

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Criminal Application [APPA] No. 696 of 2019
IN
Criminal Appeal No. 540 of 2019
[Jammya @ Sheikh Jamir Sheikh Jabbar & another Vs. State of Mah.,
Babhulgaon PS, Distt. Yavatmal]

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

Court's or Judge's orders

Mr. R. M. Daga, Adv., for the Applicants.
Mr. A. D. Sonak, APP for respondent.

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CORAM : P. N. DESHMUKH AND
SMT. PUSHPA V. GANEDIWALA, JJ.

DATE : 30th August, 2019

01. This application is filed by the Original Accused No.1 - Jammya @ Sheikh Jamir Sheikh Jabbar and Original Accused No.3 - Golu @ Salim Gaffarkhan Pathan, for suspension and sentence and grant of bail.

02. The applicants came to be convicted by the learned trial Judge along with co-accused No.2 - Shahrukh Khan Baba Khan Pathan of the offence punishable under Section 302 read with Section 34 of Indian Penal Code, and they are sentenced to suffer Rigorous Imprisonment for Life and to pay a fine of Rs. 10,000-00, in default of payment of fine amount, to undergo Rigorous Imprisonment for six months.

03. It is the case of the prosecution that since three years prior to the date of incident, deceased Ganesh Meshram was running a Bettle Nut Shop on the Bus Stand Road at Babhulgaon and since seven-eight months prior to the incident, his relations with the applicants as well as the co-accused - Shahrukh were strained on the issue of bettle nut shop. In the background of these facts, it is the case of the prosecution that accused had extended threats to the deceased to kill him, and on 11th December, 2016, when deceased had came to Bhabulgaon Bus Stand along with his father, the complainant, and while his father was going to some mobile phone shop for a re-charge of his mobile phone and when deceased was alone, the complainant witnessed co-accused, Shahaarukh, armed with a knife, roaming there along with applicants and immediately, heard the shouts of deceased, "Baba Mi Martoya." The complainant further noticed Accused No.1 - Jammya assaulting the deceased on his head by an iron rod, while co-accused Shahaarukh giving knife blows on the stomach of deceased and Applicant No.2 [Original Accused No.3] - Golu @ Salim Gaffarkhan Pathan exhorting "Kat Dalo Salya Ko, Mar Dalo". After people arrived on the spot, all the assailants fled away.

04. In the background of above case of the prosecution and on referring to the evidence of eye-witnesses - PW 1 - Daulat Meshram and PW 2

Chandrakhekar Mendhe, the learned counsel for the Applicants submitted that though from the evidence of both the eye-witnesses, the applicant no.1 - Jammya @ Sheikh Jamir is said to have assaulted the deceased on his head by an iron rod and the injuries have been proved, the Post-mortem Report certifies them to be not serious and sufficient so as to cause death. In support of these submissions, the learned counsel has relied upon the evidence of PW 3 - Dr. Ravindra Thakre, who performed Post-mortem and the Post-mortem Notes. The learned counsel, thus contended that from the medical evidence, charge for the offence punishable under Section 302, Indian Penal Code, cannot be said to be made out against the Original Accused No.1 - Jammya.

05. With reference to the case of the prosecution establishing involvement of Original Accused No.3 - Golu, it is pointed out that his role, even according to the case of the prosecution, is that of exhorting the other assailants by saying "Kat Dalo Salya Ko, Mar Dalo."

06. It is further contended that there is no recovery of the weapon alleged to be used in the crime, namely the iron rod, from the possession of applicant no.1 - Jammya @ Jamir or at his instance, since, according to Spot Panchanama, the said recovery of weapon is made from the spot of incident and the circumstance of blood-

stained clothes on the person of accused is not relied by the trial Court, as evidence led on that aspect was not found to be convincing. It is also contended that pending trial, both the applicants were on bail and they have not misused the said liberty of bail granted to them. In the background of available evidence, It is, therefore, prayed that they be released on bail by imposing suitable conditions.

07. Learned Addl. Public Prosecutor opposed the application, contending that there is a direct evidence against both the applicants establishing their involvement in the present crime and since their involvement is, thus, established, they are not entitled for bail.

08. In the background of submissions advanced by both the sides as aforesaid, perusal of evidence PW 1 - Daulat Meshram, the informant, and an eye-witness to the incident, would reveal that at the time of incident when he along with the deceased was near Babhulgaon bus stand, he witnessed assault on his son at the hands of the applicants. He stated that he saw the applicant no.1 assaulting his son on head by a steel rod, while co-accused - Shaharukh was seen by him giving blows of knife on the stomach of deceased and the applicant no.2 - Golu exhorting by saying "Kat Dalo Salya Ko, Mar Dalo."

09. Similar is the evidence of PW 2 – Chandrashekhar, another eye-witness relied by the prosecution. From the evidence of these eye-witnesses, we, thus, find that the roles attributed to Accused Nos. 1 and 3 are an assault by an iron rod, and exhorting the assailants respectively, as aforesaid and the co-accused – Shaharukh is attributed the role of assault by a knife on the stomach of deceased.

10. In the background of above evidence, perusal of evidence of PW 3 – Dr. Ravindra Thakare along with injuries stated by him in his evidence would reveal that the deceased had sustained as many as eight stab and incised wounds which could be possible by a knife. So far as evidence against Applicant No.1 – Jammya is concerned, he is alleged to have assaulted the deceased on his head by an iron rod. He, thus, can be said to be an author of injuries nos. 9 to 11, which are lacerated wounds on the occipital region. The Medical Officer has further deposed that all the injuries were ante-mortem and the cause of death was hemorrhagic shock due to stab injury to the left lung. It is worth noting here that according to the case of prosecution and account of eye-witnesses, said injuries cannot be linked to the roles of assault attributed to the present applicants. The Medical Officer has in clear terms admitted that the lacerated wounds which are referred as injury nos. 9,10 and 11 in column 17 of the Post-mortem Report are even possible by a fall on the ground and he also deposed that if an

assailant gives some blows of a steel rod on the head of any person with full force, then there is a possibility of fracture in the skull. Admittedly, on internal examination, no fracture of any kind of skull is seen and noted by the Medical Officer. We, thus, find much substance in this medical evidence. Moreover, It is further contended on behalf of the Accused No.1 that though he is said to have assaulted the deceased on his head, he had no intention to cause death. Even otherwise, according to the medical expert's evidence, the cause of death, as stated above, is due to injury to left lung, which is attributed to stabbing by a knife.

11. Having considered the above stated facts and evidence and since there is no recovery of the weapon from the possession of accused no.1 or at this instance and the role attributed to the applicant no.2 - Golu is only of provocation as aforesaid and since though the blood-stained clothes of applicant no.2 - Golu were seized, the said piece of evidence having not been relied by the trial Court, we find no reason to dismiss the application, more particularly pending trial, when both the applicants were on bail, they have not misused the said liberty, and have not breached any of the bail conditions. In the circumstances, the application is allowed with the order as below:-

[a] The applicant no.1 - Jammya @ Shaikh Jamir Sheikh Jabbar [Original Accused No.1] and

Applicant No.2 - Golu @ Salim Gaffarkhan Pathan [original Accused No.3] be released on bail on their executing Personal Bonds in the sum of Rs.50,000-00 [rupees fifty thousand only] each with one surety each in the like amount.

- [b]** The applicants shall mark their presence with Babhulgaon Police Station on the first day of alternate month initially for a period of six months and thereafter quarterly between 10-00 a.m. to 11-00 a.m., pending appeal.

Judge

Judge

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