

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

CRIMINAL APPLICATION (BA) 591 OF 2021

(Mohammad Umair Mohammad Haroon..vs.. State, thr PSO, PS Barshitakli, Dist. Akola)

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

Court's or Judge's orders.

Mr. Avinash Gupta, senior counsel with
Mr. Akash Gupta, counsel for applicant.
Mrs. K.R. Deshpande, APP for non-applicant /State.
Mr. A.M. Sharma, counsel for informant.

CORAM: ROHIT B. DEO, J.

DATE: 06.09.2021.

Heard.

2. The applicant is an engineering student of relatively young age and is in custody since 16.10.2020 in connection with Crime 633/2020, registered with Police Station, Barshitakli, District Akola, for offence punishable under section 302 read with section 34 of Indian Penal Code and sections 4/25 of the Arms Act.

3. Broadly, the prosecution case is that the applicant, his father and brother assaulted Mr. Juber Khan on 15.10.2020, with iron pipe and knife and Mr. Juber Khan succumbed to the injuries suffered.

4. The motive alleged is a property dispute.

5. The learned APP Mrs. K.R. Deshpande and Mr. A.M. Sharma, the learned counsel for the informant are vehemently opposing bail. The submission is that there is more than ample prima facie material on record to show that the applicant and the co-accused entered into a conspiracy to assault Mr. Juber Khan, the incident is witnessed by several persons whose version is consistent and that one co-accused, who is the father of the applicant herein, is absconding.

6. The learned senior counsel for the applicant Mr. Avinash Gupta would submit, that even if it is assumed that there is a prima facie case, to suggest that the applicant and the co-accused intended to cause injury and/or physical harm to Mr. Juber Khan, the fact that the solitary stab wound inflicted by the applicant unfortunately cut through the hamstring muscles and then walls of the popliteal artery and femoral vein,

excludes the possibility that the applicant intended to cause the injury which proved to be fatal. Mr. Avinash Gupta would rely *inter alia* on the decision of the Hon'ble Supreme Court in ***Gokul Parashram Pail vs. State of Maharashtra [(1981)3 SCC 331]*** ("***Gokul Parashram Patil***"). Mr. Avinash Gupta would submit that while Mr. Juber Khan suffered 17 ante mortem injuries, injuries 1 to 16 are inflicted by iron pipe and while injuries 1 to 15 are on the non-vital parts of the body, to wit hand and leg, injury 16 suffered by Mr. Juber Khan on the testicles may as well be an accidental and unintended consequence, in a live situation. Mr. Avinash Gupta would emphasis that assault with pipe is not attributed to the applicant.

7. Mrs. K.R. Deshpande, the learned APP would counter the submission by inviting my attention to the decision of the Hon'ble Division Bench in ***Roy Fernandes, Domnic Mendes ..vs. State, (Criminal Appeal 21 of 1997)*** and in particular, the observations in paragraph 43, which read thus:

"43. The learned counsel appearing for the

accused no. 2 has urged that the accused no. 2 would at the most be guilty of an offence punishable under [Section 304](#) Part II of the Indian Penal Code. According to the learned counsel, the accused no. 2 is alleged to have dealt a single blow. The situs blow is not on any vital part of the body and as such it cannot be inferred that accused no. 2 had an intention to commit the murder of the deceased. A perusal of evidence of P.W.3 Dr. E.J. Rodrigues would show that the total depth of the wound was 11 cms.. The knife had been pierced with such ferocity that there was an exit wound at the situs. The injury had also cut the femoral artery. During cross-examination P.W.3 Dr. Rodrigues has stated I deny the suggestion that thigh is not a vital part of the body. It is further admitted by P.W.3 Dr. Rodrigues in the cross-examination that the deceased would not have survived even if timely medical treatment had been given to the deceased. In the face of this evidence, it is difficult to hold that the accused had no intention of causing the death of the deceased. The force with which the blow was given is indicative of the fact that the intention was to cause injuries to the deceased which would result in his death or at least the accused had the knowledge that it

is likely to cause the death of the deceased. The weapon of assault was a dangerous weapon capable of causing injury to the depth of 11 cms.. In the face of this evidence, therefore, we are unable to accept the submission that the accused no. 2 would be guilty of an offence under [Section 304](#) Part II of the Indian Penal Code and not guilty of an offence punishable under [Section 302](#) of the Indian Penal Code”.

8. I am consciously refraining from making any observation on the role played by the co-accused, particularly, since one co-accused is absconding. Restricting to the role attributed to the applicant in the assault, the prosecution case is that a solitary knife blow was inflicted on the thigh, with the consequences noted supra. In all fairness to the learned APP Mrs. K.R. Deshpande, she is justified in drawing support from the observations of the Hon’ble Division Bench which are reproduced supra, although, the further reliance on the dismissal of the Special Leave Petition in limine may not be the seal of approval of the Hon’ble Apex Court to the observations. It is indeed

held by the Hon'ble Division Bench, and the facts were broadly similar, that even if the solitary blow cuts the femoral artery, given the force with which the blow was inflicted, it is difficult to hold that the accused had no intention of causing death.

9. While I am respectfully bound, in the ordinary course, by the observations of the Hon'ble Division Bench, in view of the authoritative enunciation of the Hon'ble Supreme Court in ***Gokul Parashram Patil***, which decision was not brought to the notice of the Hon'ble Division Bench, I am inclined to take a prima facie view, that the fact that the femoral vein was cut, as is the case, leads to no inference that the accused intended to cause the injury which resulted in death.

10. It would be apposite to note the following observations of the Hon'ble Supreme Court in ***Gokul Parashram Patil***.

“4. The learned counsel for the appellant has contended that the case does not fall within the

ambit of [Section 302](#) of the Code and that the two courts below erred in relying on [Virsa Singh v. State of Punjab](#). The gist of the dictum of this Court in that case is that if an injury is held to have been intended by the assailant and is further found to be sufficient in the ordinary course of nature to cause death, it would attract clause thirdly of [section 300](#) of the Code and that, therefore, its author would be liable to punishment under [section 302](#) thereof. The question thus is whether the particular injury which was found to be sufficient in the ordinary course of nature to cause death, in the present case was an injury intended by the appellant. Our answer to the question is an emphatic no. The solitary blow given by the appellant to the deceased was on the left clavicle - a non-vital part - and it would be too much to say that the appellant knew that the superior venacava would be cut as a result of that wound. Even a medical man perhaps may not have been able to judge the location of the superior venacava with any precision of that type. The fact that the venacava was cut must, therefore, be ascribed to a non- intentional or accidental circumstance. This was precisely the view taken in **Harjinder Singh v. Delhi Administration** by Sikri, J., and in **Laxman Kalu Nikalje v. The State of Maharashtra**, by Hidayatullah, C.J. In the former of these cases, the injury in question was a stab wound on the left thigh which had cut the femoral artery and vessels. In the latter, the damage caused consisted of a cut in the auxiliary (sic.axillary) artery and veins. In each of the two cases it was held that although the injury which was found to be sufficient in the ordinary course of nature to cause death had resulted from a blow with a sharp-edged weapon, the same could not be said to have been intended, that the only injury which could be regarded as intentional was the superficial wound resulting directly from the blow, that the assailant could not be held guilty of an offence under [section 302](#) of the Code and that he was, on the other

hand, guilty of a lesser offence falling under part II of [section 304](#) thereof.

5. Mr. Rana, learned counsel for the State has drawn our attention to illustration (c) appended to [section 300](#) of the Code and has contended on the basis thereof that the culpable act attributed to the appellant is covered thereby. The illustration may be extracted :

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death'.

6. The proposition propounded by Mr. Rana is that the illustration, which is obviously relatable to clause thirdly of the section, postulates that the injury in question need satisfy only two tests to attract the provisions of that clause and that those tests are:

(i) The injury must be sufficient in the ordinary course of nature to cause death.

(ii) Such injury must have been intended to have been caused by the culprit.

7. There is no quarrel with this proposition but then the injury which was found to be sufficient in the ordinary course of nature to cause death in the present case does not satisfy test (ii) because, as already pointed out, it cannot be said to have been intended by the appellant. The illustration, therefore, does not advance the cause of the State”.

11. Notably, in ***Gokul Parashram Patil***, the

Hon'ble Supreme Court observes that even a medical man perhaps may not have been able to judge the location of the artery cut with any precision and the injury must be ascribed to non intended or accidental circumstance. The Hon'ble Supreme Court referred to its decision in *Laxman Kalu Nikalje Vs. State of Maharashtra*, AIR 1968 SC 1390, in which the fatal injury was caused due to a cut to the axiliary artery and veins and to the decision in *Harjinder Singh v. Delhi Administration*, A.I.R. 1968 S.C. 867 in which stab blow to the left thigh cut the femoral artery and vessels. In both the cases, the Hon'ble Supreme Court held that although the injury was sufficient in the ordinary course of nature to cause death, the same was not intended and the only injury which could be held intended was the superficial wound resulting directly from the blow. The attention of the Division Bench was not invited even to the two Supreme Court decisions which are considered in *Gokul Parashram Patil*.

12. In any event, a strong prima facie case, is

not an absolute fetter for exercise of discretion. Considering the fact that the applicant is a student and has no criminal antecedents, I consider continue incarceration absolutely unnecessary.

13. The Application is allowed.

14. The applicant be released on bail in connection with Crime 633/2020, registered with Police Station, Barshitakli, District Akola, for offence punishable under section 302 read with section 34 of Indian Penal Code and sections 4/25 of the Arms Act, on executing PR bond of Rs. 16,000/- (Rupees Sixteen Thousand) with one solvent surety of the like amount.

15. The applicant shall not, directly or indirectly, make any attempt to influence the witnesses or otherwise tamper with the evidence.

16. The applicant shall not leave the country without the permission of the trial Court.

Judge