

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 1200 OF 2016
IN APEAL/95/2016

ZAHED BAIG S/O. MIRZA KHAJA BAIG AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicants : Mr. Rajendra S. Deshmukh, h/f Mr. S. S. Kazi.
APP for Respondent : Mr. S. D. Ghayal.

...

WITH

CRIMINAL APPLICATION NO. 1015 OF 2016
IN APEAL/77/2016

MOHD. SADDAM @ GAZANI ABDUL RAZZAK AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicants : Mr. Joydeep Chatterji.
APP for Respondent : Mr. S. D. Ghayal.

...

CORAM : **A. V. NIRGUDE &
INDIRA K. JAIN, JJ.**

DATE : 17th March, 2016.

P.C.:

. Both these applications are seeking bail to the Appellants who are convicted under Section 302 read with 34 of the Indian Penal Code and also under the provisions of Section 3(2)(v) of the Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act.

2 On perusal of judgment we found that the learned Judge utilized the statements of eye witnesses recorded under Section 164 of the Code of Criminal Procedure, which were duly proved by the learned Magistrate, who recorded them. These eye witnesses, however, did not support prosecution case when they appeared before the Sessions Judge at the time of trial. Statement under Section 164 of the Code of Criminal Procedure is not substantial evidence. It can be utilized only for contradictions and omissions. The learned Judge probably gave undue importance to the statements recorded under Section 164 of the Code of Criminal Procedure. Other two circumstances that are pointed out to us by learned APP are production of murder weapons at the behest of three Accused. He further pointed out that these weapons were stained with human blood. Their clothes were also seized but only clothes of one Appellant/Accused was found stained with human blood, but it was not found to be stained with human blood having same blood group of the deceased. The circumstances thus are not sufficient to complete the chain of circumstances indicating unimpeachable guilt to the Accused / Appellants. The Appellants deserve bail. They are released on bail upon furnishing personal bond in the sum of Rs.15,000/-

(Rupees Fifteen Thousand only) each, with one surety in the like amount. Hamdast is also allowed. Bail bonds to be executed in the trial Court, Nanded. Substantive sentence awarded to all the Appellants on both counts stands suspended.

3 Both the criminal applications stand disposed of.

[INDIRA K. JAIN, J.]

[A. V. NIRGUDE, J.]

ndm