

vks

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1059 OF 2014
IN
CRIMINAL APPEAL NO.643 OF 2014.

1. Mr. Kiran Balasaheb Maske
2. Mr. Vinod Kiran Maske ... Applicants.

V/s.

The State of Maharashtra Respondent.

Mr. V. M. Thorat, Advocate, for the Applicants.
Smt. V.R. Bosale, A.P.P., for the Respondent-State.

CORAM : P.V.HARDAS &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 25TH FEBRUARY, 2015.

P.C. : [Per. Dr. Shalini Phansalkar-Joshi]

1. By this application, the applicant Nos 1 and 2 who are the original accused Nos. 2 and 3, seek suspension of their substantive sentence of imprisonment and their enlargement on bail pending the decision of the appeal.

2. Both the applicants alongwith original accused No.1 Vikas stand convicted for the offence punishable under Section 302 read with 34

of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs.10,000/- each in default further rigorous imprisonment for a period of six months, by the Sessions Judge, Solapur, vide his judgment dated 25.7.2014, in Session Case No.150 of 2011.

3. As per the case of prosecution, as deceased Arun had made complaints against accused No.1 Vikas in respect of his illegal business of smuggling sand from the river bed, the relations between the deceased and accused No.1 were strained. As a result of it, on 11.3.2011 when deceased was proceeding on his motorcycle, accused No.1 Vikas and present applicant Nos 2 & 3 came from opposite direction in Indica Car in high speed and gave dash of car to his motorcycle. Due to impact of the dash, deceased fell down from the motorcycle. Accused No.1 and the present applicants alighted from the Indica car. After noticing them, the deceased got up and started running away, however, he was caught hold of by the present applicants. They assaulted him with fist-blows and kicks and compelled him to lie down on the ground. Accused No.1 Vikas inflicted successive blows of sword on the head and neck of Arun. As a result, Arun died on the spot.

4. In trial Court, the prosecution relied on the evidence of 11

witnesses including the evidence of eye witness and the informant P.W.4 Abhiman, the real brother of the deceased Arun, who has deposed all the details of the incident. There is also evidence of recovery of clothes of present applicant No.2 Vinod, carrying blood stains of the blood group of the deceased and some other evidence like postmortem proved through the testimony of P.W.6 Dr. Gaikwad. The trial Court relied upon the evidence of eye witness and the other corroborating evidence and convicted the applicants and the original accused No.1, as stated above.

5. The submission of learned counsel for the applicants is that, if the overt act attributed to the present applicants is considered that of holding the deceased and beating him with fist-blows and kicks, they cannot be implicated with the common intention of committing murder of the deceased and therefore, they deserve to be released on bail, pending the decision of the appeal.

6. However, as rightly submitted by the learned APP, prima facie there is sufficient material on record to attribute common intention on the part of applicant Nos. 1 and 2 considering the fact that they had come together to the spot alongwith original accused No.1 in the car. The car had given dash to the deceased, when he was proceeding on the

motorcycle. When deceased fell down, it was present applicant Nos 1 & 2, who held him as he was trying to run away, fell him on the ground and at the same time assaulted him with fist-blows and kicks. As observed by the trial Court they facilitated attack by accused No.1 on deceased Arun with sword.

7. Therefore in our considered opinion, prima facie, there is sufficient evidence on record which would establish complicity, with aid of Section 34 of the IPC, of the present applicants also in the commission of the crime. At this stage, their role cannot be bifurcated from the role of the accused No.1 Vikas. In such circumstances, therefore, we are not inclined to suspend the substantive sentence of applicant Nos 1 & 2 and to direct the release of applicants on bail especially considering the fact that during the pendency of the trial also, they were not enlarged on bail.

8. Accordingly this application stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[P.V.HARDAS, J.]