

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****WRIT PETITION NO. 3280 OF 2019****ALONG WITH****WRIT PETITION NO. 4271 OF 2018**

Bramha Nand Shukla ... Petitioner

Versus

The State of Maharashtra and Ors. ... Respondents

Mr. Aditya Pratap for the petitioner.

Mr. K.V. Saste, APP for the respondent State.

**CORAM : B.P. DHARMADHIKARI &
NITIN R. BORKAR, JJ.****DATE : FEBRUARY 21, 2020****P.C.:**

Petitioner who happens to be father of the unfortunate victim claims that the juvenile (CCL) has killed her and therefore, offence under section 302 IPC ought to have been invoked. It appears that the specific request was made by moving an application for that purpose vide application dated 12/9/2018 and it was rejected by the trial court with the observation that the issue was considered by it earlier on 28/2/2018 and that order was unsuccessfully challenged in Criminal Appeal No.448 of 2018. So the order dated 28/2/2018 has attained finality.

2. Submission of the learned counsel before this court is the

CCL who claims to be student has not made it clear and as such his status as student and reason for his presence at the spot needed proper verification. He was waiting for the train to arrive and he has used that train as a weapon/appliance for committing the offence. He snatched the chain of the daughter who was standing on the platform and pushed her in front of the incoming locomotive. Contention is offence under section 302 therefore, is made out and the investigation ought to have been carried out in that direction.

3. Lastly it is submitted that the JJB has recently looked into the offence only as a serious offence and it should have treated it as heinous offence. In any case CCL should have been placed in proper custody (behind bars) for the period of three years and he should not have been permitted to walk out after giving bond after serving only about 1.1/2 year of the so called punishment.

4. Our attention has been drawn to the judgment of the Hon'ble Apex Court in Shilpa Mittal Vs. State of NCT of Delhi and Ors.: AIR 2020 SC 405.

5. Learned APP has relied upon the findings in paragraph 36 of the very same judgment of the Hon'ble Apex Court. He points out that the age of CCL is not in dispute and he only wanted to snatch the chain. He succeeded in it and in the process the

victim fell in front of the incoming train. He points out that the JJB has looked into these facts and found that at the most, the offence under section 304 IPC could have been made out.

6. With the assistance of the respective counsel, we have perused the papers and also relevant definitions. In paragraph 36 of the judgment (supra), the Hon'ble Apex Court has clarified that there was need for parliament to take call on the matter but till that happens, offence of the present nature needs to be treated as serious crime only.

7. The victim was not known to the CCL and as such it is difficult to ascribe any intention to him to kill her. He appears to be chain snatcher and perhaps he succeeded in snatching the chain. According to learned APP the CCL could not get the chain. Counsel for the petitioner disputes this. This is not the issue to be looked into by this court in the present jurisdiction. The facts do not show any intention on the part of the CCL to eliminate the victim. He only wanted to make use of the crowd and its movement catching the incoming train.

8. In this situation, we find no substance in the arguments raised. Accordingly we dispose of the present proceedings.

(NITIN R. BORKAR, J.)

(B.P. DHARMADHIKARI, J.)