

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

Criminal Application (APPA) No. 414/2019.

In

Criminal Appeal No. 310/2019.

(Abdul Kadir @ Sonu S/o Abdul Rashid & Anr. Vs. State of Maharashtra, thr.PSO, PS
Wadgaon Road, District Yavatmal.)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri R.M.Daga, Advocate for applicants.
Shri A.S.Ashirgade, APP for State.

CORAM : P.N.DESHMUKH &
MRS. PUSHPA V. GANEDIWALA, JJ.

DATE : 13.06.2019.

Heard.

This application is filed for suspension of sentence and grant of bail by original accused nos.2 and 3, who came to be convicted for the offence punishable under Section 302 r/w. Section 34 of the Indian Penal Code by the learned Sessions Judge, Yavatmal, in Sessions Case No.21/2018 dated 13/03/2019, and are sentenced to suffer R.I. for life and to pay fine of Rs.50,000/- each and in default, to suffer simple imprisonment for six months. During the pendency of trial, both the applicants were on bail.

The learned counsel for the applicants from the evidence has pointed out that the original accused nos. 2 and 3 assaulted the deceased – Gowardhan by kicks and fists blows, while the original accused no.1 came from behind the deceased and gave blows by Iron Rod on his head due to which he fell down. Further submissions are that from the evidence of Medical Officer, injuries caused on head by Iron Rod are stated to be the cause of death of

deceased. In that view of the matter, it is submitted that from the available evidence on record, there is nothing to establish that applicants had an intention to cause death of deceased and it is thus prayed that the application be allowed by imposing suitable conditions, as there are no criminal antecedents against the applicants and also on the ground that pending trial, they are on bail.

The learned APP has placed on record affidavit-in-reply. The copy is served to the counsel for the applicants and has opposed the application on the ground that there is direct evidence against the applicants and though assault by Iron Rod is by original accused no.1, who is not before the Court, both the applicants had duly participated in the incident as had assaulted deceased by kicks and fists blows, and thus the learned APP prayed for dismissing the application.

In the backdrop of submissions as aforesaid, we have perused the relevant evidence.

The learned counsel for the applicants has also contended that though PW-2 is relied as an eye-witness, his statement is recorded belatedly in spite of the fact that he had accompanied his mother to the police station when she had lodged the report.

In the evidence of PW-1-Pushpa she has stated that she was informed of incident of assault on deceased – husband by PW-2-Jay. She was informed that deceased was assaulted by applicants and original accused no.1 – Raju Shaikh by means of rod on his head and accordingly, she visited police station and lodged the report. In her cross-examination, she has admitted that she was

accompanied by PW-2-Jay – the eye witness when she had lodged the report.

Admittedly, the statement of the said eye-witness is recorded after 17 days. Prima-facie, we find no reason for the prosecution for not recording the statement of PW-2-Jay when he had accompanied his mother in the police station on the day of incident.

In the backdrop of above facts, when the evidence of PW-2-Jay is perused, it would reveal that the applicants assaulted the deceased by kicks and fists blows, while the original accused no-1 committed assault by Iron Rod on the head of the deceased. Though, from his evidence, it is also found that immediately after the incident, he disclosed the same to his maternal uncle – Banti, but he was not examined.

In view of the above stated evidence which is the only evidence against the applicants, it is therefore found that though applicants are involved in the incident, their role is only of committing assault by kicks and fists blows upon the deceased.

In that view of the matter, perusal of evidence of PW-3-Dr.Kapildeo is very material. At the time of performing postmortem, he found as many as twelve injuries over the body of deceased, all are stated to be antemortem and fresh, and the said injuries are stated to be sufficient in ordinary course of nature to cause death, which according to the expert evidence are possible by Iron Pipe. On a query being put to Doctor, he answered that the injuries are possible by Iron Pipe.

In that view of the matter, we find no reason to reject the application, all the more when both the applicants were on bail and

it is no case of prosecution that the applicants had mis-used the conditions.

Accordingly, application is allowed by imposing suitable conditions as per below order.

ORDER

Applicants shall be released on bail on their executing P.R. bond in the sum of Rs.50,000/- each with one surety each in the like amount.

Applicants shall mark their presence with Police Station, Wadgaon Road, District Yavatmal once in three months, on the 1st day of each such month, pending appeal.

JUDGE

JUDGE