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3] The case of the prosecution which has surfaced before the Sessions Court at Panvel through PW 2, the injured, is to the effect that on 07.05.2014, when he had visited the Grampanchayat Office, on his driver parked the vehicle, he reached near the Office and started ascending the steps, at that relevant time, the present Applicant alongwith Preetam Tambde followed him. As per PW 2 the present Applicant pushed him and caught hold of his collar from behind and he was stabbed by means of a knife in his stomach. Similarly, another blow was mounted on his right hand, which landed on his finger. He started bleeding from the stomach and raised cry for help, pursuant to which, the Gram Sevak Prakash Mhatre and Shiva Chiklekar approached him and Mayur and Preetam are alleged to have fled away from the spot.

The injured was taken to Metro Hospital where he was given preliminary treatment, thereafter he was taken to Lifeline Hospital, Panvel, where he continued to be admitted as indoor patient and took treatment for 10 days.

4] In order to establish its case, the prosecution has examined 8 witnesses, which include, the informant himself alongwith his driver. The Medical Officer is examined as PW 4.

In order to corroborate the version of the informant/injured, the

driver PW 3 stepped in witness box , but he resiled from the statement, the learned APP sought permission to cross-examine the witness and he denied the suggestion that when he heard the shouts of Rajesh, and he saw in that direction, he had seen the Applicant and other accused running towards from Grampanchayat office.

5] The injuries sustained by PW 2 are corroborated by PW 4, a surgeon working in Lifeline Hospital, Panvel, who examined him on 07.05.2014, as the patient was referred to him and he noticed stab injury on right side of upper part of abdomen, of 2.5 inch in length and which was actively bleeding.

PW 4 specifically depose that CT scan of abdomen and pelvic reflected superficial haematoma in right anterior abdominal wall measuring 10 x 6.4 x 3.8 mm. He also deposed that the injury was compressing underlying liver capsule as well as liver tissue, and it was grievous in nature. According to him the injury was sufficient to cause his death.

The injury certificate issued by him alongwith notes of clinical examination is marked as Exhibit 50. He also deposed that the injury was possible by sharp object and when he was shown a knife, he answered in the affirmative that the injury could be caused by Article 'A'.

6] The learned counsel for the Applicant has stressfully relied upon the cross-examination of PW 4 where on a suggestion that this injury could be caused be on fall on sharp object, he has answered in the affirmative.

The learned counsel would submit that the prosecution has failed to prove its case beyond reasonable doubt as it did not conclusively establish the recovery of the weapon and most importantly no motive is established. Apart from it, it is his submission that the other Accused Nos.1 and 3 stand acquitted of the said offence.

7] On perusal of the impugned Judgment, I do not notice any such legal infirmity, since the learned Judge has rightly appreciated the evidence of injured (PW 2) read with the evidence of Medical Officer(PW 4) and arrived at a conclusion that an act is committed with an intention or knowledge, that it would result into death and an offence under Section 307 is attracted. Since the ingredients of the offence were made out with the specific deposition of PW 4 that the said injury was sufficient to cause death, finding of guilt has rightly been recorded against the Applicant and the other two stands acquitted since there was no role attributed to them.

8] It is well settled position of law, as laid down by the Apex Court in

the case of **Preet Pal Singh vs. State of U.P. (2020) 8 SCC 645** that upon conviction having been awarded, the presumption of innocence is not available and until and unless there is perversity in the finding rendered by the Court which has convicted the Accused, the power under Section 389 do not deserve to be exercised, merely on the ground that the sentence imposed is of minuscule nature or for a fixed period of time, and only on the ground that Appeal is admitted by the court.

Since prima facie I do not find any perversity in the impugned order, as the learned Judge has rightly recorded that the Applicant is the author of the injuries and the sentence of imprisonment for a period of three years is imposed, I do not deem it appropriate to suspend the sentence.

However, I deem it necessary that the hearing of the Appeal is expedited once the Record and Proceedings is received.

For the above reasons, Interim Application is rejected.

9] The learned counsel for the Applicant, on instructions make a statement that the Applicant shall surrender before the trial Court within a period of four weeks from today. If there is failure to do so, the Investigating Officer shall effect his arrest.

[BHARATI DANGRE, J]