

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 627 OF 2023
IN
CRIMINAL APPEAL NO. 1261 OF 2022

Prasanna @ Balu @ Bali Sajjan

Sathe

...Applicant/Appellant

Versus

The State of Maharashtra

... Respondents

Mr. Aniket Nikam i/b Amit Icham for the Applicant/Appellant.
Mr. Y. Y. Dabake, APP for the State.

**CORAM : PRAKASH D. NAIK &
N.R. BORKAR, JJ.**

DATED : 14.12.2023

P.C. :-

This is an application for suspension of sentence and grant of bail during pendency of Criminal Appeal No. 1261 of 2022.

2. The appellant has been convicted vide judgment and order dated 5.03.2022 passed by the learned Sessions Judge, Kolhapur for an offence under Section 302 of the Indian Penal Code and sentenced to suffer life imprisonment.

3. The case of prosecution is that on 21.04.2018, there was quarrel between the accused and P.W. 4. The deceased intervened in the quarrel. He was assaulted by the accused with the help of knife by giving single blow on abdomen. The deceased succumbed to the injury.

4. The eye-witnesses have not supported the prosecution case. The prosecution had examined P.W. 4- Mangala Sathe with whom there was alleged quarrel. P.W. 5 is the another eye-witness to the incident. However, both the witnesses have not supported the prosecution case.

5. The prosecution relied upon the evidence of two witnesses viz. P.W. 1 and P.W. 3. Both these witnesses have deposed that the deceased had informed them that there was a quarrel between the accused and P.W. 4 and when he tried to intervene, he was assaulted by the accused. Thus, the deceased made dying declaration to them.

6. The post mortem report is on record. The PM was conducted by P.W. 11. From the medical evidence it appears that, the accused had inflicted single blow injury on the deceased.

7. The submission of learned counsel for the applicant is that the case is based on weak piece of evidence. Assuming that the prosecution has proved that the applicant has assaulted the deceased, the offence would not be covered by Section 302 of the Indian Penal Code.

8. Whereas, learned APP submitted that the assault was on vital part of the body. There is substantial evidence to convict the applicant for offence under Section 302 of the Indian Penal Code.

9. As stated above the case is based on the evidence of two witnesses viz. P.W. 1 and P.W. 3, who has referred to the statement made by the deceased about cause of his death.

10. The eye-witnesses have not supported the prosecution case. It also appears that there was no motive for the accused to assault the deceased. The incident had occurred at the spur of moment. It is debatable whether Section 302 of IPC could be attracted. The accused gave single blow. There is no evidence how the incident occurred.

ORDER

(i) Interim Application No. 627 of 2023 is allowed.

(ii) The substantive sentence of imprisonment imposed by the judgment and order dated 5.03.2022 passed by the learned Sessions Judge, Kolhapur for an offence under Section 302 of the Indian Penal Code is suspended and the applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount.

(iii) The applicant shall report to Rajaram Police Station, Kolhapur once in three months on first Saturday between 11:00 a.m. to 1:00 p.m.

(N.R. BORKAR, J.)

(PRAKASH D. NAIK, J.)