

**A.F.R.**

**Reserved on 28.08.2020**

**Pronounced on 03.09.2020**

**Court No. - 45**

**Criminal Misc Bail Application No. 01 of 2019**

**In**

**Case :- CRIMINAL APPEAL No. - 3319 of 2019**

**Appellant :- Suraj Bhan And 5 Ors.**

**Respondent :- State of U.P.**

**Counsel for Appellant :- Amit Daga**

**Counsel for Respondent :- G.A.**

**Hon'ble B. Amit Sthalekar,J.**

**Hon'ble Shekhar Kumar Yadav,J.**

**(Per. Shekhar Kumar Yadav, J.)**

1. Heard Sri Rajiv Lochan Shukla, Advocate, Sri Ajay Kumar Pandey, Sri S. N. Yadav, Advocate appearing for the appellants and learned AGA for the State and Mr Kartikeya Bhargava, learned counsel for the complainant.

2. The present criminal appeal has been filed by the appellants Suraj Bhan, Jomdar, Mahesh, Shishu Pal @ Rishi Pal, Surendra and Satendra against the judgment and order dated 11.4.2019 passed by the Addl. Sessions Judge, Agra in **Sessions Trial No. 1139 of 2009** (State Vs Jomdar and others), and **Sessions Trial No. 123 of 2010** (State Vs Surendra), under Sections 147, 148, 302/149, 307/149 IPC, P.S. Kagarol, District Agra and **Sessions Trial No. 03 of 2010** (State Vs Satendra), under Section 25/27 Arms Act and **Sessions Trial No. 1140 of 2009** (State Vs Shishu Pal @ Rishi Pal), under Sections 25/27 Arms Act, whereby the appellants Suraj Bhan, Jomdar, Mahesh, Shishu Pal @ Rishi Pal, Surendra and Satendra have been convicted under Sections 148, 302/149, 307/149 IPC and sentenced to undergo rigorous

imprisonment for two years each and a fine of Rs. 1,000/- under Section 148 IPC with default stipulation, and they have been sentenced to undergo life imprisonment under Section 302/149 IPC along with fine of Rs. 30,000/- each with default stipulation and further all the appellants have also been sentenced under Section 307/149 IPC for seven years rigorous imprisonment along with fine of Rs. 5000/- with default stipulation. Appellants Shishupal @ Rishi Pal and Satendra Singh have been convicted under Section 25/27 Arms Act and sentenced to undergo two years rigorous imprisonment with fine of Rs. 1000/- with default stipulation.

3. The appellants have prayed for their release on bail during the pendency of this criminal appeal before this Court.

4. An abridgment of the facts of the prosecution case are that on 10.8.2009 at about 4 p.m., the complainant Ramesh Singh (P.W.-1), his brother Rajveer and his father Harcharan Lal (P.W.-2) and one Rajan Singh were coming to his village Maselya from Village Baseri Bhar, P.S. Dauki, District Agra City in his Tavera vehicle and when they reached near their village, they stopped their vehicle and seeing the crowd at their field, they went there and saw that measurement of fields of Ganpati and Bachchu Koli were going on and at that time seeing them, appellant Jomdar son of Hajarilal exhorted others to kill them because at their instance, the measurements of their fields got started. At this, appellants Suraj Bhan, Mahesh, Rishi Pal, Surendra, Satendra, who were armed with country made pistols, revolver and fire arms, with an intention to kill opened fire at them, as a result of which, brother of complainant Rajveer Singh died instantaneously on the spot and the complainant and his father also sustained grievous injuries.

5. Learned counsel for the appellants has argued that the

trial Court has not appreciated the evidence properly with regard to cross case so as to determine as to which party was aggressor and has convicted the appellants without proper application of mind. He further submitted that the statements of prosecution witnesses are not reliable and trustworthy, who were also an accused in cross case. It is further submitted that genesis of the incident has been suppressed by the prosecution and the members of both the side have received injuries but the prosecution has failed to explain the injuries sustained by the accused appellants.

6. Further submission is that in this case, there were cross cases and total ten persons have been convicted on both the sides. It is further submitted that the witnesses have not made any attempt to explain any injuries on the side of accused. The attention of the court was invited to the medical evidence to point out that injuries have been sustained by the members of both the sides. The attention of the court was also invited to the findings recorded by the trial court to submit that the trial court has failed to establish as to who was the aggressor.

7. It is further submitted that having regard to the facts which have come on record, the accused had every reason to apprehend that such assault would cause death or at least grievous hurt to them. It was submitted that under the circumstances, it cannot be said that the accused had exceeded their right to self defence. The learned advocate appearing on behalf of the appellants vehemently contends that the members of the victim-party were the aggressors.

8. It is further contended by learned counsel for the appellants that on the date of incident, the measurements of field was going on in presence of police personnel and the revenue officer and it is the complainants' side, who came there

in a Travera Car and thereafter the alleged incident took place to contend that it was the deceased party, who were the aggressor and they had assaulted the appellants side and also inflicted injuries on the appellants side in which four persons from the side of the appellants had sustained grievous injuries.

9. Submission of learned counsel for the appellants is further that the appellants are innocent. It is stated that the appellant no. 1 is aged about 82 years, appellant no. 2 Jomdar is aged about 84 years and all the appellants were on bail during trial and have not misused the liberty of bail granted to them. They are in jail since 11.4.2019 and there is a fair chance to succeed in the appeal and disposal of the appeal will take time.

10. On the other hand, leaned AGA as well as learned counsel for the complainant invited the attention of the court to the first information report as well as the testimonies of the witnesses to submit that the witnesses have consistently deposed and narrated the incident and hence their depositions cannot be said to be untrustworthy. It is submitted that from the evidence on record, it is evident that the applicants-accused were the aggressors in the offence and that, this is not a case of a free fight. It is further submitted that having regard to the facts and circumstances of the case, no case is made out for exercise of discretion in favour of the applicants and the application, being devoid of any merit, deserves to be dismissed.

11. The evidence on record prima facie reveals that apart from deceased, the accused side also sustained injuries, however, it is the case of the applicants that such injuries are not explained by the prosecution.

12. It is well settled law that if accused is proved to have sustained injuries in course of same incident and there is no explanation of such injuries by the prosecution, it is a manifest defect in the prosecution case and shows that the origin and genesis of the occurrence had been deliberately suppressed which leads to the irresistible conclusion that the prosecution has not come out with a true version of the occurrence.

13. In the case of **State of Gujarat VS Bai Fatima, 1975 SCC (Cri) 384**, it has been observed as under:-

*“In a situation like this when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may follow:*

*(1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self defence.*

*(2) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.*

*(3) It does not affect the prosecution case at all.”*

14. In the case of **Lakshmi Singh and Others Vs State of Bihar, (1976) 4 SCC 394**, the Hon'ble Supreme Court has observed as under:-

*“It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:*

*(1) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version:*

*(2) that the witnesses who have denied the presence of the injuries on the person of the*

*accused are lying on a most material point and therefore their evidence is unreliable;*

*(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.”*

15. Aforesaid settled view of Hon'ble Supreme Court was further followed in Para 18 of the case reported in **Babu Ram & others vs. State of Punjab, 2008 (3) SCC 709**, and further in para 22 of another case reported in **(2009) 16 SCC 649 (Amarjit Singh vs. State of Haryana)**.

16. It is, therefore, incumbent upon the prosecution to explain the injuries on the person of the accused as well and prima facie this lacuna or infirmity appearing in the prosecution case, entitles the applicants to be enlarged on bail. However, there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case but that would apply to cases where the injuries sustained by the accused are minor and superficial. In the instant case, prima facie what we find from the record is that four persons from the accused side namely Shishupal, Suraj Bhan, Mahesh and Surendra have sustained grievous injuries of which there is no explanation forthcoming from the side of the prosecution.

17. Having scanned through the evidence on record, considering the facts and circumstances of the case, and also rival submissions of the parties, without commenting anything on the merit of the case, prima facie we find that a case of bail is made out.

18. Let the appellants, namely Suraj Bhan, Jomdar, Mahesh, Shishu Pal @ Rishi Pal, Surendra and Satendra be released on bail on each of them executing a personal bond and furnishing two sureties each in the like amount to the

satisfaction of the court concerned in **Sessions Trial No. 1139 of 2009** (State Vs Jomdar and others), and **Sessions Trial No. 123 of 2010** (State Vs Surendra), arising out of Case Crime No. 199 of 2009, under Sections 147, 148, 302/149, 307/149 IPC, and **Sessions Trial No. 03 of 2010** (State Vs Satendra), and **Sessions Trial No. 1140 of 2009** (State Vs Shishu Pal @ Rishi Pal) arising out of Case Crime Nos. 200 of 2009 & 201 of 2009 respectively, under Sections 25/27 Arms Act, P.S. Kagarol, District Agra subject to deposit of whole of the fine amount imposed on them within a month from the date of their release.

19. On acceptance of bail bond and personal bond, the lower court shall transmit photostat copies thereof to this Court for being kept on the record of this appeal.

20. It is made clear that any observations made while deciding this application are merely prima facie observations made for the purpose of grant of bail and shall have no bearing on the final outcome of the appeal.

21. The lower court record is available. Office is directed to prepare the paper book within two months. Learned counsel for the parties may collect the paper book thereafter from the office.

22. List this appeal for hearing in due course.

**Order Date :- 03.09.2020**  
RavindraKSingh

[Justice Shekhar Kumar Yadav] [Justice B. Amit Sthalekar]