



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION NO.508/2024

IN

CRIMINAL APPEAL NO.286/2024

Pawan s/o Ratan Patil

Vs.

The State of Maharashtra, thr. it's P.S.O., P.S. Ramnagar, Chandrapur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri A.C. Jaltare, Advocate for applicant
Shri U.R. Fasate, APP for respondent/State

**CORAM : SMT. M.S. JAWALKAR AND
M.W. CHANDWANI, JJ.**

DATE : 04/12/2024

1. Heard learned Counsel for applicant and learned APP for State.
2. The present application is filed for suspension of sentence. After going through the depositions and relevant documents, admittedly the accused was not carried any weapon with him. Learned Judge while appreciating evidence of PW-5 observed that there was scuffle between accused and Sonu and in that scuffle accused snatched knife from the hands of Sonu and inflicted injury to his stomach. This witness also admitted that knife was belonging to deceased. As such, at the relevant time, *prima facie* there is no intention of the accused to kill the deceased.

4. Learned APP vehemently submitted that considering the 14 injuries on the body of deceased, it can be seen that the accused exceeded to his self defence and, therefore, it is rightly concluded that there was an intention to kill Sonu, which is formed at the time of scuffle itself.

5. Learned Counsel for appellant relied on ***Darshan Singh Vs. State of Punjab and another, (2010) 2 SCC 333***, wherein the Hon'ble Apex Court laid down certain principles related to self defence in paragraph No. 58 as under:

“58. The following principles emerge on scrutiny of the following judgments:

(i) Self-preservation is the basic human instinct and is duly recognised by the criminal jurisprudence of all civilised countries. All free, democratic and civilised countries recognise the right of private defence within certain reasonable limits.

(ii) The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.

(iii) A mere reasonable apprehension is enough to put the right of self-defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if

the right of private defence is not exercised.

(iv) The right of private defence commences as soon as a reasonable apprehension arises and it is coterminous with the duration of such apprehension.

(v) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.

(vi) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.

(vii) It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.

(vi) The accused need not prove the existence of the right of private defence beyond reasonable doubt.

(ix) The Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.

(x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self-defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened.”

6. Learned Counsel for appellant also relied on **Suresh**

Singhal Vs. State (Delhi Administration) (2017) 2 SCC 737 and *Pathubha Govindji Rathod and another Vs. State of Gujarat (2015) 4 SCC 363*. In these citations also, the conviction under Section 302 of the Indian Penal Code is set aside and it is converted into conviction under Section 304 Part- I of the Indian Penal Code on the ground of self defence.

7. In our considered opinion, *prima facie*, there is a scope to succeed in appeal on the ground of self defence. As such, we are inclined to suspend the sentence passed by the learned Sessions Judge, Chandrapur in Sessions Case No.93/2021. Accordingly, it is hereby suspended, during the pendency of Appeal. The accused be released on bail on furnishing his PR Bond of Rs.50,000/- with one solvent surety in the like amount.

8. As appeal is admitted, record and proceeding is received along with paper book of Sessions Court.

9. Office to prepare paper book.

10. List the matter for final hearing as per its turn.

(M.W. CHANDWANI, J.)

(SMT. M.S. JAWALKAR, J.)