

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1207 OF 2019

IN

CRIMINAL APPEAL NO.983 OF 2019

SURESH VISHWANATH SHINDE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.L.Odhekar, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 23rd MARCH 2020

P.C. :

1 By this application, the appellant/convicted accused is praying for stay to the order of conviction and sentence as well as for grant of bail and suspension of sentence. He is convicted of the offence punishable under Section 304 (Part II) of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for 5 years apart from direction to pay fine of Rs.15,000/- and in default to undergo further rigorous imprisonment for 2 years.

2 Heard the learned counsel appearing for the appellant/convicted accused. He drew my attention to the report of non-cognizable case given by Manda Zumber Shinde on 23rd September 2018 and argued that the entire prosecution case is inconsistent and contradictory and the learned trial court has disbelieved evidence of the prosecution so far as other accused persons are concerned, and therefore, it ought not to have convicted the appellant/convicted accused on the basis of same evidence. It is argued that out of sentence of 5 years, the appellant/convicted accused has already undergone sentence of about ten months and as the appellant/convicted accused is found to be suffering from diabetes and therefore he needs to be released on bail.

3 The learned APP argued that there cannot be stay to the conviction as no such case is made out. By drawing my attention to paragraph 36 of the impugned judgment and order, the learned APP argued that the learned trial court has given undue benefit to the appellant/convicted accused by converting

the offence to one punishable under Section 304 (Part II) of the Indian Penal Code when the Charge was for the offence punishable under Section 302 of the Indian Penal Code.

4 I have considered the submissions so advanced and also perused the record made available.

5 Incident in question took place in two parts on 23rd September 2015. In the second part of the incident, Zumbar Shinde died because of assault on him by the appellant/convicted accused. His son PW2 Sudam suffered injuries.

6 There is evidence regarding dying declaration of Zumbar Shinde. The same is at Exhibit 73. Apart from that three witnesses including injured PW2 Sudam had noticed the incident. Other eye witnesses PW3 Shaila Lawange and PW4 Runja Pawar have spoken about the incident. Prima facie, it appears that the case is that of murder of Zumbar Shinde and an attempt to commit murder of PW2 Sudam. No plausible reason is found in

the impugned judgment and order for acquitting accused persons for attempt to commit murder of PW2 Sudam. Apart from evidence of injured witness PW2 Sudam, there is medical evidence adduced by the prosecution to support the case of the prosecution, so far as offence punishable under Section 307 of the Indian Penal Code is concerned.

7 Evidence of PW7 Dr.Sanjiv Desai shows that the deceased was made quadriplegic because of assault on him. Ultimately, he succumbed to injuries on 26th September 2015. At the time of hearing of the appeal, this court may think of issuing notice to the appellant/convicted accused for enhancement of sentence and further for conviction under Section 302 of the Indian Penal Code as well as under Section 307 of the Indian Penal Code. However, at any rate, no case for grant of bail so also stay to conviction is made out.

The application is, therefore, rejected. Hearing of the appeal is expedited.

(A. M. BADAR, J.)