Crime No.18 of 2012, on their executing P.R.bond in the sum of Rs.25,000/- each, with one surety each in the like amount.

(b) While on bail, appellants to mark their presence with Talasari Police Station, Palghar, quarterly on the each day of such month, pending appeal.

(P. N. DESHMUKH, J.)