

(1)

Cri. Appln. Nos. 6291 of 2014
& 6292 of 2014

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Application No. 6291 of 2014

(In Criminal Appeal No. 695 of 2014)

With

1. Ashok s/o. Paraji Pund,
Age : 33 years,
Occupation : Agriculture.

2. Vikram s/o. Paraji Pund,
Age : 35 years,
Occupation : Agriculture.

Both R/o. Nandgaon,
Taluka & District : Ahmednagar.

.. Applicants.

versus

The State of Maharashtra.

.. Respondent.

.....

Criminal Application No. 6292 of 2014

(In Criminal Appeal No. 695 of 2014)

1. Paraji s/o. Haribhau Pund,
Age : 70 years,
Occupation : Agriculture.

2. Gayabai w/o. Vikram Pund,
Age : 27 years,
Occupation : Household.

Both R/o. Nandgaon,
Taluka & District : Ahmednagar.

.. Applicants.

versus

(2)

Cri. Appln. Nos. 6291 of 2014
& 6292 of 2014

The State of Maharashtra.

.. Respondent.

.....

*Mr. Satej S. Jadhav, Advocate, for the applicants
in both applications.*

*Mrs. S.G. Chincholkar, Additional Public Prosecutor,
for the respondent - State in both applications.*

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**CORAM : S.S. SHINDE &
A.M. BADAR, JJ.**

**Date of reserving the
Order : 2nd February 2015.**

**Date of pronouncing the
Order : 5th February 2015.**

ORDER (Per A.M. Badar, J.) :

1. Criminal Application No. 6292/2014 is filed by original accused nos.1 and 4, whereas Criminal Application No. 6291/2014 is filed by original accused nos.2 and 3, respectively, for suspension of sentence and releasing them on bail. All accused came to be convicted for the offences punishable under Sections 302, 323, 504, 506, read with Section 34 of Indian Penal Code, and are sentenced to suffer imprisonment for life along with other sentences which are directed to run concurrently, by the impugned judgment and order dated 10-11-2014, in Sessions Case No. 177/2013, by the learned Additional Sessions Judge, Ahmednagar.

2. Heard the learned Counsel appearing for the applicants /

accused. He vehemently argues that PW 1 Sindhubai is the wife of deceased Dattatraya Pund, whereas PW 3 Macchindra is the son of deceased Dattatraya Pund. They both are highly interested witnesses and though other independent witnesses were available, the prosecution has failed to examine them. This unexplained omission to examine independent witnesses, according to the learned Counsel for applicants / accused, cast a serious shadow of doubt on the prosecution case and there is every likelihood of success in appeal. The learned Counsel for the applicants further argues that the evidence of PW 2 Dr. Gorakhnath Gaikwad, who conducted autopsy on deceased Dattatraya, goes to show that the deceased had suffered a fall in the well because of slipping of leg and in that process, sustained injuries because of dash to the iron foundation in the well. Relying on report of non-cognizable case at Exhibit 62, lodged by applicant - accused no.3 Vikram, the learned Counsel for the applicants vehemently argues that, in fact, deceased Dattatraya and PW 3 Macchindra had assaulted applicant / accused no.3 Vikram on this spot of the incident. This, according to the learned Counsel for the applicants, gives rise to an inference that deceased Dattatraya might have suffered a fall in the well during the course of that scuffle causing his death. Reliance is also placed by him, on the fact that informant Sindhubai / widow herself went to Police Station at about 7.00 p.m. on 15-3-2013 to lodge report which is according to the defence an outcome of concoction because of lodgment of report of non-cognizable case by applicant / accused no.3 Vikram. He further argues that genesis of the incident is suppressed by prosecution by non-examining material witnesses.

3. Per contra, according to the learned Additional Public Prosecutor, the applicants / accused are convicted for the serious offence of murder and, therefore, they should not be enlarged on bail during pendency of the appeal as the offence alleged against them is proved.

4. We have carefully considered the rival submissions and also examined deposition of witnesses, apart from the documentary evidence adduced by the prosecution, in order to ascertain whether the substantive sentence needs to be suspended during pendency of the instant appeal.

5. True it is, that the prosecution has only examined PW 1 Sindhubai - widow of deceased Dattatraya, and PW 3 Macchindra - son of deceased Dattatraya, in order to prove commission of murder by applicants / accused by throwing Dattatraya Pund in the well situated in the field at village Nandgaon Shivar, on 15-3-2013, at about 1.00 p.m., but non-examination of independent witnesses cannot be used as ritualistic formula for casting shadow of doubt on prosecution case. Non-examination of material witnesses may not give rise to adverse inference against the prosecution when evidence of eye-witnesses examined by the prosecution is trustworthy and reliable. It is only when evidence of such eye-witnesses raise serious doubt as to their presence at the actual occurrence of the incident, the unexplained omission to examine independent witnesses would assume significance. Be that as it may, this aspect needs to be examined at the time of appreciation of evidence.

6. Suffice to mention here, that applicants in Criminal Application No. 6292/2014 i.e. Paraji s/o. Haribhau Pund - accused no.1

and Gayabai w/o. Vikram Pund - accused no.4 were on bail during pendency of trial. Applicant - accused no.1 Paraji is reported to be 70 years old, whereas applicant - accused no.4 Gayabai is reported to be merely 27 years of age. No apprehension is expressed by the learned Additional Public Prosecutor, that on their release on bail during pendency of this appeal, they are likely to abscond or misuse their liberty. Considering the fact, that applicant - accused no.1 Paraji is old aged person and applicant - accused no.4 Gayabai is a lady and that they had not misused their liberty during pendency of the trial, we see no reason to refuse bail to them during pendency of the appeal by suspending substantive sentence imposed upon them by the learned trial court.

7. So far applicant / accused no.2 Ashok and applicant / accused no.3 Vikram are concerned, they were not on bail during pendency of trial. The offences alleged against them are serious. Upon trial, they are convicted by the learned trial court by holding that in furtherance of their common intention, they had committed murder of Dattatraya Pund by throwing him in a well. Agricultural fields of applicants / accused and the prosecuting party are adjacent to each other. As such, we are of the opinion that they have not made out any case for releasing them on bail by suspending their sentence during pendency of the instant appeal.

8. In the result, we pass the following order :

(a) Criminal Application No. 6292 of 2014, in Criminal Appeal No. 695 of 2014, is allowed. Applicant / accused no.1 Paraji s/o. Haribhau Pund and applicant / accused no.4 Gayabai w/o. Vikram Pund, appellant nos.1

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and 4, respectively, in Criminal Appeal No. 695/2014, are directed to be released on bail, pending hearing and final disposal of the appeal, on their executing P.R. Bond in the sum of Rs. 10,000/- [Rupees ten thousand] each, and on furnishing one or two solvent sureties in the like amount by each of them.

(b) Criminal Application No. 6291/2014 preferred by applicant / accused no.2 Ashok s/o. Paraji Pund and applicant / accused no.3 Vikram s/o. Paraji Pund, is rejected.

**(A.M. BADAR)
JUDGE**

**(S.S. SHINDE)
JUDGE**

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