

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.290 OF 2023
WITH
CRIMINAL APPEAL NO. 327 OF 2023

Piyush Parshuram Patel .. Appellant
Versus
The State of Maharashtra and anr. .. Respondents
WITH
CRIMINAL APPEAL NO. 327 OF 2023

Sham @ Shyam Yuvraj Sonawane .. Appellant
Versus
The State of Maharashtra and anr. .. Respondents

Mr. B.G. Tangsali a/w Ms. Pooja R. Dubey for the appellant.
Mr. Mahaling Pandarge, for respondent no.2.
Mr. Y.M. Nakhwa, APP for the State.
Mr. D.D. Tele, Assistant Commissioner of Police, Vashi
Division, Navi Mumbai.

CORAM: BHARATI DANGRE, J.
DATED : 25th OCTOBER, 2023

P.C:-

1 The two appellants seek their release on bail in connection with CR No. 0087/2021 registered with Kopar Khairane Police Station, on 02/04/2021, which has invoked Section 326, 394 r/w 34 of IPC, and Sections 3(i)(r) and 3(i)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

On completion of investigation, charge-sheet has been filed against 7 accused persons.

2 The complaint came to be lodged by one Tinu Sanjay Kamble, alleging that there was some dispute between one Rupesh Mhadse and the main accused Shyam Sonawane (appellant in Criminal Appeal No. 327 of 2023), who had threatened him of dire consequences. This Rupesh Mhadse is the brother-in-law of victim Amol Kamble.

On 31/03/2021, at around 10:45 p.m, when the victim was taking stroll after his dinner, 6 to 7 persons suddenly accosted him and one amongst them, the appellant, Shyam Sonawane, confronted him and threatened him with dire consequences, if his brother-in-law did not mend his way in the business. Thereafter, one person, who has being described as wearing blue and yellow colour T-shirt, is alleged to have hurled casteist abuses. At that time Shyam Sonawane assaulted the victim with a sharp edged chopper, which hit him on his arm as well as on the back side and he started bleeding.

As per the complainant, another person caught the victim from behind, however, he managed to rescue himself and started running away from the spot, at that moment, one person wearing white and black T-shirt, assaulted on his back with sharp edged weapon. Once again when he attempted to run away, a person riding on Activa Scooter also assaulted him on his back with sharp edged weapon and he got down from the vehicle, and continued his chase. When he fell down once again the person wearing white colour shirt assaulted him on his back with

chopper.

The brother of the victim Tinu Kamble came to the spot and he was taken to the hospital.

3 The complaint dated 1/04/2021, narrate the minute detail of the assault and except describing the appellant Shyam Kamble, the other assailants are described by their apparels.

In connection with the C.R. Shyam Sonawane, and Piyush Patel came to be arrested on 2/04/2021, and 4/04/2021, respectively, the investigation was carried and on its completion, charge-sheet is filed on 1/06/2021.

4 The learned counsel for the appellants, apart from the material compiled in the charge-sheet has invited my attention to two distinct orders passed by two Division Benches, of this Court releasing 5 co-accused on bail.

On 31/03/2022, one Salman Sahiblal Shaikh and Prithvi Khengarji Soda are enlarged on bail, by considering the version of the first informant and the injured Amol Kamble. The reference is made to the version of another eye witness Vaibhav, who has given his account of how Amol was assaulted with knives.

The version of the eye witness was juxtaposed with the injury certificate, and the Division Bench clearly observed as under:

“11. We have perused the injury certificate. The injury certificate significantly described only injury to the forearm of Amol. It is a serious injury. There was sensory loss to injured on left wrist. There are laceration of the ulnar nerve and

artery.”

Apart from this, another reason which prompted the Division Bench to enlarge the appellants before it on bail was that the CCTV camera did not specifically identified the appellants and the identification parade, which was conducted was not consistent. The Court observed that the injury sustained by Amol was serious, but it was on the arm and it was attributed to Shyam Sonawane, that is why the co-accused Salman and Prithvi were directed to be released on bail.

5 In another set of 3 accused, on 3/10/2022, another Division Bench, (A.S. Gadkari, and Milind Jadhav JJ,) dealt with other co-accused, Uday @ Vinay Malwankar, Saddam Hadimani, and Gurfan Raffatullha Khan.

This time once again the Court assessed the medical certificate and also specifically perused the statement of the victim recorded under Section 161 of Cr.PC. and noted that there are numerous contradictions and improvements in it and while identifying the appellants in the test identification parade, no specific role has been assigned to them that this particular appellant inflicted a particular blow on the particular part of his body.

What the Division Bench has further observed is of great relevance:

“We therefore asked learned Advocate for the victim to explain to us, as to who has caused which injury as per the statement of victim Amol Kamble. It is an admitted fact that, the victim could not explain as to who assaulted him and on which part of his body. The description of the assailants given by the

Respondent No.2 that, an accused was wearing white colour shirt does not match with the contents of test identification parade conducted by Special Executive Magistrate.”

Apart from this, the Medico Legal Certificate issued by the Breach Candy Hospital was also taken note of with the Final Diagnosis being recorded thereunder:

“Final Diagnosis-

Left wrist post knife injury complete laceration of the FDP and FDS of all fingers, partial laceration of the FPL, partial laceration of the median nerve, complete laceration of the ulnar nerve and artery.

Right thumb CLW.

Surgery-

Left wrist repair of partial laceration of FPL, cut tendons of FDS and FDP, partial laceration of medial nerve, ulnar nerve laceration and ulnar artery laceration.

Right thumb CLW suturing done on 01.04.2021 under block.”

6 The above certificate being read with the version of the witnesses in support of the case of the prosecution, the Division Bench clearly noted to the following effect:

“It appears to us that, with a view to implicate all accused persons in a crime of serious nature, rather a grave offence and to attract Sections 307 and/or 326 of IPC, the victim Amol Kamble has given statement to the Police, after he was discharged from the hospital and as and by way of improvements to paint a dark picture. As noted earlier, a bare perusal of Medico Legal Certificate issued by Breach Candy Hospital prima facie indicates that, application of Section 307 of IPC to the present crime is misplaced. We also have serious doubt about the applicability of Section 326 of IPC to the present crime.”

Apart from this, considering the most important aspect that the investigation of the crime is completed and no purpose shall be served by further detaining the appellants in jail by way of pre-trial incarceration, the Court deemed it appropriate to secure their freedom by releasing them on bail.

7 It is no doubt true that the appellant Shyam Sonawane is the main assailant and the two Division Benches while releasing the co-accused have specifically referred him as the assailant.

However, what has been observed by the Division Bench headed by Justice A.S. Gadkari is of great relevance. Comparing the version of the witnesses as against the Medico Legal Certificate, which only refer to an injury to the wrist, with specific reference to the surgery that was performed for repair of partial laceration and to deal with the cut tendons of FDS and FDP as well as the partial laceration of medial nerve, it is reported that suturing was done on 1/04/2021 under block.

In the light of this Medico Legal Certificate, a specific observation comes from the Division Bench, that the invocation of section 307 in the present CR is misplaced and even a doubt is expressed about the applicability of Section 326 to the present facts.

8 The learned counsel for the respondent has made a feeble attempt to place before me other medical papers from Breach Candy Hospital and though these papers do not form part of the charge-sheet, I have permitted the counsel for the complainant to take me through the said papers.

The medical papers clearly refer to suturing of the nerve and tendon injuries on left hand. Apart from this injury, there is no mention of other injury on the part of his body and even assuming that he suffered an ulnar nerve and medial nerve injury with tendon and the artery injury on the left hand at distal forearm and wrist region, none of doctor has certified that this injury would have resulted into his death.

The papers from Breach Candy Hospital, only refer to the treatment offered for the said injury sustained by him and that definitely is attributed to Shyam Sonawane.

However, as far as Piyush Patel is concerned, he would be entitled to the benefit of the other co-accused, who are not clearly identified.

In any case when five of the co-accused are already released on bail, I see no reason, why the said benefit shall be denied to the two appellants, particularly when now the investigation is complete and the charge sheet is already filed.

In the wake of the above, the appellants in the two appeal deserve their release on bail subject to the following conditions.

: ORDER :

- (a) Appeals are allowed.
- (b) Appellants - Piyush Parshuram Patel, and Sham @ Shyam Yuvraj Sonawane shall be released on bail in Sessions Case No. 259 of 2021 arising out of C.R.No. 87 of 2021 registered with Kopar Khairane Police Station on furnishing P.R. Bond to the extent of Rs.25,000/- each with one or two sureties in the like amount.

- (c) The appellants shall mark their attendance on first Saturday of every month between 10:00 a.m to 12:00 noon to the concerned Police Station and make themselves available as and when required by the Investigating Officer.
- (d) The appellants shall provide their current address, telephone number, place of residence and intimate about the change if any, to the concerned Investigating Officer.
- (e) In case of any two consecutive defaults in marking their presence in the Police Station, in that event, the State is at liberty to file an application for cancellation of bail of appellants.
- (f) The appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The appellants shall not tamper with evidence.
- (g) The appellants shall attend the trial on regular basis.

(SMT. BHARATI DANGRE, J.)