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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 466 OF 2016
IN
CRIMINAL APPEAL NO. 451 OF 2016

Milind @ Mindhya Bhimrao Tayade .. Applicant
(Org. Accd. No.3)
Vs.

State of Maharashtra .. Respondent

WITH
CRIMINAL APPLICATION NO. 749 OF 2016
IN
CRIMINAL APPEAL NO. 450 OF 2016

Arif Nazir Ahmad Shaikh .. Applicant
(Org. Accd. No.1)
Vs.

State of Maharashtra .. Respondent

Mr. Aniket Vagal for applicant in Cri. Appln. No. 466 of 2016.
Mr. Arun Rajput i/by Ms. Anjali Patil for applicant in Cri. Appln. No. 749 of 2016.
Mrs. M. M. Deshmukh, APP for State.

CORAM: NARESH H. PATIL &
PRAKASH D. NAIK, JJ.

SEPTEMBER 21, 2016.

P.C.

1. The applicants - Original Accused Nos.3 and 1 are respectively convicted for offences punishable under Sections 302, 376-D

and 377 read with Section 34 of the IPC and sentenced to suffer imprisonment for life, on each of the count, by the learned Additional Sessions Judge, City Civil & Sessions Court, Gr. Mumbai by judgment and order dated 25/8/2015 in Sessions Case No. 290 of 2014.

2. The prosecution case is that deceased Lalita Rao was collecting scrap and earning her livelihood. On 1/1/2014 at 10.30 a.m., the Pant Nagar mobile unit informed the Station House Officer that one lady was lying injured on Andheri Ghatkopar link road and she was being taken to Rajawadi Hospital by Pant Nagar mobile staff. The police reached the spot. They found blood on the spot. Thereafter they reached Rajawadi Hospital. At Rajawadi Hospital, Ganesh Rao, son of deceased, was present. PSI Kalekar conducted inquest panchanama and dead body was sent for post-mortem. There were injuries on her forehead and back side of her head. ADR was registered vide Crime No. 02 of 2014. Son of the lady identified the dead body. In the post-mortem report, doctor opined that the death was caused due to head injury. PW 13 - Dr. Shivaji Kachare, who conducted post-mortem noticed 9 injuries, which included incised wounds, CLWs, cut lacerated wounds and contused abrasion. Doctor also noticed injuries under the scalp.

3. Learned counsel appearing for the applicants submitted that the case is based on circumstantial evidence. The circumstances relied upon by the prosecution includes seizure of blood stained clothes and stone. Evidence of the shop owner i.e. PW 7 - Amarjeet Banga was relied upon. Learned counsel submitted that original accused no.2 - Raju @ Razwa Bhadairam Jaiswal has been released on bail by this court by an order dated 27/11/2015 in Criminal Application No. 1327 of 2015. Learned counsel submitted that merely on suspicion the applicants were arrested and they are behind bars since their arrest. Prosecution failed to bring on record incriminating material to involve the applicants in the crime. They are of young age and innocent. They be released on bail.

4. Learned APP submits that prosecution has relied upon clinching evidence and the case is based on circumstances, which are incriminating in nature. Blood stained clothes and stone are recovered by the prosecution. It has come on record that the applicants were staying on foot-path while the deceased was also residing on the foot-path. Heavy reliance is placed on the evidence of PW 7 - Amarjeet Banga, who stated in para 2 as under :-

“2. I know Arit, Razwa and Mindhya. They used to be there in the area. Now the accused present before the court shown to me. I had seen them in the area. I do not know their exact names, but I know them by faces. They also used to sell scrap. They used to drink liquor and take drugs. Lalita Rao had complained me previously that the three boys trouble her. She had stated name of Arif in them. She told that her money was snatched away. We close shop at 7.00 to 8.0 p.m. and open at 10.00 a.m.”

5. We have perused the record produced before us. We had independently assessed the evidence on record brought by the prosecution against both these applicants. The prosecution mainly relies on the blood stained clothes and stone. The blood was found to be human. Reliance is placed on circumstance of semen being found on the undergarment of accused - Milind Tayade. It is disturbing to note that in such a matter, where a lady is mercilessly beaten, raped, the prosecution has not bother to bring before the court witnesses who were named in the charge-sheet and whose statements were recorded by the police to the effect that they had last seen the accused along with the deceased. Raju Gupta and Raju Saude, who were named as witnesses, on the point of last seen the accused along with the deceased, could not be examined as summons could not be served, according to the APP. The prosecution submitted that the accused

were identified by the witnesses, who deposed in the court. Unfortunately, these witnesses were also declared hostile.

6. Prima facie we are not convinced to uphold the submissions of the prosecution for rejecting the bail applications.

7. The applications are allowed. Substantive sentences awarded against the applicants - Milind @ Mindhya Bhimrao Tayade & Arif Nazir Ahmad Shaikh stand suspended. The applicants are directed to be released on bail in the sum of Rs.15,000/- each with one surety in the like amount to the satisfaction of the trial court. The applicants shall attend the Pant Nagar Police Station, Ghatkopar, Mumbai once in two months i.e. on first Monday, during the pendency of their appeals.

8. We direct the DCP of the concerned zone, under which the crime was committed, to call for explanation from the Investigating Officer as to why two witnesses i.e. Raju Gupta and Raju Saude were not brought before the court for deposing. The issue be dealt with departmentally.

9. Stand over for three weeks for compliance.

10. All concerned to act on an authenticated copy of this order.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)