



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3875 OF 2024
IN CRIMINAL APPEAL NO.833 OF 2024

Kaustubh Sanjay Kamble

....Applicant

VERSUS

The State of Maharashtra

.....Respondent

.....

AND

CRIMINAL APPLICATION NO. 3819 OF 2024
IN CRIMINAL APPEAL NO. 820 OF 2024

Prasad Vitthalrao Shinde

.....Applicant

VERSUS

The State of Maharashtra

.....Respondent

.....

Mr. Giri Prashant Prabhakar, Advocate for Applicant / Appellant in Criminal Application No.3875/2024

Mr. Nilesh S. Ghanekar, Advocate for Applicant / Appellant in Criminal Appeal No .3819/2024

Mr. S. D. Ghayal, Add. PP for Respondent – State in both Criminal Applications

Mr. Rahul R. Karpe, Advocate for the Informant

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CORAM : R. G. AVACHAT &
NEERAJ P. DHOTE, JJ.

Reserved On 27.09.2024

Pronounced On : 01.10.2024

FINAL ORDER : [PER NEERAJ P. DHOTE, J.]

1. By the present Criminal Applications, the Appellants have prayed for suspension of sentence imposed by the learned Additional Sessions Judge, Latur, in Sessions Case No.123/2021, vide Judgment and Order dated 05/08/2024, convicting the Appellant/s for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 [hereinafter referred to as 'IPC'].

2. Heard learned Advocate Mr. Giri Prashant Prabhakar, learned Advocate Mr. Nilesh S. Ghanekar for the Appellants and learned Addl. PP for the Respondent – State assisted by the learned Advocate Mr. R. R. Karpe for the Informant. Perused the copies of evidence available on record and the impugned Judgment.

3. It is submitted by the learned Advocates for the Appellants that, though the Prosecution examined the eye witnesses to the incident and the witness, who saw the Deceased lastly in the company of the Appellants, they did not support the case of Prosecution. The electronic evidence cannot be relied upon being inadmissible in evidence, as the fourth [4th] copy of the CCTV footages was brought in evidence. There is no evidence in respect of sealing the Articles after its seizure. The arrest panchnama did not show the blood stains on the clothes of the Appellants. The knife and katti, which were allegedly used in the Crime and shown to be seized at the instance of Accused No.1, show only human blood. The CA report in respect of blood group of the Deceased was inconclusive. The best evidence is withheld by the Prosecution. The learned Trial Court convicted the Appellants on the basis of electronic evidence and CA reports. The Appellants were on bail during trial and the Appeal would take its own time to come up for final hearing. It is submitted that, the Applications be allowed.

4. The Applications are opposed by the learned APP and learned Advocate for the Informant [assisting the Prosecution]. They submitted that, transcript of CCTV footages show the presence of two [2] persons. The blood stained weapons used in the Crime were seized on the next day after the arrest of Accused No.1 pursuant to voluntary statement. The blood on the weapons and the clothes of the Appellants were stained with human blood, which

can be seen from the CA report. The clothes, which are seized during investigation, matched with the description of the clothes given by the Informant, who is examined as PW – 1 in her report. Though the eye witnesses did not support the Prosecution, the circumstantial evidence establishes the involvement of the Appellants in the Homicidal Death of husband of Informant / PW – 1. They urged that, the Applications be dismissed.

5. The case in hand arises out of the Crime registered with Shivajinagar Police Station, Latur bearing No.315/2021 for the offence punishable under Section 302 r/w Section 34 of IPC. The said Crime came to be registered on the report lodged by PW – 1 [Akanksha Gokul Mantri] on 10/08/2021 that she was the resident of Dadoji Konddevnagar, Latur. She was residing with her family, comprising two children and husband – Gokul Mantri. Her husband was in the work of Private Finance. On 10/08/2021, around 03.00 p.m. her husband left the house for work. Around 3.15 p.m., the neighbourer – Amol Bahule came and asked for cell number of her husband. She gave him her husband's mobile number. After some time, said neighbourer again came and told her that it was not the correct mobile number, therefore, she gave him the second mobile number of her husband and the said neighbourer left. After five [5] to ten [10] minutes, the said Amol Bahule again came to the Informant's house and informed her that, her husband was lying in an injured condition at the backside of Radha Krishna Temple and in front of Kamlakar Dudhale's house. The Informant proceeded towards the said spot on the motorcycle with neighbourer - Harilal Maharaj. On reaching the said spot, she noticed her husband in an injured condition. The Police moved her injured husband to the Government Hospital at Latur, where he was declared dead. The Informant inquired with the people residing nearby and she came

to know that due to previous quarrel, the Appellants assaulted her husband – Gokul Mantri with sharp weapons and killed him. On this report, the aforesaid Crime came to be registered.

6. During investigation, the Inquest and Spot Panchnama came to be drawn. The statements of witnesses came to be recorded. The Appellants came to be arrested. The blood stained clothes of the Appellants came to be seized. The knife and katti came to be seized pursuant to the disclosure made by Appellant No.1. The CCTV footages came to be seized. The Articles seized during investigation were referred for Chemical Analysis. As the investigation revealed that the Appellants were the perpetrators of Crime, the Charge-sheet came to be submitted for the offence punishable under Section 302 r/w Section 34 of IPC.

7. On going through the evidence on record, it is clear that, the eye witnesses examined by the Prosecution as PW – 5 [Kamlakar Ramling Magar] and PW – 7 [Onkar Kamlakar Dudhale], did not support the case of Prosecution. The witness examined on the point of Deceased lastly seen with the Appellants also did not support the case of Prosecution. Admittedly, the Informant / PW – 1 [Akanksha Gokul Mantri] is not the eye witness to the incident.

8. The evidence of PW – 1 [Akanksha Gokul Mantri] shows that the incident was flashed in the news papers and circulated on social media. She had given the information on social media about the incident on the same day in the evening. The relevant Paragraphs from her evidence are re-produced below:-

“8. I had given information to police as well as media which was within my knowledge. I now shown the clip on <https://you.tu.be/-tkkc-m8p8> of news channel Vishwa Darpan by playing on the Laptop of the counsel for accused. It is true that in my interview I had stated that since leaving the house Gokul was being followed. Witness volunteers that at that time I was in depression.

I had stated in the interview that firstly by coming to house mobile number was demanded. I had stated that number was demanded for two times, therefore, I gave the mobile number. I had stated that when the number was demanded for first time I found suspicion therefore, I had given wrong number. I was knowing the said person who had demanded the mobile number of Gokul, he was residing nearby our house. I had stated in my interview that the said person went away by making phone call, my husband took turn by motorcycle. I had stated that the assailants 5-6 in number followed him by the gap of one-one minutes. I had stated in my interview that Gokul went towards Khadgaon he eat suppari at the pantapari and stated me that he will return home within 10 minutes. I had stated in the interview that he was taken in the lane by speaking sweat words and thereafter he was assaulted from back. Witness volunteers that I had stated the same in state of depression.

9. *I had stated in my interview that many persons had taken money from Gokul, the money was not returned, therefore, his friends/assailants by making the plan before two days decided to kill Gokul and ran away.*

10. *I had stated in my interview that Gokul had came to know about the said plan, thereafter, one boy was caught. I do not know the boy who was caught. I had stated in my interview that the another boy committing murder was under influence of vices, therefore, his mother took him to house, after assaulting him he ran away under the influence of vices. I do not know who is the said boy. I do not know who had assaulted him. I had stated in my interview that the said boy was under influence of ganja and near Khadgaon grave station someone assaulted him on his head and he was admitted in Civil Hospital and Gokul had visited Civil Hospital and seen him. The said boy might be from resident of our lane. I do not know his name. I had stated in my interview that the said boy gained consciousness and he was discharged. I had stated in my interview that there were five persons.”*

The evidence of PW – 1 [Akanksha Gokul Mantri] shows that she set the criminal law in motion on hearsay information.

9. The electronic evidence in the nature of CCTV footages brought on record by the Prosecution, are in the nature of copy made from the copies of CCTV footages collected from the hard-disk of camera. Admittedly, the hard-disk of the CCTV camera was not seized. The CCTV footages were copied in the hard-disk, which were further copied in the pendrive and further copied on the memory card. What was played before the learned Trial Court in the nature of electronic evidence was the memory card. There is nothing to show as to of what the said memory card was that of.

The certificates under Section 65-B of the Indian Evidence Act, 1872 [hereinafter referred to as 'the Evidence Act'] brought on record at Exhibits - 136 and 148, are not in-consonance with the requirement in law. Thus, the electronic evidence becomes inadmissible.

10. The above referred electronic evidence in the nature of CCTV footages, even if for the sake of argument are accepted, admittedly, they are not of the spot where the incident had taken place. The said CCTV footages are of the place two kilometers away from the spot of incident. The Prosecution claims that the Appellants are seen with the weapons in their hands in the said CCTV footages. The Prosecution examined PW - 20 [Mahesh Marotirao Khose], through whom, the Police Machinery collected the CCTV footages. He was in the business of video shooting. His evidence shows that, he took the CCTV footages from near the house of Deceased in the pendrive. The CCTV footage from the CCTV at some distance from the spot of incident was taken in hard-disk. He copied the CCTV footages in the external device, which was the hard-disk of the Police. He took the data from pendrive and hard-disk in another pendrive and handed over the pendrive to the Police. He prepared the folder of the said CCTV footage. The CCTV footage Nos.1 to 8 were from the area near the house of Deceased and footage No.9 was from the area at some distance from the spot of incident. His cross-examination shows that, the date of CCTV footage in the memory card was not directly copied from CCTV footage. The same was copied from external device. The data copied from the CCTV footage in external device could be edited in audio and video. The date on the CCTV footage can be edited from the copy of external device. His evidence further shows that, the face of boy in the CCTV footage No.9 was not identifiable. The faces of the persons appearing in the CCTV footage were not clearly visible. As the

CCTV footages were black and white, the colour of clothes was not identifiable. The articles in the hands of two persons were not identifiable [there was something in the hands of two persons, but exactly it cannot be stated]. In view of this evidence on record, the electronic evidence in the nature of CCTV footages loses its evidentiary value.

11. The evidence on record goes to show that, the Appellants were arrested on the very same day of the incident i.e. 10/08/2021 and their clothes were seized on 12/08/2021. It is nowhere the case of Prosecution that, the clothes and shoe pairs were seized from the person of the Appellants or the said clothes were seized pursuant to discovery under Section 27 of the Evidence Act. The said clothes were brought in the Police Station and they came to be seized under the Panchnama. In absence of the evidence to show that the said clothes and shoe pairs were that of the Appellants, the same would hardly be of any assistance to the Prosecution.

12. The CA reports show that the result of analysis of blood of the Deceased was inconclusive. Though, the CA reports show human blood on the articles, including the knife, katti, which were seized at the instance of Accused No.1 and the clothes seized during the investigation, the result of blood group was inconclusive.

13. The injury on the Accused – Prasad Vitthalrao Shinde was in the nature of abrasion on palmar aspect of right index finger. The evidence of Doctor shows that, the abrasion, contusion and laceration were common in vehicular accident. The said injury was minor abrasion, which could be possible while doing domestic or mechanical work.

14. In view of the above discussed evidence available on record which is circumstantial in nature, in our *prime-facie* view shows

that the Appellants have arguable and better case on merit. There is no possibility that the Appeal would come up for hearing in near future. The NCR – Non Cognizable Offence Information Reports by the Informant lodged on 10/07/2022 and 11/08/2024 against the Appellants, would take its own course in law. The Appellant - Kaustabh Sanjay Kamble was granted bail by the order dated 21/06/2024 in Bail Application No.692/2023 while trial was in progress. Therefore, in our considered view, the case for suspension of sentence and bail is made out. It is made clear that the observations made above are only to the extent of suspension of sentence and shall not be taken that we have expressed our final view on merits of the case. Hence, the following order:

ORDER

- [i] Criminal Applications are allowed.
 - [ii] The substantive sentence imposed by the learned Additional Sessions Judge, Latur, in Sessions Case No.123/2021, vide Judgment and Order dated 05/08/2024 on the Appellants, namely, Kaustabh Sanjay Kamble and Prasad Vitthalrao Shinde, is suspended during the pendency of present Appeals.
 - [iii] The Applicants / Appellants be released on bail on furnishing P.R. Bond of Rs.30,000/- [Rupees Thirty Thousand] each with one or two sureties in the like amount.
 - [iv] Bail before the Trial Court.
 - [v] The Applicants / Appellants shall not enter Latur City and neighbouring villages for next two [2] years.
15. Criminal Applications are disposed of accordingly.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]