

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR

CRIMINAL APPLICATION (APPA) NO. 300/2019
IN
CRIMINAL APPEAL NO. 194/2019

Omprakash S/o Sahadeo Gupta

-Vs.-

The State of Maharashtra, thr. P.S.O., P.S. Wadi, Nagpur

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

Court's or Judge's orders

Shri P.K. Bezalwar, Advocate for the appellant
Shri N.B. Jawade, A.P.P. for respondent / State

CORAM : ROHIT B. DEO, J.

DATED : 07-06-2019

The appellant is convicted for offence punishable under Section 307 of the Indian Penal Code (IPC) and is sentenced to suffer rigorous imprisonment for ten years.

2. I have perused the evidence adduced by the prosecution and the reasons recorded by the Trial Court, and having done so, I am satisfied that instead of suspending the sentence, it would be more appropriate, if the appeal is immediately heard.

3. Shri. P.K. Bezalwar, learned Counsel would submit that the appellant has made out a case for suspension of sentence. The submission is that other than the injured, every witness examined as eyewitness

turned hostile and so did the panch to the recovery of the knife pursuant to memorandum statement under Section 27 of the Indian Evidence Act. The other submission is that considering the nature of the injury, the Courts erred in holding the accused guilty under Section 307 of the Indian Penal Code (IPC).

4. *Prima facie*, the evidence of the injured witness appears to have survived the test of cross-examination. It is trite law that the evidence of the injured witness must be placed on pedestal higher than that of the other witnesses. The injury, and this injury is not in dispute, lends assurance to the presence of the witness on the spot and moreover, the injured is ordinarily not likely to exculpate the guilty and inculcate the innocent. The fact that the panch to the seizure turned hostile would not mean that the seizure is not proved. The evidence of the Police Officer, unless the credibility thereof is shaken, can be believed.

5. The knife blow is inflicted on the throat. Even if it is assumed, as it is submitted by the learned Counsel Shri Bezalwar that the injury was not life threatening, the fact that the blow did not prove to be fatal, is immaterial. The nature of injury cannot be determining of the intention to cause death in the context of Section 307 of the Indian Penal Code (IPC). These are of course *prima facie* observations and the material on the record is

perused by me only with the limited object of deciding whether the appellant has made out a case for suspension of sentence.

6. I am not inclined to suspend the sentence.

7. However, since the sentence is not being suspended, it would be appropriate that the appeal is heard as early as possible, if not forthwith. R and P is received.

8. The learned Counsel for the appellant undertakes to place on record copies of the depositions and copies of such other documents as he would be relying on during the course of submissions. In this view of the matter, the filing of paper book is dispensed with.

9. Let the appeal be fixed for final hearing on 27/06/2019 at serial 1 immediately after the admission board.

JUDGE

D.S.Baldwa