

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.928 OF 2015
IN
CRIMINAL APPEAL NO.801 OF 2014

Ajay Peter Topannu

... Applicant

Vs.

The State of Maharashtra

... Respondent

Mr.Prosper D'souza, Advocate appointed for the Applicant
Mr.Arfa Sait, APP, for Respondent - State

**CORAM: SMT. V.K. TAHILRAMANI &
MRS.MRIDULA BHATKAR, JJ.**

DATE: NOVEMBER 23, 2016

P.C. (PER MRS.MRIDULA BHATKAR, J.):

1. The applicant-accused i.e., Ajay Peter Topannu alongwith the other accused is convicted for the offence of murder punishable under sections 302, 201 r/w 34 of the Indian Penal Code by the judgment and order dated 23.4.2014 passed by the learned Additional Sessions Judge, Pune. The deceased Rajkumar Shahu was working as a labourer on the side of Mulshi dam at Mulshi, District Pune. The incident has occurred on 20.5.2012. The applicant-accused alongwith the co-accused have assaulted the deceased with axe on the night of 20.5.2012 and have tried to flee

from the spot, however, the talk between the two of the accused was overheard by the witnesses and thereafter, they were apprehended by the other labourers on the side of the Mulshi dam and were brought before the Supervisor and subsequently they were arrested in C.R. No.83 of 2012 registered at Paud police station, Pune (Rural), Pune.

2. The trial concluded in the conviction and hence, this bail application.

3. The learned Counsel for the applicant-accused has submitted that the evidence against the applicant-accused is weak and ought not to have been believed by the learned trial Judge. He submitted that there is no eye witness to the incident. As per the case of the prosecution, the murder has taken place on the earlier day and the accused were apprehended on the next day. The conviction is based mainly on extra-judicial confession of the appellant and the co-accused, which is not a sufficient evidence for conviction.

4. Learned Prosecutor while opposing this bail application, has submitted that the applicant-accused was working as a labourer alongwith other witnesses, who are also the labourers on site at

Mulshi dam at Ambi Valley, Pune. He submitted that there was a motive behind the murder of the deceased as the deceased used to tease and harass the wives of the accused persons. He argued that PW1 Yadav, PW2 Kailas, Rajesh Dubey and PW9 are examined on the point of extra-judicial confession by the accused. He submitted that the incident has taken place at night on 20.5.2012 and immediately on the next day morning at around 6 am, PW5 Dinesh overheard the conversation between the two persons regarding elimination of the deceased. He further submitted that there is evidence of two witnesses i.e., PW3 Dasa Barla and PW5 Dinesh Benjamin on the point of last seen together as those witnesses have seen the applicant-accused and the co-accused going along with an axe. He relied on the post-mortem report wherein the two incised wounds are shown as cause of death. He submitted that all these wounds were on the vital parts i.e., on the neck, frontal and parietal portion of the skull.

5. Perused the relevant portion of the evidence of all the witnesses. There is evidence of last seen together and also a proximate extra-judicial confession. We have also considered the post-mortem report and the cause of death. Considering the

submissions of the learned Prosecutor, we are not inclined to grant bail. We also note that the accused were not on bail during the trial. Hence, the application is rejected.

(MRIDULA BHATKAR, J.)

(V.K. TAHILRAMANI, J.)