

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

CRIMINAL APPLICATION (APPA) NO. 1146 OF 2018
IN CRIMINAL APPEAL NO. 729 OF 2018

(Sanjay s/o Datta Shinde vs. The State of Maharashtra thr. PSO, PS Wadgaon Road, Yavatmal)

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

Court's or Judge's orders.

**CORAM : SUNIL B. SHUKRE &
PUSHPA V. GANEDIWALA, JJ.
APRIL 02, 2019.**

Heard Shri R.M. Daga, counsel for the applicant
and Shri N.R. Rode, learned APP for the respondent – State.

We have perused the records including the
deposition of the key witnesses and the relevant portions of
the impugned judgment and order.

This applicant is original accused No. 1 in the
First Information Report (FIR) that has been filed in the wee
hours of 11.08.2012 at about 03.28 AM in respect of
incident which took place between 21.30 and 21.40 hours
on 10.08.2012 at Yavatmal. Four accused persons have
been named and they have been referred to as Nana Rode,
Chini @ Mayur Pusnake, Janagya @ Sanjay Bachalkar and
Barkya. So far as three accused persons other than Barkya
are concerned, they have been also referred to specifically
by their names and, therefore, there does not appear to be
any dispute about the allegations made against these
persons at this stage. However, the dispute is in respect of
the fourth accused by name Barkya. Now the question is,
who is this Barkya ?

On going through the entire evidence, we do not find any explanation having been given in this regard by any of the witnesses. The witnesses have identified all the accused persons including this accused in the Court hall, but the identification, on a careful perusal of evidence of the alleged eye witnesses PW-3 – Ashish Paltankar, PW-4 – Vijay Rajurkar and PW-5 – Sudhakar Paltankar, one can notice at this stage itself that ID was in general terms. When fourth accused person has been named as Barkya in the FIR, it was the duty of the prosecution to have explained that this Barkya is none other than the applicant, who is accused No. 1. In the FIR, the first accused person referred is Nana Rode but here Nana Rode is original accused No. 3. So, the prosecution case which has been built around the FIR (Exh. 40) appears to, prima facie, have lost its connection with its starting point insofar as this applicant is concerned.

The doubt which has so arrived in the prosecution has been made even more complex by the admissions given by the Investigating Officer – PW-12 Umesh Nasre. He says that he received the investigation in this case sometime on 11.08.2012, when he got in possession of the case diary. He admits that at that time, there was not a single witness who had taken the name of this applicant and accused Sanjay Bachalkar. He also admits that in spite of this fact, the police arrested both these accused persons. Then there are material omissions in the depositions of PW-4 – Vijay Rajurkar and PW-6 – Sarita Paltankar, insofar as role played by this applicant is concerned. They say that this applicant was involved in

giving blows of kicks and fists to the deceased Amit. But this has come on record by way of omissions.

In view of the above, we are of the view that an arguable case has been made out by the present applicant at this stage and, therefore, we are also of the view that this application deserves to be allowed.

Hence, Criminal Application is allowed. The substantive sentence of imprisonment awarded to this applicant (original accused No. 1) is hereby suspended on the condition that the fine amount shall be paid and deposited by him in the trial Court, if not deposited already and upon fulfillment of this condition, it is directed that this applicant (original accused No. 1) be released on furnishing PR Bond of Rs.20,000/- with one solvent surety in the like amount and on the condition that the applicant shall attend this Court as and when required. The order shall remain valid till final disposal of this Criminal Appeal. Bail bonds before the trial Court.

Criminal Application is disposed of accordingly.

JUDGE

JUDGE

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