



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 CRIMINAL APPLICATION NO.2834 OF 2023
IN APPEAL/735/2023

BHIMASHANKAR SHIVAPPA LAMJANE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. N.K. Tungar, Advocate for applicant

Mrs. U.S. Bhosale, APP for respondent No.1

Mr. R.P. Patwardhan, Advocate for respondent No.2

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CORAM : SMT. VIBHA KANKANWADI &
ABHAY S. WAGHWASE, JJ.

DATE : 06th DECEMBER, 2023

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed for suspension of sentence by the original accused. He stood prosecuted in Sessions Case No.1/2018, for the offence punishable under Section 307, 504 of the Indian Penal Code, 1860 before learned Additional Sessions Judge, Omerga, Dist. Osmanabad. By Judgment and order dated 07.01.2022, he has been held guilty and has been sentenced to suffer imprisonment of life and to pay fine of Rs.1,000/- (Rupees One Thousand only), in default to suffer simple imprisonment for

three months for having committed an offence punishable under Section 307 of the Indian Penal Code. He has also been held guilty and has been sentenced to suffer simple imprisonment for six months for the offence punishable under Section 504 of the Indian Penal Code under the same Judgment and order.

2 Heard learned Advocate Mr. N.K. Tungar for the applicant, learned APP Mrs. U.S. Bhosale for respondent No.1 and learned Advocate Mr. R.P. Patwardhan for respondent No.2.

3 The learned Advocate for the appellant/applicant has taken us through the paper book, which is now ready and he submits that the learned trial Judge has not appreciated the evidence properly. It appears that there is enmity between the informant and the appellant and, therefore, he has been falsely implicated. The testimony of eight witnesses, who have been examined on behalf of the prosecution, is full of omissions and contradictions as well as improvement. Perusal of the medical evidence in the form of PW 8 Dr. Prasanna A.V. would show that though six injuries were noted by him, the first injury to the head was simple in nature. The other five injuries were not on vital part. The fracture was to the right femur and left TP bone. He further admitted in the cross that injuries were possible due to fall on rough surface and, therefore, learned trial Court erred in holding that offence under

Section 307 of the Indian Penal Code has been made out. The appellant has every hope of success in the appeal and for this purpose he need not be kept behind the bars.

4 Per contra, the learned APP strongly objected the application. He submitted that the accused was earlier convicted in Sessions Case No.80/1997 by 2nd Additional Sessions Judge, Osmanabad on 25.11.1997 for the offence punishable under Section 302 and 201 of the Indian Penal Code. He was sentenced to suffer imprisonment for life. He had almost undergone imprisonment of 16 years and then came out of the jail and committed this offence on 05.07.2013. Several eye witnesses have been examined. The weapon used in the commission of the crime is axe, which is deadly weapon. The injury No.1 told by the Medical Officer was sutured wound, which was to the head and, therefore, the learned trial Judge has come to the conclusion that offence under Section 307 of the Indian Penal Court has been made out.

5 At the outset, we have got confirmed about the previous conviction of the appellant/applicant and the period which he has spent in jail in the said case. It was about 16 years. It is then stated that after he came out of the jail he has committed this offence. PW 1 Panchappa is the informant and eye witness. PW 3 Mahadeo is the injured, PW 5 Babruwan is another eye witness. Their testimony has been considered by the trial Court.

It has been stated by PW 1 that the axe from the hands of accused was snatched by the persons, who intervened and then it was produced before the police by them. The weapon that has been used is axe. In all six injuries were noted by PW 8. First injury is sutured wound, 12 c.ms. on left side of the head. Therefore, there appears to be the evidence against the appellant/applicant. So also in view of his previous conviction we do not find this to be a fit case where the conviction to the appellant/applicant is required to be suspended till the appeal is heard. Application stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

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