

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1347 OF 2019
IN
CRIMINAL APPEAL NO. 1105 OF 2019

Virsingh Karamsingh Shikalkar .. Applicant

Versus

The State of Maharashtra ... Respondent

...

Mr. Nitin Uttam Jadhav for the Applicant.

Mr. V. V. Gangurde APP for the Respondent/State.

CORAM: P. N. DESHMUKH, J.

DATED : 14th OCTOBER, 2019.

P.C:-

1. Issue notice to the respondent.
2. Learned APP waives service of notice for respondent/State.
3. By consent heard. Learned counsel for the applicant submitted that pending trial applicant was on bail and that even according to the evidence of eye-witnesses, there are material omissions and has therefore, prayed for bail and suspension of sentence, which even otherwise is stated to be short sentence of 3^{1/2} years.

Sonali Patil

4. Learned APP opposed the application by submitting that there is direct evidence and applicant is found involved to have assaulted complainant causing grievous injury on his head.

5. Record reveals that accused is convicted for the offence punishable under Section 397 read with 34 of Indian Penal Code and is sentenced to suffer Rigorous Imprisonment for 3 years and 6 months and to pay fine of Rs.1,000/-, in default, to suffer Rigorous Imprisonment for 1 month.

6. Perusal of the evidence of complainant would reveal that incident occurred in his house in the midnight where on hearing sound, when he came out of his house, he was assaulted by knife on his head by the accused who was armed with knife and was caught hold by complainant's brother while two other persons ran away. As per his further evidence, accused were armed with knife and iron rod. Admittedly, no Test Identification Parade is held, which fact is also admitted by the complainant nor he was inquired with the physical description of suspects.

7. Evidence of P. W. 2- eye witness though reveals that after assault on complainant he caught hold accused and on informing police handed over him to police. Said evidence is by way of omission, for which he is unable to assign any reason why such fact is not mentioned in his statement. However,

it is noted that above omission is not proved on record at the time of trial. In that view of the matter, above submissions though cannot be considered in favour of applicant, as from the evidence of complainant he claims to have sustained assault on his head by knife. When evidence of Dr. Usha Maheshwari is perused, it has come on record that complainant sustained one CLW on his head, which is certified to be grievous and possible with sharp and blunt object. According to case of prosecution, the accused were armed with knife and iron rod, in that view of the matter and injury since stated to be possible also by blunt object, there is reason to doubt whether same is caused by applicant or his companion, armed with iron rod.

8. Having considered facts as aforesaid and since appellant was on bail, pending trial and is imposed with short sentence of 3^{1/2} years. Application is allowed as per order below:-

ORDER

1. Applicant shall be released on bail on executing P.R. Bond in the sum of Rs.25,000/- with one surety in the like amount.
2. Applicant shall attend the Shivaji Nagar Police Station, Ambarnath, District-Thane, on the first day of each month initially for the period of 6 months and thereafter, quarterly on the first day of each such month, pending appeal.

3. Applicant shall pay fine, if not already paid.

(P. N. DESHMUKH, J.)