

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.3191 OF 2022
IN
CRIMINAL APPEAL NO.951 OF 2022**

Basavraj Mahadeo Dindore ..Applicant/Appellant
Versus
The State of Maharashtra & Anr. ..Respondents

**WITH
CRIMINAL APPEAL NO.938 OF 2022
WITH
INTERIM APPLICATION NO.3125 OF 2022**

Siddharam Mahadeo Dindore ..Appellant/Applicant
Versus
The State of Maharashtra & Anr. ..Respondents

**WITH
CRIMINAL APPEAL NO.950 OF 2022**

Bappu @ Sharnappa Shivanand Dindore ..Appellant
Versus
The State of Maharashtra & Anr. ..Respondents

**WITH
CRIMINAL APPEAL NO.952 OF 2022**

Shivanand Mahadeo Dindore ..Appellant
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Aniket Nikam a/w Piyush Toshnival & Ashish Satpute i/by Amit
Icham, for the Appellant/Applicant.
Smt. M. M. Deshmukh, APP for the Respondent No.1/State.
Mr. Priyal G. Sarda, for the Respondent No.2.

**CORAM : NITIN W. SAMBRE &
R. N. LADDHA, JJ.**

DATE : 18th JANUARY, 2023

PC.

1. This is an application by accused No.2 seeking relief under Sub-Section (1) of Section 389 of CrPC.
2. The case of the prosecution is, accused Nos.2 to 4 are real brothers. Out of property dispute, accused No.1 fired at deceased Mallikarjun, cousin brother of the applicant. The role attributed to the applicant is that of accomplice with common intention. The applicant was armed with sickle at the time of commission of offence. In Sessions Case No.218 of 2017, the Sessions Court has ordered conviction of the applicant for an offence punishable under Section 302 r/w 34 of IPC and sentenced him to life imprisonment and fine.
3. Counsel for the applicant Mr. Aniket Nikam informs that the accused has already deposited the amount of fine.
4. While impressing upon the Court for grant of relief, he would invite attention to the testimony of eye witnesses, namely PW-2 and PW-5 who are real brothers of deceased. According to him, both these witnesses have stated that applicant was armed with sickle. He would urge that the sickle was recovered from stream which is open place and as such recovery is under doubt.

Our attention is also invited to the fact that the applicant was on bail during trial which liberty was not misused by him. According to him, PW-5 has not stated about presence of PW-2 complainant at the spot of the incident and there is unexplained delay of about eight hours in lodging FIR. He would further urge that the cousin sister Bhagirathi who was seeking partition of the property was not examined so as to establish the motive.

5. While countering aforesaid submissions, learned APP Smt. M. M. Deshmukh assisted by Mr. Priyal Sarda, counsel for the respondent No.2 would urge that even if the applicant has not assaulted the deceased but Section 34 of IPC is rightly invoked by the prosecution. He would urge that the applicant with common intention with his brothers has executed the offence in question. Drawing support from the judgment of Apex Court in the matter of ***Subed Ali & Ors. Vs. State of Assam*** reported in ***(2020) 10 SCC 517***, he would urge that the foundation of conviction on the basis of common intention is very much established and inferred.

6. We have appreciated the submissions.

7. The applicant came to be arrested on 20th March, 2017 pursuant to the incident dated 19th March, 2017. Deceased was cousin brother of applicant. PW-2 and PW-5 real brothers of deceased were eye witnesses have not attributed any overt act of assault by the applicant. From the evidence, it is apparent that it is

accused No.1 who has caused firearm injury which is cause of death.

8. During the trial, applicant was on bail which liberty was not misused by him.

9. If we appreciate testimony of PW-2 and PW-5, rightly so pointed out that PW-2 even though has carried the deceased to the hospital, no blood stains were found on his clothes.

10. Apart from above, PW-5 has not stated about the presence of PW-2 on the spot of the incident. In the aforesaid background and having regard to the fact that the recovery of weapon from the applicant from an open space and the applicant is not attributed any specific role in commission of crime but for his physical presence, in our opinion, a case for grant of relief under Sub-Section (1) of Section 389 of CrPC is made out.

11. The application as such stands allowed.

12. The applicant is directed to be released on bail on furnishing PR bond of Rs.25,000/- with one or two sureties in the like amount.

13. The applicant shall not contact the witnesses.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]