

Additional Sessions Judge, Thane in Sessions Case No.569 of 2014, has been convicted, for the offences punishable under Sections 302, 201, 324, 323 r/w 34 of the Indian Penal Code. For the offence punishable under Section 302 r/w 34 of the Indian Penal Code, the applicant alongwith other co-accused is sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.25,000/- each, in default, to undergo simple imprisonment for six months. The applicant alongwith other co-accused has also been awarded separate sentences for the other offences. All the substantive sentences were directed to run concurrently.

4. Perused the papers with the assistance of the learned counsel for the applicant and the learned A.P.P. The prosecution relies on two eye-witnesses i.e. PW2 – Sandeep Raut and PW3 – Mahadev Pawar. As far as PW2 – Sandeep is concerned, a perusal of the evidence of the said witness reveals that the accused and the deceased – Rajendra were friends. It appears that a fight took place in the night between them and in the said fight, the applicant and co-accused –

Jamaluddin assaulted Rajendra, as well as others. The said witness was declared hostile. Although in the cross-examination by the learned APP, the said witness has admitted certain facts, however, in the cross-examination by the advocate for the applicant, the said witness has admitted that he had gone to the Court alongwith the police; that 2 days prior to his statement, the said witness was kept in the police station; that the police had threatened him that if he did not state as per their say, he too would be joined as an accused; that under the pressure of police he has made a statement before the police, as well as before the Court, as against the applicant/accused and that the contents of Exhibits – 29 and 30 were stated by him under the pressure of police. There is no re-examination of the said witness on the said aspect and as such *prima facie*, it is difficult to place implicit reliance on the evidence of the said witness. As far as PW3 – Mahadev Pawar is concerned, he has stated in his evidence that the applicant alongwith co-accused – Jamaluddin assaulted the deceased with fist and kick blows, after which, co-accused – Jamaluddin took a wooden log from one corner and assaulted the deceased – Rajendra @Raju on

his head, as a result of which Rajendra @Raju sustained a serious injury and collapsed. He has stated that when Sandeep tried to rescue Rajendra @Raju, the applicant alongwith co-accused – Jamaluddin assaulted him with fist and kick blows and also with a water pot (kalshi). The applicant is also alleged to have thrown a T.V set. According to the said witness, co-accused – Jamaluddin took kerosene in a mug and poured it around Rajendra @Raju and lit a matchstick, as a result of which Rajendra @Raju sustained burn injuries and succumbed to the same. It appears from the evidence of PW3 that the applicant has assaulted deceased – Rajendra @Raju and Sandeep with fist and kick blows.

5. Considering the evidence on record and the discrepancies with respect to the applicant's role, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his aforesaid appeal, on the following terms and conditions :-

ORDER

- i) The applicant be released on bail on furnishing P.R.Bond in the sum of Rs.15,000/- with one or two sureties in the like amount;
- ii) The applicant shall report to the trial Court, once in three months on the day/date specified by the trial Court, till his appeal is finally disposed of;
- iii) The applicant shall keep the trial Court informed of current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;
- iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

6. The application is disposed of on the aforesaid terms.
7. All concerned to act on the authenticated copy of this order.

V. G. BISHT, J.

REVATI MOHITE DERE, J.