

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****NAGPUR BENCH, NAGPUR.****CRIMINAL APPEAL NO.307/2019**

Shubham s/o Suresh Bawankule and anr. (In Jail) .vs. The State of  
Maharashtra through PSO P.S. Khapa, Saoner.

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

Court's or Judge's orders.

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Mr. A. S. Shukla, Advocate for appellants.

Mr. N. B. Jawade, A.P.P. for respondent-State.

**CORAM : V. M. DESHPANDE, J.**

**DATED : MAY 2, 2019**

**Criminal Application No.409/2019**

This is an application for suspension of substantive jail sentence and for grant of bail. The appeal, in which the present application is filed, was admitted on 16.04.2019. By filing the appeal, the applicants/appellants are challenging the judgment and order of conviction passed by learned Additional Sessions Judge, Nagpur in Sessions Trial No. 422/2017. The applicants are convicted by the learned Judge of the Court below for an offence punishable under Sections 143, 147, 304 and 149 of the Indian Penal Code (IPC). The maximum punishment that is imposed upon the applicants is for the offence under Section 304-II read with Section 149 of the IPC and they are directed to suffer rigorous imprisonment for seven years.

I have heard Mr. Shukla, learned counsel for the applicants and Mr. Jawade, learned A.P.P. for the non applicant-State and also perused the record and proceedings. Though, a charge for the offence punishable under Section

302 of the IPC was also framed against the present applicants, they were not convicted for the said charge. Instead, they are convicted for the offence punishable under Section 304-II of the IPC.

Deceased is one Pankaj Junghare, cousin of first informant Homeshwar Junghare (PW2). Homeshwar lodged a report on the next day of the incident. The incident occurred on 10.04.2017. Evidence of Homeshwar would reveal that on 10.04.2017, there was a procession to celebrate Hanuman Jayanti and in the said procession, Disk Jockey (DJ) was being played. Homeshwar and deceased Pankaj participated in the said procession and during their participation, a blackish complexioned boy gave push to him, near Gandhi School. The evidence of Homeshwar would reveal that he made a question about the said to the said boy, resulting into eruption of quarrel between them. His evidence would show that that time deceased Pankaj tried to intervene in the said quarrel. As per the evidence of Homeshwar, the assailants who were four in number, started beating the deceased Pankaj, resulted into he becoming unconscious. He, therefore, was taken to the Government Hospital and the Doctor declared him dead.

In the prosecution case, there is one another eye witness i.e. Bhojraj (PW3), who was sitting in the vehicle, which was carrying DJ. He was in the front side of the vehicle from where it was informed to him that a quarrel is going on the backside of the vehicle. Therefore, he went back to notice that six persons were beating Pankaj and he

disclosed the participation of the present applicants. He intervened in the quarrel and separated them.

What is important to note from the deposition of these two eye witnesses is that none of the assailants used any weapon to assault on the deceased. Further, in my view, the Court below has rightly acquitted the appellants of the offence under Section 302 of the IPC, in view of the fact that on the trifle issue, the quarrel erupted. Further, Dr. Pathak (PW7) also could not notice any injury on the person of the deceased, by which it could be said that any weapon was used by the appellants. Post Mortem Report (Exh.-44), shows that the injuries are in the nature of abrasions and in the cross-examination, the Doctor has specifically admitted that the injuries can occur due to fall on the stone and the road, where the incident had occurred, was a stony one.

Applicants were on bail during the trial and at no point of time, they have misused the liberty granted to them.

Looking to the aforesaid nature of the evidence and the fact that the applicants were on bail and the punishment imposed upon the applicants is of fixed duration, in my view, their application can be considered favourably. Consequently, I pass the following order.

### **ORDER**

- (i) The application is allowed.
- (ii) The substantive jail sentence imposed upon the applicants by judgment and order dated 02.04.2019 in Sessions Trial No.422/2017, shall remain suspended during

the pendency of the appeal.

(iii) Applicant no.1-Shubham s/o Suresh Bawankule and applicant no.2-Satish s/o Namdeo Jathre be released on bail on they executing P.R. Bond in the sum of Rs.10,000/- with one solvent surety in the like amount.

(iv) Learned Sessions Judge, Nagpur before whom the bail bonds will be executed, shall ensure that before issuing the release warrant, the entire fine amount is deposited.

(v) The applicants are directed to attend Police Station, Khapa, once in three months and mark their presence in the said Police Station on third Saturday of such month between 03.00 p.m. to 05.00 p.m. and shall maintain diary of the same.

(vi) The applicants are directed to remain present before this Court at the time of final hearing of the appeal.

The application is disposed of.

**JUDGE**

kahale