

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.74 OF 2017
(Laxman s/o Sakkharamji Ghodam vs. The State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Shri P.V. Navlani, Advocate for applicant.
Shri S. Sirpurkar, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : FEBRUARY 22, 2017

This is an application for bail by accused involved in Crime No. 320/2016 registered under Sections 302 and 201 of Indian Penal Code.

Heard Shri Navlani, learned Counsel for applicant, and Shri Sirpurkar, learned Additional Public Prosecutor for respondent.

Shri Navlani, learned Counsel for applicant, has submitted that case of prosecution is based on circumstantial evidence. It is contended that deceased Vilas is real brother of complainant Sanjay while applicant is real uncle of deceased and it is the case of prosecution that in the night intervening 20th and 21st August 2016, there was quarrel between applicant and deceased under the influence of liquor and, therefore, applicant committed murder of Vilas by strangulation. However, the statements of witnesses, particularly Harishchandra, Ghanshyam and Dinesh, who are relied by prosecution on the theory of last seen together, do not substantiate the case of prosecution establishing

involvement of applicant as an assailant on the deceased.

Learned Counsel by referring to statement of Panchfulla, mother of deceased, has submitted that in fact from her statement, it is established that as deceased was in the habit of consuming liquor, on her say, on many occasions earlier, applicant had advised deceased not to consume liquor and as such, it is not that it is only prior to incident on a relevant night, applicant had told deceased not to consume liquor or on that count, had indulged into quarrel with him. It is submitted that since investigation is complete and as there are no circumstances sufficient to establish involvement of applicant nor any incriminating articles are recovered at the instance of applicant or during the course of investigation, application be allowed by imposing suitable conditions.

Shri Sirpurkar, learned Additional Public Prosecutor for respondent, has opposed the application on the ground that from the statements of witnesses, involvement of applicant is directly established as he is the only person, who was lastly seen in the company of deceased. It is submitted that though investigation is complete, application be rejected.

Perusal of report reveals that same was lodged by brother of deceased stating accidental death of Vilas on road proceeding from Ner Pinglai to Tiosa. On the strength of report, aforesaid crime came to be registered initially under Sections 279, 304-A 337 and 338 of Indian Penal Code read with Sections 184, 134-B and 177 of Motor Vehicles Act and was investigated. It

is noted that on the basis of cause of death of Vilas as recorded in the post mortem report, i.e. due to strangulation, Section 302 of Indian Penal Code came to be added to the present crime. It is material to note that as per case of prosecution, dead body of Vilas was found lying on the road in the early morning of 21/8/2016.

On perusal of statement of Panchfulla, mother of deceased, she has stated that there was quarrel between applicant and deceased on 20/8/2016 at 7.30 p.m. which fact, as per her say, was stated to her by her another son Kailash. On perusal of statement of Kailash, however, it is found that contrary to what is stated by Panchfulla, he has stated that from his mother, he learnt that there was quarrel between applicant and deceased wherein applicant had given 2-3 fist blows to deceased. Having considered inconsistencies in the statements of both these witnesses, there is nothing to rely if at 7.30 p.m. there was any quarrel between applicant and deceased on 20/8/2016. Moreover, as per statement of Panchfula, this was a regular feature and there was nothing new as whenever deceased used to visit her under the influence of liquor, he used to indulge into quarrel with her and, therefore, she used to request applicant to make deceased understand not to consume liquor and on that issue, there used to be quarrel between them.

Considering statement of Panchfula, thus it is noted that there used to be frequent quarrel between applicant and deceased prior to incident for the above reason.

In the background of facts as aforesaid, statement of Harishchandra dated 28/8/2016 reveals that on 21/8/2016 in the early morning at 5 o'clock when he was proceeding to answer the nature's call, he could see applicant and one person lying on the road and, therefore, asked applicant as to who was that person, upon which applicant is stated to have said to him that he was the person from his home with whom he had quarreled. According to Harishchandra, there was sufficient dark at that time and he had only identified applicant. As such, his statement does not substantiate the case of prosecution in any manner.

Statement of Ghanshyam dated 23/8/2016, when perused, reveals that on 21/8/2016 at 4 a.m. while he came out of his house, he saw applicant coming on bicycle from Rajurwadi side and referring deceased as Mundra, as he was having curly hair, informed Ghanshyam that Mundra has met with accident and accordingly Ghanshyam visited the spot and found one person lying on the road, who was informed by applicant to be Mundra. From his statement it is material to note that when Ghanshyam told applicant to go to home of deceased and inform this fact, applicant expressed that he would prefer not to go to home of deceased as there was quarrel between him and deceased on the previous night and as such, his family members would suspect him.

Perusal of statement of Dinesh, which is relied by prosecution on the theory of last seen together, reveals that at about 10.30 p.m. - 11 p.m. on 20/8/2016

said witness alleged to have witnessed quarrel between deceased and applicant when they were manhandling each other. This person is stated to have witnessed the incident in the night as aforesaid on 20/8/2016. He has also stated that this was a regular feature between them and nobody used to intervene in their quarrel. He has further stated that on the following day at 5.30 a.m. when he was proceeding to his field, he found deceased Vilas lying by the side of road and he had sustained bleeding injury on his head.

In view of statements referred to hereinabove, it is noted that case of prosecution is based on theory of last seen together for which above statements are relied. By now, law on this aspect is well settled. It is settled principle of law that the Court has to apply the theory of "last seen together" cautiously unless there is corroborating and circumstantial evidence that does not by itself necessarily lead to the inference that it was the accused, who committed the crime. In the present case, though the applicant was lastly seen together with the deceased, there is no corroborating and circumstantial evidence leading to the conclusion that the applicant has committed murder of deceased Vilas.

In that view of the matter, prima facie it is found that no case as put forth on behalf of prosecution can be said to be established. Moreover, on perusal of post mortem report, it is material to note that no surface injuries are stated in column 17 except for mention of fracture of hyoid bone in column 18, which creates

doubt in the truthfulness of statement of Dinesh, who claims that deceased was found having bleeding injury on his head.

Though according to post mortem report, probable cause of death is due to manual strangulation, except that statement as aforesaid, there is nothing to establish involvement of applicant in strangulating deceased in any manner. Though it is also noted that as per the query made to Medical officer, strangulation mark is by dupatta or piece of cloth, nothing is recovered from the applicant. It is further noted that fracture of hyoid bone is stated to be possible by assault by hard and blunt object and such injury is possible due to fall on iron pole.

Having considered facts as aforesaid and since charge-sheet is already filed, following order is passed :

Applicant shall be released on bail on his executing a P.R. bond in the sum of Rs.50,000/- with one surety in like amount. While on bail, applicant shall mark his attendance with Police Station, Shirkhed, District Amravati on first day of every three months pending trial. Applicant shall furnish proof of his residential address to Investigating Officer and shall update the same in the event of any change therein.

The criminal application is accordingly allowed.

JUDGE

khj