

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

CRIMINAL APPLICATION (BA) NO.1154/2017

Santosh s/o Namdeo Guthe and anr

..vs..

The State of Mah., thr. PSO PS Jaulka, Tahsil Malegaon, District Washim

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

Court's or Judge's Order

Shri S.D. Chande, Counsel for the applicants.

Shri V.A. Thakare, Addl.P.P. for the State.

CORAM : V.M. DESHPANDE, J.

DATED : DECEMBER 20, 2017.

1. Heard learned counsel Shri S.D. Chande for the applicants and learned Additional Public Prosecutor Shri V.A. Thakare for the State.

2. The applicants were arrested on 13.5.2017 in connection with Crime No.93 of 2016 registered with Police Station Jaulka, District Washim for the offences punishable under Sections 279, 304-A, and 427 of the Indian Penal Code and further added Sections 302 and 201 read with Section 34 of the Indian Penal Code and Section 3(2)(5) and amended Section 3(i) (1)(S) of the The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. The investigating agency has already completed entire investigation and charge-sheet is filed vide final report

No.36 of 2017.

4. Initially, on the basis of report lodged by Police Head Constable Dhnyaneshwar Narayan Rathod, an offence was registered against unknown persons for the offences punishable under Sections 279, 304-A, and 427 of the Indian Penal Code since while patrolling, after getting an information, when he reached to the spot, he noticed that an unknown person was lying on the road in a dead condition and beside him one motorcycle bearing registration No.MH-30/N/9355 was also lying in an accidental condition.

5. On 15.7.2016, Sau. Rekha Ramkisan Khandare, mother of deceased Deepak, lodged a typed complaint to the Superintendent of Police at Washim. In the said complaint, it is stated that on 11.6.2016 at about 10:00 in the morning, applicant No.2 came to their house and took deceased Deepak on his motorcycle. It is also stated that at 1:00 in the noon, when she made a phone call to Deepak, it was informed by him that he will be returning. The said act was also repeated at 3:00 in the noon. However, at 6:00 in the evening, when she made a phone call, applicant No.2 took the said phone call and informed that they will be coming. However, on the said day, Deepak failed to return to the house. On 12.6.2016, as per the complaint, the Police Patil informed her that her son Deepak has received injuries and is admitted in the Government Hospital at

Malegaon. Therefore, she along with relatives went to the Hospital at Malegaon. At that time, she noticed dead body of her son and according to the complaint, she noticed that there were injuries on both of his hands and also on his head. According to the complaint, there was also injury to the eyes of the deceased and according to her complaint, it was due to some weapon.

6. On the basis of the said complaint, the investigating agency has added Sections 302 and 201 read with Section 34 of the Indian Penal Code.

7. After about one year, Rekha's supplementary statement was recorded. It is dated 14.5.2017 and in the said supplementary statement she has stated that on the next day of death of Deepak, applicant No.2 was shouting in front of her house that he took Rs.1,000/- from applicant No.1 and, thereafter, killed him.

8. According to the postmortem report, the death is due to the head injury.

9. During the course of the investigation, no weapon is seized from any of the applicants. There is no ocular evidence available in the prosecution case. The only circumstance the prosecution tries to rely upon is, that on 11.6.2017 applicant No.2 took deceased along with him on his motorcycle and on 13.6.2017 applicant No.2 was shouting in front of first informant's house that he has killed deceased on the say of applicant No.1. *Prima*

facie, due to delay of one month for lodging the report and in view of the recording of the statement after one year, in which the first informant disclosed about shouting by applicant No.2 and in absence of any recovery from any of the applicants, in my view, the applicants need not be detained any further in jail custody. Consequently, I pass the following order:

ORDER

(i) The criminal application is allowed.

(ii) Applicants Santosh s/o Namdeo Guthe and Santosh s/o Baban Andhale, be released on bail on their executing P.R. Bond in the sum of Rs.25,000/- by each of them with two solvent sureties of the like amount by each of them, in connection with Crime No.93 of 2016 registered with Police Station Jaulka, District Washim for the offences punishable under Sections 279, 304-A, and 427 of the Indian Penal Code and further added Sections 302 and 201 read with Section 34 of the Indian Penal Code and Section 3(2)(5) and amended Section 3(i)(1)(S) of the The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

(iii) The applicants shall not intimidate the first informant or any of the prosecution witnesses.

(iv) With this, the criminal application is allowed and disposed of.

JUDGE

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