

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

CRIMINAL APPLICATION (APPA) NO.918/2019 IN
CRIMINAL APPLICATION NO.700/2019

Bablu Sachin Roy and anr. .vs. State of Maharashtra through its PSO P.S.
Sitabuldi, Nagpur.

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

Court's or Judge's orders.

Mr. S. Kadam, Advocate for applicants.
Mr. M. J.Khan, A.P.P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.
DATED : DECEMBER 17, 2019

Heard Mr. Kadam, learned counsel for applicants
and Mr. Khan, learned A.P.P. for non applicant-State.

The appeal filed by applicants challenging their
conviction was admitted on 18.10.2019 and consideration of
the present application for suspension of substantive jail
sentence and for grant of bail was deferred till receipt of the
record and proceedings. The record and proceedings are
received and are placed before me for consideration.

The applicants are convicted for an offence
punishable under Sections 143, 148, 353, 149, 307, 427 of
the Indian Penal Code (IPC) and Section 65 (e) of the
Maharashtra Prohibition Act. For the offence punishable
under Section 143 of the IPC, they are directed to suffer
rigorous imprisonment for six months. For the offence
punishable under Section 148 of the IPC, they are directed
to suffer rigorous imprisonment for three years. For the
offence punishable under Section 353 read with Section 149

of the IPC, they are directed to suffer rigorous imprisonment for two years. For the offence punishable under Section 307 read with Section 149 of the IPC, they are directed to suffer rigorous imprisonment for five years. For the offence punishable under Section 427 of the IPC, they are directed to suffer rigorous imprisonment for two years. For the offence punishable under Section 65 (e) of the Maharashtra Prohibition Act, they are directed to suffer rigorous imprisonment for three years.

Thus, the maximum sentence that is awarded to the applicants is five years.

For consideration of present application, evidence of Premkumar Durge (PW6) and Jogeshwar Chandrama (PW7) are relevant.

Crime was registered against the applicants and others in view of report (Exh.-154) lodged by Head Constable Bhaiyaji Kulsunge(PW1). Printed First Information Report (FIR) (Exh.155) was registered for an offence punishable under Sections 143, 148, 149, 353, 307 and 427 of the IPC and Sections 65 (e), 83 and 98(2) of the Maharashtra Prohibition act.

As per evidence of Premkumar (PW6), on 18.02.2011, he was with PI Palange, PSI Mhaske, PSI Wagh, NPC Jumnake, PC Pawar and HC Kulsunge. On receipt of a secret information of transportation of illicit liquor, they went to Mendha. They made nakabandi on Mendha to Vishrampur road. Police party was divided in two teams. One team was near Engineering College, Gadchiroli and another team was at Mendha. According to the evidence of

Premkumar (PW6), at about 2.30 a.m., police party noticed two four wheeler vehicles of white colour coming for Vishrampur side. When police party tried to stop the vehicles they did not stop and they attempted to flee away by putting their vehicles in reverse mode. According to Premkumar (PW6), he sustained injury on his chest due to reversing of Tata Sumo vehicle.

Evidence of Jogeshwar (PW7) would show that he received injury on his right hand due to dash given by Mahindra Max vehicle. Due to said dash, Government vehicle got broken.

From evidence of these two witnesses, it is clear that Premkumar (PW6) received injury due to Tata Sumo vehicle. Whereas, Jogeshwar (PW7) received injury due to dash given by Mahindra Max vehicle.

Tata Sumo vehicle was caught on the spot itself. Applicant no.1-Bablu Roy was driver of the said vehicle. Whereas, applicant no.2-Vasant Bhoyar was driver of another vehicle. From the evidence, it is clear that injury to Jogeshwar (PW7) cannot be attributed to the applicant.

Though these two prosecution witnesses claim that they received injury, for the reason best known to the prosecuting agency, the Doctor, who examined them, was not examined during the course of trial. A reference to that effect is also made by the learned Judge in paragraph 27 of the impugned judgment.

It is clear that injury is not *sine qua non* for the offence punishable under Section 307 of the IPC. However, in my view, after perusing the evidence of the witnesses,

second thought to the impugned judgment is required.

Both applicants were on bail during the trial. It is not case of the prosecution that they have misused the liberty granted to them. Hence, I pass the following order.

ORDER

- (i) application is allowed.
- (ii) Substantive jail sentence imposed upon the applicants by learned Sessions Judge, Gadchiroli in Sessions Case No.57/2014 on 04.10.2019 shall remain suspended during pendency of the present appeal.
- (iii) Applicant no.1-Bablu Sachin Roy and applicant no.2-Vasant Maroti Bhoyar, be released on bail on they executing P.R. Bond in the sum of Rs.25,000/- each with one solvent surety each in the like amount.
- (iv) The learned Judge before whom the bail bonds will be executed shall ensure that the entire fine amount is deposited by the applicants, if not already deposited.
- (v) The applicants are directed to attend Police Station, Gadchiroli once in six months, during the pendency of the present appeal.
- (vi) Both the applicants are directed to remain personally present before this Court at the time of hearing of the appeal.

The application is disposed of.

JUDGE