

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 481 OF 2017
IN
CRIMINAL APPEAL NO. 47 OF 2017**

Siddharam Bhimraya Birajdar .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. Shirish Gupte Senior Advocate with Mr. Tejas Hilage
Advocate for Applicant

Mr. H.J. Dedia A.P.P. for the State

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**CORAM : SMT.V.K.TAHILRAMANI AND
M.S.KARNIK, JJ.**

DATED : APRIL 06, 2017

ORAL ORDER [PER SMT. V.K.TAHILRAMANI, J.]:

1 Heard the learned Senior Counsel for the applicant-
original accused no.2 and the learned A.P.P. for the State.

2 The applicant along with three other accused, has
been convicted under Section 302 read with Section 34 of IPC.
The applicant is now seeking bail.

3 It is the prosecution case that on 7.2.2014 at 7.45 p.m. the applicant along with three other accused assaulted Bhimashankar at Tadwal-Mhaisalgi Road. PW 7 Revansidha and PW 8 Guranna have categorically stated that they had seen the applicant along with three other accused assaulting the deceased.

4 Mr. Gupte, the learned counsel for the applicant submitted that the evidence of PW 7 Revansidha and PW 8 Guranna cannot be relied upon. He stated that the incident occurred on 7.2.2014, however, the statements of these two witnesses were recorded 15 days after the incident. He contended that this delay in recording the statements of both these eye witnesses raises serious doubt about the genuineness of these two witnesses. Mr. Gupte pointed out that both these witnesses were available in the village on the next day of the incident which is seen from the evidence of both these witnesses. He drew our attention to the evidence of PW 8 Guranna who has stated that the next morning police had come to the spot. He narrated the incident to the police.

Police asked him to sign the panchnama (Inquest Panchnama) and asked him to come to the police station on the next day for recording his statement. Mr. Gupte pointed out that PW 7 Revansidha was also present on the next day in the village which is seen from paragraph 2 of his evidence wherein he has stated that on the next day he went to the police station. Police made enquiry with him. He narrated the incident to the police. Mr. Gupte submitted that despite this fact, the statement of both these eye witnesses is recorded 15 days after the incident. He submitted that if they were eye witnesses, their statements should have been recorded if not on the day of incident, then at least, on the next day when they met the police.

5 As far as the above contention is concerned, the learned A.P.P. placed reliance on the evidence of PW 11 Sidharam who is the son of deceased as well as on the evidence of PW 7 Revansidha and PW 8 Guranna. He pointed out that the incident occurred on 7.2.2014. On 9.2.2014, PW 11 and his brother went to the police station for giving statement, however, their statements were not recorded.

Police made enquiries with them but their statements were not recorded, hence, they suspected that the police are reluctant to investigate their case. Therefore, his brother Santosh (PW 10) gave an application on 3.3.2014 to D.S.P. Solapur. As there was no progress in the investigation in respect of giving application on 3.3.2014, on 20.3.2014 they personally met D.S.P. Solapur. D.S.P. had a talk with the Investigating Officer Shri. Shelke and instructed PW 10 Santosh and 11 Sidharam to go to the police station. Accordingly, they went to the police station. However, the Investigating Officer Shri. Shelke abused them. Then on 29.3.2014, PW 11 Sidharam filed application before D.S.P. Solapur. Sidharam has stated that inspite of making grievance to the D.S.P. Solapur, there was no progress in the investigation, therefore, his brother PW 10 Santosh filed Writ Petition bearing No. 1378 of 2014 before the High Court. As the police was not recording their statements, his brother PW 10 Santosh approached Akkalkot Judicial Magistrate F.C. and requested for recording statement under Section 164 of Cr.P.C. Accordingly, on 6.5.2014 the learned J.M.F.C. Akkalkot recorded their statements. The evidence of PW 10 Santosh corroborates the evidence of PW 11 Sidharam.

6 The learned A.P.P. also placed reliance on the evidence of PW 7 Revansidha who has stated that on the next day, he met the police. He narrated the incident to the police. The police told him that they would prepare panchnama and they would call him to record his statements after two days. After four days, he went to Akkalkot Police Station. At that time, the police present in the police station told him that the officer was on leave and he should come to the police station after eight days. After eight days, he again went to the police station. At that time, the Investigating Officer recorded his statement. Learned A.P.P. drew our attention to the evidence of PW 8 Guranna who has stated that on the next day of the incident he had been to the spot. He narrated the incident to the police. Police asked him to sign the panchnama (Inquest Panchnama) and asked him to come to the police station on the next day for recording his statement. Thereafter he had been to the police station on 3 to 4 occasions but the police did not meet him. After about 15 days, police recorded his statement. It is also pertinent to note that the Investigating Officer PW 15 PI Shelke in para 11 of his evidence has stated

that “at the time of recording spot panchnama, some villagers wanted to give information about the incident. I asked them to come to the police station as there was commotion on the spot of the incident. Those people came to the police station, however, I could not meet them as I was on leave due to sickness of my mother and I was also busy in election Bandobast”. Thus, through the evidence of PW 10 Santosh, PW 11 Sidharam, PW 7 Revansidha, PW 8 Guranna and PW 15 PI Shelke, the prosecution has explained the delay in recording the statements of two eye witnesses.

7 Thereafter, Mr. Gupte placed reliance on the cross-examination of both witnesses i.e. PW 7 Revansidha and PW 8 Guranna, wherein in the cross-examination, it has been brought out that in their statements they have stated that on the next day morning, they came to know about the murder. Mr. Gupte submitted that if these witnesses had stated that on the next day morning, they came to know about the murder, they could not have been eye witnesses. As far as this contention is concerned, it is seen that the investigation in this case was tainted and biased. All these witnesses gave their

statements in "Kannada", however, their statements were recorded in Marathi language with which they were not conversant. Hence, prima facie, it appears that the Investigating Agency has tried to play mischief.

8 Lastly, it was submitted that PW 7 and PW 8 were travelling together, however, PW 8 Guranna has stated that the incident took place at 7 to 7.30 p.m. whereas PW 7 Revansidha has stated that the incident took place at about 7.45 p.m. when both these witnesses were traveling together. The learned counsel submitted that if both these witnesses have given different time of the incident, it shows that their evidence cannot be relied upon.

9 The evidence on record shows that PW 7 Revansidha has stated that at about 7.45 p.m. they were proceeding towards Mhaisalgi, they heard commotion and saw the incident whereas PW 8 Guranna has stated that at about 7 to 7.30 p.m. they were proceeding towards Mhaisalgi on motorcycle of Revansidha. After crossing a distance of two kms. they heard commotion then they saw the accused assaulting

Bhimashankar. Thus, as far as Guranna is concerned, his evidence shows that both these witnesses started proceeding at 7.30 p.m. and after they had crossed a distance of about 2 kms. thereafter they heard commotion and when they heard commotion, the time might have been 7.45 p.m. as some time might have certainly elapsed in crossing the distance of 2 kms., which would mean the incident took place at 7.45 p.m.. In any event, both PW 7 and PW 8 are rustic villagers. They were agriculturists, hence, discrepancy in timing of 15 to 20 minutes here and there would not affect the veracity of their evidence.

10 Looking to the evidence of the two eye witnesses and other evidence on record which shows that there was recovery of blood stained clothes and weapons at the instance of the applicant, we are not inclined to grant bail, hence, the application is rejected.

[M.S.KARNIK, J.]

[SMT.V.K.TAHILRAMANI, J.]