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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.658 OF 2016
IN
CRIMINAL APPEAL NO.360 OF 2016**

Sachin S/o. Bhanudas Kotkar	... Applicant (Orig. Accused No.7)
Vs.	
The State of Maharashtra	... Respondent

**CRIMINAL APPLICATION NO.657 OF 2016
IN
CRIMINAL APPEAL NO.361 OF 2016**

Amol S/o. Bhanudas Kotkar	... Applicant (Orig. Accused No.12)
Vs.	
The State of Maharashtra	... Respondent

**WITH
CRIMINAL APPLICATION NO.706 OF 2016
IN
CRIMINAL APPEAL NO.362 OF 2016**

Sandeep S/o. Bhanudas Kotkar	... Applicant (Orig. Accused No.10)
Vs.	
The State of Maharashtra	... Respondent

Mr. Shirish Gupte, Senior Advocate i/by Mr. Abhaykumar Dilip Ostwal
for the Applicant in APPA/658/2016.

Mr. V.M. Thorat i/by Mr. Abhaykumar Dilip Ostwal for the Applicant in
APPA/657/2016.

Mr. A.P. Mundargi, Senior Advocate i/by Mr. Abhaykumar Dilip Ostwal
for the Applicant in APPA/706/2016.

Mr. Anilkumar K. Patil i/by Mr. Jitendra Gaikwad for the Applicant (Intervenor) in APPA/839/2016 to APPA/842/2016.

Ms. M.H. Mhatre, APP for the Respondent – State.

**CORAM : A.S. OKA & &
A.A. SAYED, JJ.**

DATE : 27th SEPTEMBER, 2016

JUDGMENT (Per A.S. Oka, J.):-

1] Criminal Application Nos.658, 657 and 706 have been preferred by the Appellants in Appeal Nos.360, 361 and 362 of 2016. These applications have been preferred by the Accused Nos.7, 10 and 12. The said applicants have been convicted for the offence under Section 302 read with Section 34 of the Indian penal Code. The prayer in the Applications is for suspension of the substantive sentence and for grant of bail pending the final disposal of the Appeals against conviction preferred by them.

2] Very detailed submissions have been made by the learned Senior Counsel appearing for the Applicant in Criminal Application No.706 of 2016 and Application No.658 of 2016 which have been adopted by Applicant in Application No.657 of 2016. We have also heard the learned APP for the State who was assisted by the learned counsel appearing for the Applicant in Application Nos.839 to 842 of

2016 filed for intervention. The allegation which is held as proved against the Applicants is of committing murder of one Ashok Bhimraj Lande.

3] The intervener Shankarrao Raut is the first informant. His case is that he was earlier a resident of village Kedgaon. Subsequently, he shifted to a rented premises at Ahmednagar. He knew the deceased as the deceased was carrying on a business of selling lottery tickets. The first informant used to purchase lottery tickets for him. According to the first informant, he liked the behaviour of the deceased Ashok and, therefore, he had cordial relations with members of the family of the deceased. It is the case of the first informant that the deceased used to visit his house. On 19th May, 2008, there was a holiday on account of 'Buddha Purnima'. The first informant decided to visit Kedgaon. His case is that he had obtained a loan from a Co-operative Credit Society at Kedgaon. Moreover, he had made some investments in the said Credit Society. As he has not received any returns, he decided to proceed to Kedgaon for visiting the office of said society. The first informant and his wife started from their house by a motorcycle. As the rear wheel of motorcycle got punctured, they halted near auto rickshaw stand situated near Shree Chhatrapati Shivaji Maharaj Statue for proceeding towards Kedgaon. At that time, they met Ashok. They had taken tea

together. At that time, Ashok disclosed to the first informant that two years back he had some dispute with Bhanudas (Accused No.1) and his sons - present Applicants and therefore, he had shifted to Shevgaon as they had threatened him not to come back at Kedgaon. He stated that he had stopped doing the business of selling lottery tickets and he was doing some agriculture work. Deceased Ashok disclosed to the first informant that he has some work at Kedgaon. Therefore, deceased Ashok proceeded by an auto rickshaw to Kedgaon. The first informant followed him in another auto rickshaw. The first informant and his wife reached Kedgaon and were waiting outside the office of the Credit Society as the office had not opened. They were there at about 10.00 a.m when they met deceased Ashok. Thereafter, Ashok started proceeding towards Patil Colony. At that time, the first informant and his wife noticed that Accused No.10 came in a vehicle having red beacon over it from Eastern side of Mhasoba Chowk. On seeing Ashok, the said accused and his driver got down from the vehicle. There was a scuffle between them. When deceased Ashok tried to resist, accused Sandip started assaulting Ashok by means of a cable wire. After sometime, Accused Nos.7 and 12 as well as Accused No.1 arrived at the spot by their respective Scorpio vehicles. It is alleged that the first informant noted that some young persons arrived at the spot in a Maruti Van. Accused No.1 Bhanudas and his sons armed with iron rods

started assaulting Ashok. He stated that one young person was armed with sword. According to the case of the first informant, the victim started shouting loudly to save his life. Some of the accused administered fist blows and kicks. On account of terror of the accused Bhanudas and his sons, persons gathered there did not dare to intervene. It is alleged that thereafter the accused took Ashok towards Bhairavnath Patsanstha by pulling and beating him. Thereafter, they kept Ashok in one white coloured Maruti Van and those vehicles proceeded towards hotel Sandip. The complainant and his wife went to their house. After meal, the first informant/complainant proceeded to Civil Hospital apprehending that Ashok may have been admitted there. He learnt that Ashok had died and his relatives had arrived from Shevgaon. The first informant noticed that the relatives had gathered in the Civil Hospital. He noticed that one unknown photographer was snapping photographs. Dead body of Ashok was lying on the floor. It is alleged that the first informant took copies of photographs and C.D by paying a sum of Rs.200/-. The first informant stated that 1st Accused and his sons and associates were present in the Civil Hospital and were looking in angry manner towards him. He went home and informed his wife about the death of Ashok. Thereafter, they came to Police Station at Kotwali to narrate the incident. Though in the newspapers, news items had appeared that it was an accident, the first informant and his

wife informed the Police that it was not an accident but it was a murder. It is alleged that notwithstanding the request made by the first informant, PSI Vahile did not record his statement and told him not to interfere with the investigation. On the next day, he received a copy of the C.D of postmortem and photographs and, therefore, the first informant and his wife went to the Police Station for lodging the complaint. However, Police did not pay any heed.

4] Thereafter, the first informant obtained information under the Right to Information Act, 2005 in the name of his wife. The Police recorded statements of witnesses who stated that they have not noticed any motor accident on 19th May, 2008 between 9.00 a.m. to 12.00 pm. The first informant submitted an application to the Deputy Director General of Police, Mumbai and the Director General of Police with a copy to the Home Minister. As their statements were not recorded, the first informant and his wife submitted an application to the District Superintendent of Police. Various complaints and applications were made by the first informant to various authorities. It is alleged that though the first informant and other persons had seen the assault, Police were acting under pressure from the accused who were very influential persons. By preparing false medical record, they were trying to suppress the murder of Ashok. Ultimately, on 9th September, 2009 the

first informant filed a complaint in the Court of Judicial Magistrate, First Class-4, Ahmednagar who ordered investigation under Sub-Section (3) of Section 156 of the Code of Criminal Procedure, 1973. The statements of several witnesses including the first informant and his wife were recorded before the learned Judicial Magistrate under Section 164 of the Cr.P.C. Thereafter, charge sheet was filed. The defence of the accused was of total denial. Their case is that deceased Ashok died due to a motor accident.

5] The learned Senior Counsel appearing for the Applicants in Application No.658 and 706 pointed out that the Applicants were on bail during the pendency of the trial. The learned Senior Counsel pointed out that the prosecution has not proved at all that the first informant made any attempt to lodge FIR on 19th May, 2008 or anytime thereafter. They submitted that though the first informant named a particular officer who declined to record his statement, the said officer has not been examined. They pointed out that First Information Report was registered belatedly on the basis of a complaint filed by the first informant on 9th September, 2009 long after the incident. They pointed out that the evidence of the first informant shows that he had a grudge against the first accused and his family members. They pointed out that the evidence of the first informant as well as his wife cannot be believed

at all as it is impossible to accept that they had a very close acquaintance with the deceased. It is impossible to accept that the first informant had come to Kedgaon on a Bank holiday to visit the office of a Co-operative Credit Society. The submission is that if the version of the said witness is correct, it is impossible to believe that they followed the accused from place to place. They pointed out various admissions in the evidence of both the first informant and his wife. It is pointed out that though even according to the case of the prosecution, large number of persons must have seen the alleged incident, the statements of the relevant witnesses have not been recorded at all. They pointed out that out of 61 prosecution witnesses, at least 21 did not support the prosecution. It is pointed out that ADR report was filed recording accidental death. They pointed out that the case made out by the first informant that a photographer was present in the Civil Hospital who photographed the dead body is proved to be completely false. They pointed out inordinate delay in recording statements of the witnesses. Their submission is that the material witnesses were withheld by the prosecution and, therefore, this is a fit case to draw adverse inference against the prosecution. It is pointed out that other three alleged eye witnesses have not supported the prosecution. They pointed out that the photographs shown to the witnesses have not been proved as the photographer has not been examined. They pointed out the manner in which the investigation was

carried out in as much as one of the witnesses deposed that the Police had assaulted him. Their contention is that in view of the gross and unexplained delay in registration of the FIR, the case of the prosecution deserves to be disbelieved. Their submission is that there is no attempt to explain the delay. Their submission is that the fact that the first informant had a grudge against the accused persons is brought on record. They also pointed out the evidence of defence witnesses. After pointing out the serious omissions and contradictions in the version of the first informant and his wife, it is contended that once the said evidence is kept out of consideration, it was a case of no evidence. By inviting our attention to the evidence of the first informant and his wife, they pointed out that their versions are inherently improbable and cannot be accepted. Their submission is that the impugned judgment is per se illegal.

6] The learned APP pointed out that the complaint filed by the first informant on the basis of which the learned Magistrate passed an order under Sub-section (3) of Section 156 of the Code of Criminal Procedure, 1973 contains detailed averments regarding the delay. She pointed out as to how influential the first accused and his family members are and in what manner they tried to pressurize the prosecution witnesses. She invited our attention to the evidence of the

Defence Witness No.1– Ravindra Lande who claimed that one tempo gave a dash to the deceased. She pointed out from the cross-examination of the witness that he was got up witness and his version deserves to be discarded. Her submission is that once the evidence of DW 1 is discarded, the defence of the accused deserves to be rejected. Her submission is that after comprehensive analysis of the evidence, the learned trial Judge has come to the conclusion that the guilt of the accused for the offence of a very serious nature is established. The offence is of heinous nature of killing the deceased in broad daylight on a public road. She pointed out that the present applicants and accused No.1 have antecedents and they are involved in many criminal cases. She submitted that considering the evidence of the prosecution witnesses who were tried to be influenced by the accused persons, in any event, the Applicants are not entitled to be released on bail.

7] We have considered the submissions. We have perused the notes of evidence of the relevant witnesses. We have also perused the judgment of the learned trial Judge. The first informant and his wife are claiming to be the eye witnesses. Both of them have described the incident of assault by the present applicants and other accused on the deceased.

8] It will be necessary to consider the testimony of PW 14 - Dr. Vijay Ganbote who conducted postmortem on the deceased. Final cause of death certificate at Exhibit 225 issued by him shows that according to him, the deceased had six injuries on his body. Injury Nos.1, 3, 5 and 6 as shown in column No.17 of postmortem report were possible by hard and blunt object and injury No.4 was possible by sharp object. The final cause of death certificate is dated 22nd July, 2008. It is pertinent to note that he deposed about the pressurizing tactics adopted by the Accused Nos.2 and 3. He stated that on 9th July, 2008 as he was frightened, he prepared a new opinion in his handwriting in which he stated that he cannot specifically state whether injuries mentioned in column 17 of the postmortem report are possible due to accident or not. He stated that after receiving the letter dated 15th July, 2008 along with Chemical Analyzer's report, he issued the final cause of death certificate at Exhibit 225. He opined that some of the injuries mentioned in column no. 17 can be possible by wooden log (Article 29), hockey stick (Article 28) and iron rod. He deposed that injuries mentioned at serial number 4 can be possible by swords (Articles 12, 23, 24 and 26). The learned trial Judge after analyzing his evidence, came to the conclusion that evidence of the witness negatives the theory of death due to an accident. He has recorded the reasons in paragraphs 67 of the judgment. There is an evidence of Dr. Kailas Zine (PW 15) who is M.D

in Forensic Medicine who claimed to have performed 5000 postmortems and supervised more than 15,000 postmortems. He stated that he received a letter from the Superintendent of Police along with the photographs of the deceased, ADR report, postmortem report, etc. along with opinion of PW 14 (Dr. Ganbote). A Committee was formed of himself and two other doctors. The Committee submitted an opinion at Exhibit 269 recording that the injuries sustained by the deceased are possible by weapons like cable, iron rod, sword and that the injuries were not consistent with those which can be sustained in a motor vehicular accident.

9] The defence witness Ravindra Lande (DW 1) claimed that the deceased Ashok met with an accident on railway over bridge. Witness deposed as to how he along with Accused No.1 admitted deceased Ashok in Anand Rushi Hospital. Though he claimed that one tempo came from back side and gave a dash to the deceased Ashok, in the cross-examination, he stated that he was unable to tell the number of the tempo and even colour and make of the said tempo. Exhibit 287 is the case paper of the Anand Rushi Hospital. DW 1 claimed that he signed the admission form at Exhibit 287 at 10.30 am. The learned trial Judge observed that there is an overwriting in the time mentioned in the said form at Exhibit 287. Exhibit 954 is a document on which a

Doctor in Anand Rushi Hospital made an endorsement at 11.30 a.m. The said endorsement specifically records that relatives were not present and death time was 11.30 a.m. DW 1 Ravindra was claiming to be a relative of the deceased. This endorsement shows that even he was not present. As the defence of the accused was that the deceased died due to a motor accident, the learned trial Judge considered the opinion of Dr. Pherwani (DW 2) who admitted in the cross-examination that he did not find imprint injury of dash given by a motor vehicle on the body of deceased. He admitted that he had not seen photographs of injuries sustained by the deceased. He admitted that he received witness summons on 11th January, 2016 and prepared medico legal report on 13th January, 2016.

10] The findings recorded in the impugned Judgment show that the learned trial Judge was conscious of the fact that examination of the evidence of the first informant and his wife needed a very close scrutiny. In the complaint filed by the first informant on the basis of which an order under Sub-section (3) of Section 156 was issued, he has referred to number of complaints filed to various authorities. On ADR report, 'A' summary was granted by the learned Magistrate.

11] As far as accused Sandip is concerned, his defence of alibi has been also considered. The defence was that on the date of incident, he was in Mumbai in connection with Water Supply Scheme prepared by Ahmednagar Municipal Corporation. PW 23 Adinath Mhaske who did not support the prosecution stated that on 19th May, 2008 at about 6.00 am he along with Accused No.10 by vehicle No. MH-16-N-1001 went to Mumbai. The prosecution had produced log-books and documents relating to log-books. There is an entry of 19th May, 2008 which shows that Ajay Gaikwad, Driver who was absconding accused obtained custody of the aforesaid vehicle. The said vehicle went from the garage to Mayor's Bungalow and from there to Kedgaon. The vehicle was brought back to garage at about 12.15 pm. Nothing was produced by the said accused to show that he was in Mumbai for official work on 19th May, 2008.

12] The defence witness No.3 (Dr. Kulkarni) was examined to prove the defence that on 19th May, 2008 the Accused No.7 was at home and was taking rest as advised by the Doctor. Witnesses relied upon a certificate issued by him recording that on 8th May, 2008 he performed surgery of Kidney stone on the Accused N.7 who was discharged on 12th May, 2008. He was advised rest for 15 days. In the cross-examination, he admitted that on the request made by the wife of the said accused he

issued the certificate in the year 2012. He stated that accused was able to pursue his daily activities and only by way of precaution that he had advised rest for 15 days. In the case papers produced at Exhibit 963, the advise of taking rest is not incorporated.

13] We find that on making a comprehensive analysis of the evidence of the prosecution witnesses and the defence witnesses, the learned trial Judge has believed the version of the first informant and his wife who were eye witnesses. Moreover, for the reasons recorded, the plea of the accused that the deceased died due to motor accident has been disbelieved. The learned Judge disbelieved the evidence of the Defence Witness No. 1 who was examined in support of the plea that the victim of the offence died due to a motor accident. Plea of alibi of two accused has been disbelieved after scrutiny of the evidence of the prosecution and defence witnesses. Considering the delay involved and considering the fact that number of prosecution witnesses did not support the prosecution, the learned Judge has made a minute scrutiny of the version of the first and second prosecution witnesses (first informant and his wife).

14] Moreover, there is a cogent evidence on record to show that an attempt was made on behalf of the accused to pressurize the

material prosecution witnesses and especially medical officers. Only on the ground of delay in registration of FIR, the applicants cannot be enlarged on bail. The detailed submissions raising very minute points have been made on behalf of the Applicants as if the Appeals are being heard finally. At this stage, such a detailed scrutiny and re-appreciation of evidence is not called for. Taking overall view of the matter, and considering antecedents of Accused Nos.7 and 10, we find that no case is made out for suspending substantive sentence and for enlarging the Applicants on bail. Accordingly, we reject Criminal Application Nos. 658 of 2016, 657 of 2016 and 706 of 2016.

(A.A. SAYED, J)

(A.S. OKA, J)