

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.769 OF 2019
IN
CRIMINAL APPEAL NO. 715 OF 2019**

1. Babasaheb Shamgonda Patil
Age : 54 years.

2. Balaso Shamgonda Patil
Age : 51 Years.
Both R/o. Tilavani, Tal. Hatkanangale,
Dist. Kolhapur.

... Applicants

Versus

The State of Maharashtra

... Respondent

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Mr. A. P. Mundargi, Sr. Advocate i/b Mr. Jayant Bardeskar, Advocate
for the Applicant.

Mr. A. R. Patil, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 4th NOVEMBER, 2020.

PER COURT:

1. This is an application for suspension of sentence of imprisonment awarded by the Additional Sessions Judge, Ichalkaranji, Dist. Kolhapur vide Judgment and order dated 20th April, 2019 in Sessions Case No.39 of 2012. The applicants are convicted for the offences under Sections 341 r/w Section 34 of IPC and Section 307 r/w Section 34 of IPC. They were sentenced to undergo simple imprisonment for One month and rigorous

imprisonment for Ten years respectively on each count.

2. The prosecution case is that, the applicants are brothers. There is dispute between the injured and the accused regarding boundary of agricultural land and litigation is pending in Court. On 23rd November, 2011, the applicants assaulted the complainant by sword and axe. The applicant No.1 was armed with sword whereas the applicant No.2 was in possession of axe. Applicant No.1 assaulted injured Aba Chavan by sword on head and neck. Applicant No.2 assaulted by axe on thigh of injured. The injured was taken to IGM Hospital, Ichalkaranji. Initially he was treated in the said hospital and thereafter transferred to Sanjivani Hospital, Ichalkaranji. Subsequently he was discharged from the said hospital.

3. Learned counsel for the applicant submitted that the applicants were falsely implicated on account of enmity. The complainant is habitually filing false proceedings against several persons. The applicants were on bail during the trial and facility of bail were not misused by them. Both accused are residing in the same village where the alleged incident had occurred. The evidence on record clearly establishes that accused No.2 has been falsely implicated in this case. It is submitted that the complainant was hospitalized in Sanjivani Hospital, however, Medical Officer from the

said hospital has not been examined by the prosecution. There is no opinion of the medical officer indicating that the injuries sustained by the injured were sufficient in ordinary course to cause death hence the offence under Section 307 is not attracted. It is further submitted that the nature of injuries itself would indicate that the offence under Section 307 of IPC is not made out and at the most Section 326 of IPC may be attracted. The evidence of witnesses is contrary to the Medical Officer from the IGM Hospital, Ichalkaranji who had initially treated the injured. In the history provided by patient, there was reference of only one weapon. There were no blood stains on the weapons. Injuries inflicted on complainants are not possible with weapons like Sword and Axe. No independent witness has been examined.

4. Learned APP submitted that, specific overt act has been attracted to both the accused. He relied upon evidence of the complainant/injured witness. The injuries sustained by the injured are possible by the weapons used by the accused. The accused and the injured witnesses as well as other witnesses are from the same village. Although Medical Officer from Sanjivani Hospital has not been examined the nature of injuries reflected in the injury certificate is sufficient to draw inference that they were serious and

death would have occurred on account of the said injuries but for the treatment given to the injured. The injured was hospitalized in IGM Hospital and then in Sanjivani Hospital. The offence is of serious nature. Section 307 would be attracted in this case.

5. I have perused the documents on record. The incident had occurred on 23rd November, 2011. It appears that, after a period of about One month the accused were granted bail. The liberty of bail continued till date of conviction for a period of about 8 years. They are taken into custody on the date of Judgment of conviction. Learned counsel for the applicant had pointed out the infirmities appearing in the evidence. The main thrust of the argument is that, assuming that the offence is proved, it would not fall within the purview of Section 307 of IPC. The first two injuries appearing in the Medical Certificate issued by Sanjivani Hospital are simple in nature whereas the other three injuries are of grievous nature. PW-2, Medical Officer was attached to IGM Hospital. She stated that injury No.1 & 2 were simple and injury No.3 to 5 were grievous. Only one weapon is mentioned in case papers. Police did not seek opinion as to whether injuries found on the body of injured can be possible by sword. The prosecution has not examined Medical Officer from Sanjivani Hospital in which the injured was treated. In his statement

injured had stated that accused No.2 gave three blows by axe on his thigh. It is not reported that the accused had misused the facility of bail during the trial. The applicants are brothers. The appeal has been admitted and it cannot come up for hearing within short span of time. The applicants were on bail for substantial period of time. Since last one and half year the applicants are in custody. Considering the submissions as stated above, the sentence of imprisonment can be suspended during the pendency of appeal. Hence, I pass following order.

ORDER

- i) Criminal Application No.769 of 2019 is allowed.
- ii) The sentence of imprisonment awarded by the Additional Sessions Judge, Ichalkaranji, vide Judgment and order dated 20th April, 2019 in Sessions Case No.39 of 2012 is suspended, during the pendency of appeal against conviction preferred by the applicants and the applicants are directed to be released on bail on executing P.R. Bond in the sum of Rs.25,000/- each with one or more sureties in the like amount.
- iii) The applicants shall report Hatkanangale Police Station, Dist. Kolhapur once in a month on every first Saturday of month between 11.00 to 1.00 till further order.
- iv) Application stands disposed of accordingly.

6. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)