

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

CRIMINAL APPLICATION NO. 5450 OF 2016

Upendra Dattatraya Kapure .. Applicant

Versus

The State of Maharashtra .. Respondent

Mr. Satej S. Jadhav, Advocate for the applicant.

Mr. S.D. Ghayal, A.P.P. for respondent/State.

WITH

CRIMINAL APPLICATION NO. 5374 OF 2016

Mukesh Shivilal Koli & Ors. .. Applicants

Versus

The State of Maharashtra .. Respondent

Mr.B.S. Deshmukh, Advocate for the applicants.

Mr.S.J. Salgare, A.P.P. for respondent/State.

CORAM : A.M. BADAR,J.

DATED : 10.10.2016

P.C. :-

1. Applicant-Upendra Kapure in Criminal Application No.5450 of 2016 and applicants - Mukesh Koli, Shantilal Bhoi @ Dr. Bhoi and Aba @ Govinda Koli in Criminal Application No.5374 of 2016 are accused in Crime No.154 of 2016, registered with M.I.D.C. Police Station, Jalgaon, for the offences punishable under sections 302,

323, 324, 427, 452, 504, 506 read with 34 of the Indian Penal Code. By these applications, they are seeking bail after filing of the charge-sheet.

2. Heard learned Counsel appearing for the applicant – Upendra. He argued that statement of Ashabai Koli – daughter in law of deceased Gangaram, recorded under section 164 of Cr.P.C. does not disclose name of present applicant as a person involved in the crime in question. He further argued that statement of Shenfadu Koli, grand-son of the deceased is also not disclosing name of applicant – Upendra. By taking me through post-mortem report as well as statement of Dashrath Koli and other witnesses, learned Counsel further argued that the incident occurred because of breaking of wire supplying electricity to the house of the deceased because of brushing of vehicle carrying a sound system. Learned Counsel argued that prosecution witness Dashrath, who is son of the deceased, had in-fact assaulted Anil Koli over this issue. The incident in question is a fall out of this incident. Therefore, it cannot be said that the accused person intended to commit murder of Gangaram Koli, who is father of Dashrath Koli.

3. Learned Counsel appearing for the applicants in Criminal Application No. 5374 of 2016, on similar line

argued that statement of Mangabai Koli recorded under section 164 of Cr.P.C. shows grave and sudden provocation, which might have resulted in the incident in question. He argued that name of Anya Koli is also disclosed by Mangabai Koli in her statement. Learned Counsel further argued that initially an offence punishable under sections 324, 452 etc. of the Indian Penal Code came to be registered by Police. By taking me through statement of Dashrath Koli, learned Counsel argued that the incident was preceded by the incident of assault by Dashrath on Anil Koli. Therefore, offence punishable under section 307 of the Indian Penal Code was registered against Dashrath. The incident is fall out of this assault. Therefore, at the most it can be said that in order to teach a lesson to Dashrath, the incident had happened.

4. Learned A.P.P. opposed the application by contending that in the dying declaration of Gangaram, names of all accused are specifically mentioned. Learned Counsel further argued that the witnesses are also naming applicants as persons involved in the crime in question. The spot panchanama is corroborating the version of the deceased.

5. I have carefully considered the rival

submissions and I have also perused charge-sheet as well as documents showing criminal antecedents of Gangaram as well as his son i.e. prosecution witness – Dashrath relied by learned Counsel for the applicants. Criminal antecedents of the victim of crime at the most puts the Court on guard and versions of such victims are to be considered with care and caution in order to see that they should not implicate innocents in the crime in question for taking vengeance.

6. The incident in question took place on 20.05.2016 at village Masavat in Jalgaon district. Perusal of the charge-sheet shows that on an occasion of marriage in the village, a vehicle carrying sound system was summoned. In the marriage procession because of brushing of the vehicle, the electric supply wire of the house of prosecuting party was broken. This has resulted in the incident of assault on Anil Koli from that marriage procession by Dashrath Koli, who is witness in this case and who is son of deceased Gangaram.

7. It is seen from the charge-sheet that subsequently, according to the prosecution case, all applicants entered in the house of Gangaram Koli and his son Dashrath Koli, while armed with sticks. According to the prosecution case, thereafter they assaulted Gangaram

Koli by means of sticks and ransacked his house. While leaving, they damaged the motor-cycles standing in front of the house of Gangaram Koli. Gangaram Koli died because of injuries suffered by him on 23.05.2016. The post mortem report shows that the death was homicidal, caused due to hemorrhagic shock due to polytrauma (injury to spleen, liver and brain). The deceased had suffered about 10 ante-mortem injuries.

8. On 25.05.2016 statement of deceased Gangaram was recorded at Civil Hospital, Jalgaon and on the basis of this statement F.I.R. came to be registered. This dying declaration of Gangaram mentions earlier incident of breaking electric wire and further states that when he was in his house, at about 9.00 p.m. all applicants entered inside his house, abused him and questioned him as to where is his son-Dashrath. Deceased Gangaram further stated in his dying declaration that applicants assaulted him by means of fist blows and sticks. When his daughter-in-law Mangabai came, they left the house after ransacking the house as well as motor cycles standing outside the house.

9. Statement of Mangabai recorded under section 161 of Cr.P.C. discloses the incident in detail whereas in statement under section 164 of Cr.P.C. in somewhat

cryptic manner Mangabai has stated that applicants – Mukesh, Govinda and Dr. Bhoi along with one another came inside the house, assaulted her husband and thereafter assaulted her father-in-law Gangaram. Her both statements show that Gangaram was dragged outside the house and he was again assaulted.

10. Statement under section 164 of Ashabai shows that at the time of incident she was at the house of the neighbor. She had not disclosed name of Upendra Kapure. Child witness Shenphadu has also not disclosed name of applicant Upendra.

11. The spot panchanama recorded by the investigator shows that house of Gangaram was found ransacked and the vehicles outside the house were in damaged condition. On this backdrop statement of Dashrath Koli shows that as soon as he saw all applicants entering in his house armed with sticks, he fled from back door of the house and stayed in various areas throughout the night.

12. With this evidence collected by the Investigating Officer, prima facie, it is seen that all applicants had entered inside the house of Gangaram Koli, which was also occupied by his son Dashrath. The dying declaration and statement of Dashrath are clear on this

aspect. The incident in question, as seen from statements of witnesses, took place independent of incident of assault on Anil Koli by witness Dashrath Koli. All applicants were armed with weapons. They assaulted deceased not only inside the house but also by dragging him outside the house. Therefore, prima facie, it cannot be said that there was grave and sudden provocation which has caused applicants to assault father of Dashrath Koli. Acts of applicants are prima facie disclosing their common intention. Therefore, it cannot be said that no prima facie case for offence punishable under section 302 of the Indian Penal Code is made out. Apart from this, the clothes of applicant – Upendra were also found to be stained with blood and those were seized by the Investigating Officer and therefore it cannot be said at this stage that he was not present on the spot of incident. In this view of the matter, as the charge-sheet shows evidence for commission of offence under section 302 of the Indian Penal Code, no case for bail is made out. Hence, applications are rejected.

[A.M. BADAR, J.]