

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 195 OF 2015

IN

CRIMINAL APPEAL NO. 28 OF 2015

Rustum s/o Baburao Gadade
Age 47 years, Occupation: Agriculture
R/o Village Morphali, Taluka Dharur
District Beed
(At present- in Aurangabad Central
Prison, Harsool, Aurangabad.

... **Applicant/
Appellant
(Original
Accused No.3)**

VERSUS

The State of Maharashtra
Through the Police Station officer
Police Station, Dharur

... **Respondents**

Mr. Rajendra S. Deshmukh, Advocate for the Applicant
Mr. K. M.Suryawanshi, APP for the Respondent-State

WITH

CRIMINAL APPLICATION NO. 489 OF 2015

IN

CRIMINAL APPEAL NO. 93 OF 2015

1. Dattu s/o Maroti Salgar
Age 42 Years, Occupation: Agriculture
R/o Village Morphali, Taluka Dharur
District Beed

... **Applicants/
Appellants
(Original
Accused
Nos.1 and 2)**

2. Narayan Maroti Salgar
Age 47 years, Occupation: Agriculture
R/o Village Morphali, Taluka Dharur
District Beed

VERSUS

The State of Maharashtra
(Through Public Prosecutor, High Court
of Judicature of Bombay, Bench at
Aurangabad)

... **Respondent**

Mr. Anil M. Gaikwad, Advocate for Applicants
Mr. K. M. Suryawanshi, APP for respondent-State

**CORAM : T. V. NALAWADE &
SMT. I. K. JAIN, JJ.**
DATE : 08th April,2015

ORDER (Per Smt. I. K. Jain, J.)

These applications are filed for suspension of substantive sentence and for grant of bail.

2. Appellants are convicted in Sessions Case No. 39 of 2013 for the offences punishable under section 302 r/w 34 of the Indian Penal Code, vide judgment and order dated 24.02.2014 passed by the learned Additional Sessions Judge, Majalgaon. Learned Additional Sessions Judge sentenced the appellants/original accused Nos. 1 to 3 to suffer rigorous imprisonment for life and to pay a fine of Rs. 2,000/- each, in default, to suffer further simple imprisonment of six months. Being aggrieved by the judgment and order of conviction and sentence, the appellants have preferred the above appeals and applications.

3. The facts giving rise to the present applications may be stated

in brief as under:

4. That deceased Babaseheb was resident of Morphali Taluka Dharur District Beed. He used to visit Balumama Temple for lighting lamp. On 19.03.2013, between 7.30 p.m. and 8 p.m., Babasaheb went to temple.

5. On 20.03.2013 at about 7 a.m., Sambhaji Ramkisan Shinde informed PW-3 Ganesh Narote, son-in-law of the deceased that his father-in-law sustained bleeding injuries and lying in front of Balumama Temple. On receipt of message, Ganesh Narote along with Mr. Banshi Shinde rushed to Balumama Temple and found Babasaheb lying dead, having injuries on head. Ganesh went to Police Station, Dharur and lodged report. On the basis of report, Crime No. 37 of 2013 came to be registered for the offences punishable under sections 302 r/w section 34 of the Indian Penal Code.

6. PW-11 PI Sudke took over investigation. On completion of investigation, charge sheet was filed before the learned Magistrate, who, in own turn, committed the case for trial to the Sessions Court.

7. Charge against six accused persons was framed at Exh. 33. Prosecution examined in all 11 witnesses. On considering the evidence and submissions made on behalf of the parties, learned

Trial Court found Accused Nos. 1 to 3 guilty of the offence and sentenced them as stated hereinbefore. Accused Nos. 4 to 6 were acquitted.

8. We have perused the original record in Sessions Case No. 39 of 2013. The prosecution case is based on circumstantial evidence. So far as appellants Dattu Maroti Salgar and Narayan Maroti Salgar/ Accused Nos. 1 and 2 are concerned, conviction is based on- (i) recovery of weapon Koyata under section 27 of the Evidence Act, (ii) Recovery of blood stained clothes of the accused, (iii) CA report and (iv) motive behind commission of murder of Babasaheb.

9. It can be seen from the prosecution evidence that there was long standing civil dispute between Babasaheb and the accused. Though Panch witnesses have been declared hostile, trial Court, considered the evidence of investigating officer, in respect of recovery of weapons. It appears that accused have not given any plausible explanation to the blood stained clothes recovered from their person. PW-10 Dr. Amit Lomate performed postmortem on the dead body and on external examination noticed five chop wounds, 2 incised wounds, one multiple contusion. According to Dr. Lomte, these injuries were sufficient to cause death. Weapons at Articles 21 and 22 discovered at the instance of accused Nos. 1 and 2 were shown to the Doctor. He opined that injuries mentioned in

postmortem report are possible with Articles 21 and 22. The trial Court, has appreciated the evidence of all the witnesses.

10. In view of the circumstances established against accused Nos. 1 and 2 Dattu Salgar and Narayan Salgar (Applicants in Criminal Application No. 489/2015) we do not find it a fit case to suspend substantive sentence and grant bail to them.

11. So far as Accused No.3 Rustum Gadade is concerned, his case is on different footing. PW-3 Ganesh has proved FIR Exh.51. He named the accused on suspicion. No recovery of weapon was there from accused Rustum. The only circumstance relied upon by the prosecution against accused Rustum is seizure of blood stained Manila from his person and the report of chemical analyzer showing that blood stains on Manila of accused No.3 Rustum were of Blood Group B which was the blood group of deceased Babasaheb. So far as blood group of accused no.3 is concerned, result of analysis was inconclusive. As stated above, Panch wintriness have not supported the prosecution. In view of this, we hold that substantive sentence in respect of accused No.3 Rustum needs to be suspended.

12. In the result, Criminal Application No. 195/2015 is allowed. Substantive sentence of imprisonment in respect of applicant

Rustum Baburao Gadade is suspended.

13. Applicant Rustum is to be released on bail on his furnishing PR and SB of Rs.15,000/- each.

14. Criminal Application No. 489 of 2015 stands rejected.

(SMT. I. K. JAIN, J.)

(T. V. NALAWADE, J.)