

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

CRIMINAL APPLICATION (APPA) NO. 531 OF 2019

IN

CRIMINAL APPEAL NO. 381 OF 2019.

(Roshan @ Kandi S/o. Purushottam Pradhan, Yavatmal & Ors. Vs. State of Maharashtra, thr.
PSO, PS Yavatmal City, Yavatmal)

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

Court's or Judge's orders.

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

**CORAM : P.N. DESHMUKH AND
PUSHPA V. GANEDIWALA, JJ.
JULY 31, 2019.**

This application is filed by original accused no.7 - Roshan, accused no.8 - Anup and accused no.9 - Sachin for suspension of sentence and grant of bail, who are convicted by the learned Additional Sessions Judge, Yavatmal in Sessions Trial No. 32/2018 for the offence punishable under Sections 143, 144, 147, 148, 149, 302, 307, 120-B, 109 and 212 of the Indian Penal Code and Section 4/25 of the Arms Act.

Heard learned counsel for applicants and learned APP for respondent/State.

On behalf of applicants, it is submitted that though, there are three eye-witnesses i.e. PW/1- Shalini – mother of deceased - Anil, PW/2 – Premraj

and PW/3 – Vijay, their evidence is not convincing to be acted upon to establish applicants involvement in assault on deceased, as according to the learned counsel, evidence of all these three eye-witnesses do not establish their presence on the spot beyond doubt. Infact, it is pointed out as to how the evidence of PW/1 – Shalini is of material omission. By referring to the evidence of PW/2 – Premraj and PW/3 – Vijay, it is also contended that though, according to the prosecution, there are three eye-witnesses to the incident, their statements are recorded belatedly and by referring to the evidence of PW/10 – Dr.Manisha Waghmare, it is pointed out that PW/2 – Premraj, who is one of the injured friend of the deceased was conscious oriented and as such there was no reason for recording his statement belatedly after the incident.

In the background of above facts, it is submitted that application be allowed against the above applicants, as the nature of evidence available against them do not point out their involvement in the present crime.

Learned APP opposed the application contending that there is direct evidence against the applicants of eye-witnesses, including injured eye-witness – PW/2 – Premraj and has thus contended that all the submissions advanced on behalf of

applicants are matter to be considered on evaluating evidence at the time of final hearing of appeal and has thus prayed for rejection of the application.

In the background of submissions advanced as aforesaid, we have perused the evidence on record along with the impugned judgment wherefrom it appears to be the case of prosecution that on 31/10/2017, at around 8.30 p.m. when deceased was in the company of PW/2 – Premraj, in his absence, original accused no.1 visited the house of deceased and inquired about him from his mother having weapon 'Koyta' in his hand. Along with him, original accused nos. 2, 3 and 4 were also present having armed with 'Swords' in their hands. However, since deceased was not present in his house, they left his house. PW/1 – Shalini – mother of deceased suspecting them, followed them and after going for some distance saw original accused nos.1 to 4 along with three unknown persons assaulting the deceased by weapons due to which he sustained grievous injuries and later on he succumbed to the injuries.

In the background of above case of prosecution, we have perused evidence of PW/2 – Premraj, who in his evidence admittedly deposed that on 31/10/2017 in the night at around 8.30 p.m. while he was talking with the deceased near shop of his uncle, original accused no.2 - Adesh along with

other co-accused came there and assaulted him by Sword. With regard to assault on deceased, involvement of applicants is general, as according to his evidence, while deceased was sitting on a Motorcycle, was assaulted by other co-accused Suhas, Avinash, Akash, Vaibhav, Javed, and the applicants by Knives and Swords.

In view of above evidence on record it is noted that there is no specific role attributed to any of the applicants of assault on deceased. Infact, according to further evidence of PW/2 – Premraj, after assault on him, deceased ran towards the house of PW/5 – Milind Gedam, who was followed by accused Adesh, Akshay and Rohit and has further deposed that after deceased entered in the house of PW/5 – Milind, said co-accused assaulted and killed the deceased.

Even otherwise, evidence of PW/2 – Premraj does not appear to be convincing for the reason that his statement came to be recorded belatedly, on 08/11/2017 of the incident which has occurred on 31/10/2017 and is also injured in the same incident in which deceased - Anil died. From his evidence, it is material to note that infact after assault on his tendon, he tied his injuries by cloth and visited Police Station for lodging report on a two-wheeler where he reached in 15 minutes. As such, said

witness was not at all unconscious after assault. In spite of same and having visited Police Station, he did not found it necessary to disclose about the incident to police and in fact admitted that in spite of visiting Police Station, he chose to not to disclose anything to police and has further deposed that from Police Station, he went to the Government Hospital at Yavatmal where he was inquired by Doctor about injuries sustained by him to whom he narrated the history of assault which was recorded by Doctor who thereafter referred him to Hospital at Nagpur.

At this juncture, when evidence of PW/10 – Dr.Waghmare is perused, it reveals that on her examining PW/2 – Premraj, he was found to be conscious oriented and was replying to the questions put to him and informed that he was assaulted by someone and accordingly, she noted history of assault in Exh.150 and 151.

From the evidence of PW/2 – Premraj we find that so far as assault on himself is concerned, he has involved the applicants in general way as assailants along with other co-accused, without attributing any specific role to them and so far as assault on deceased is concerned, it is his specific evidence that deceased was chased by co-accused – Adesh, Akshay and Rohit who assaulted him after he entered the house of PW/5 – Milind and killed him.

As such, his evidence did not establish involvement of applicants in present crime whose evidence even otherwise for above reasons of not lodging report in spite of visiting Police Station and his belated statement recorded by police, further makes it unreliable.

Evidence of PW/3 – Vijay, who is uncle of deceased, is on the similar lines like that of PW/2 – Premraj and he also admitted to have not disclosed any information to police till 08/11/2017, though incident took place on 31/10/2017. He further admitted that if he would have not received notice from police on 08/11/2017, he would not have disclosed anything to police and that if he would have received such notice after one month, then he would have visited police after lapse of one month. As such, the evidence of PW/3 – Vijay also does not appear to be credit worthy.

Coming to the evidence of the complainant – PW/1 – Shalini – mother of deceased, she has disclosed about co-accused visiting her house prior to incident, having armed with weapons like knife, sword and as deceased was not in the home they left and on suspecting them, she followed them and witnessed the incident of assault. According to her, along with other co-accused, applicant no.8 – Anup Ramteke assaulted PW/2 - Premraj and from

the spot, deceased ran to the house of PW/5 – Milind to save himself, who was followed by all the accused persons who assaulted deceased due to which he was killed, upon which she visited Police Station and lodged report – Exh.52. It is to be noted that evidence of complainant with regard to assault by original accused no.8 on PW/2 - Premraj is by way of omission while her evidence on assault on deceased is contrary to the evidence of PW/2 – Premraj and PW/3 – Vijay. Admittedly, no name of any accused/applicants are in F.I.R.

In the background of above discussed evidence and since out of above applicants, original accused no.9 – Sachin was on bail pending trial and as original accused no. 7 – Roshan and original accused no. 8 – Anup are in custody since the date of arrest from 07/11/2017, we find the application to be liable to be allowed by imposing suitable conditions. Hence, we pass the following order:-

ORDER

Original accused no. 7 - Roshan, accused no.8 - Anup and accused no.9 - Sachin shall be released on bail on their executing Personal Bond in the sum of Rs.50,000/- each with one surety in the like sum.

While on bail, applicants shall mark their presence with Police Station, Yavatmal City on 15th day of each month initially for a period of six months and thereafter quarterly on 15th day of each such month pending appeal, until further orders.

JUDGE

JUDGE

Sumit.