

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1401 OF 2015
IN APEAL/280/2015 WITH APEAL/280/2015

SANGRAM S/O TANAJI WARKHINDE & ORS
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. Gaikwad Anil M.
APP for Respondent/State : Mr. K.S. Patil

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CORAM : S.S. SHINDE & A. I. S. CHEEMA, JJ.

Dated: July 02, 2015

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PER COURT :-

Heard the learned counsel appearing for the applicants. He invited our attention to the evidence of Investigating Officer PW-6, who recorded the dying declaration at Exhibit-27 and submits that, the victim was not in a condition to give such dying declaration. It is evident from the perusal of the cross examination of PW-6 Balaji Motiram Kendre that, he was not able to hear the statement of the victim. Therefore, according to the learned counsel appearing for the applicants, when the victim was not in a condition to give dying declaration and the Police Officer, who recorded the dying declaration was not able to hear what was stated by the victim, in that case, the trial Court ought to have given benefit of doubt to the applicants/appellants. It is submitted that, the victim died after three months and 20 days from the alleged date of

incident. The burn was to the extent of 54%. The cause of death is shown as septicemia, and therefore, the applicants deserves to be released on bail during pendency of the appeal.

2. We have heard the learned counsel appearing for the applicants/appellants and the learned Additional Public Prosecutor appearing for the Respondent/State and perused the contents of both the dying declarations at Exhibit-27 and Exhibit – 29. Both dying declarations so far main incident is concerned have attributed the specific overt act qua the appellants/applicants. Upon comparing the version in both the dying declarations, same is consistent implicating and attributing specific role to each of the applicants/appellants. Prima facie, it appears that, the prosecution has proved both dying declarations by examining the concerned Police Officer and the Executive Magistrate and also the Medical Officer.

3. At this stage, when the appeal filed by the appellants is pending, we do not wish to elaborate on the evidence. Suffice it to say that, the findings recoded by the trial Court are prima facie sustainable. The applicants/appellants were not on bail during trial. In that view of the matter, the application for bail is rejected.

4. The Registry of this Court shall send the original record and proceedings to the Registry of Additional Sessions Judge, Biloli within one week from today. After

receipt of the Record and Proceedings by the concerned Court, the Registry of Concerned Court to prepare the paper book and send it back to the Registry of this Court, as early as possible, however, in any case, within three months from receipt of such record and proceeding.

5. Upon receiving the paper book, liberty to the learned counsel appearing for the applicants/appellants to mention the matter for early hearing.

(**A. I. S. CHEEMA, J.)**

(**S.S. SHINDE, J.)**

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