

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1265 OF 2019
IN
CRIMINAL APPEAL NO. 1288 OF 2019

Sagar Maruti Karve

...Applicant

V/s.

The State of Maharashtra

...Respondent

Mr.Aniket Ujjwal Nikam a/w Mr.Aashish Satpute, Mr.Amit R. Icham i/b Piyush Toshnival for the Applicant.

Mrs.P.P. Shinde, APP, for Respondent-State.

CORAM : NITIN JAMDAR AND
C. V. BHADANG, JJ.

DATE : 17 August 2021

P.C. :

. By this Application, the Applicant (Accused No.8) is seeking suspension of sentence and release on bail. The Applicant along with seven others, were tried by the learned Sessions Judge at Satara in Sessions Case No.139 of 2014 under Section 143, 147, 148, 302, 307 read with 149 of Indian Penal Code ('IPC' for short), Section 4, 5/25 of the Arms Act and Section 37(1)(3) read with Section 135 of the Bombay Police Act.

2. The learned Sessions Judge by the impugned judgment and order dated 21 August 2019, while acquitting the

original accused Nos.1 to 6 has convicted the present Applicant and the Accused No.7 Abhijit Pawar under Section 302 and 307 read with 34 of the IPC. The Applicant has been sentenced to suffer imprisonment for life under Section 302 and to suffer rigorous imprisonment for 7 years under Section 307 of Indian Penal Code apart from payment of fine.

3. According to the prosecution there was a marriage procession of Ajay Mane taken out on 12 June 2014. Ajay Mane called PW-1 Amol Chaugule, PW-6 Ajay Nalawade and deceased Vikas Pawar to take part in the marriage procession. Accordingly, Amol Chaugule along with Ajay Nalawade and deceased Vikas Pawar went on motorcycle to village Dabewadi and had taken part in the marriage procession. There was a dolby system installed on the tractor of one Akshay Pawar. The marriage procession halted in front of the Padmavati Devi Temple at about 10.30 p.m. Ajay Mane went inside the temple for prayers. It is said that at that time Ajay Nalawade was insisting Ajay Pawar to dance in the procession to which Ajay Pawar declined, whereupon Ajay Nalawade is alleged to have pushed Ajay Pawar and assaulted him by a stone. After some time deceased Vikas Pawar was feeling tired. He along with the others came back and halted in a tin shed at a distance of 1½ km from village Dabewadi. It is the material prosecution case that the present applicant and others formed an unlawful assembly armed with

weapons such as guptis and wooden dandas came near the shed and assaulted Vikas Pawar and one Vasant Gaikwad. Both of them sustained injuries out of which Vikas Pawar succumbed to the same. The Applicant and the others were prosecuted for intentionally having caused death of Vikas Pawar and attempt to murder Vasant Gaikwad. The offence came to be registered on the basis of complaint lodged by Amol Choughule. The Applicant (Accused No.1) and the original Accused No.7 have been convicted while the others have been acquitted.

4. We have heard the learned counsel for the Applicant and the learned Additional Public Prosecutor for the State.

5. PW-1 Amol Shivdas Chaugule, PW-2 Vasant Gaikwad, PW-3 Dhondiram Tanaji Shingade and PW-6 Ajay Dnyaneshwar Nalawade were examined by the prosecution as eyewitnesses.

6. We *prima facie* find that PW-1 Amol Chaugule has named the present Applicant as one of the assailants. PW-2 Vasant Gaikwad although has named the Applicant as one of the assailants that evidence is brought on record, as an omission vis-a-vis the police statement. PW-3 Dhondiram Tanaji Shingade and PW-6 Ajay Nalawade have not attributed any role or overtact or

an assault to the Applicant. Thus *prima facie* the evidence of the eye witnesses, is discrepant as to the role of the present applicant is concerned. The Applicant was on bail, during the course of the trial.

7. The learned Sessions Judge has not accepted the prosecution evidence, insofar as the involvement of the Accused Nos.1 to 6 are concerned, who are also named by the prosecution witnesses. Considering the overall circumstances, and *prima facie* having regard to the fact that two out of the four prosecution witnesses have not attributed any overtact or assault by the Applicant and evidence of PW-2 attributing an assault is by way of an improvement over the police statement, we find that the Applicant can be released on bail. In the result, the following order is passed.

ORDER

(i) The substantive sentence of imprisonment awarded to the Applicant-Sagar Maruti Karve is hereby suspended, pending disposal of the Appeal.

(ii) The Applicant-Sagar Maruti Karve shall be released on bail on execution of a PR Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount and subject to payment of fine, if not already paid.

(iii) Bail bonds to be furnished before the learned Sessions Judge.

(C. V. BHADANG, J.)

(NITIN JAMDAR, J.)

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