

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4505 OF 2016
(IN CRIMINAL APPEAL NO. 467 OF 2016)

1] Avinash Ramrao Ankulwar,

Age : 23 years, Occu. :

R/o Naigaon, Taluka : Naigaon,

Dist. Nanded.

2] Sham Balaji Shinde,

Age : 27 years, Occu. :

R/o as above.

3] Avinash Balaji Dhumal,

Age : 21 years, Occu. :

R/o Village Aurala,

Tq : Naigaon, Dist. Nanded.

...Applicants

Versus

The State of Maharashtra,

through the Police Station

Ramtirth, Dist. Nanded.

...Respondent

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Mr. G. A. Kulkarni, Advocate H/F Mr. R. S. Deshmukh,
Advocate for Applicants.

Mr. A. A. Jagatkar, A. P. P. for Respondent-State.

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CORAM : T. V. NALWADE &

SMT. VIBHA KANKANWADI, JJ.

RESERVED ON : 22-10-2018.

PRONOUNCED ON : 28-11-2018.

JUDGMENT : (Per Smt. Vibha Kankanwadi, J)

01. The present application has been filed by the original accused Nos. 1, 2 and 4 for bail and suspension of sentence dated 8.7.2016 passed by learned Additional Sessions Judge, Biloli, Dist. Nanded in Sessions Case No. 2 of 2015 after holding them guilty of committing offence punishable under Sections 302, 201, 364 read with Section 34 of I. P. C.

02. The prosecution story is that the accused No. 1 was indebted to the deceased Satyawar Bhagwanrao Tammewar. When Satyawar was insisting accused No. 1 to re-pay his amount, Satyawar was kidnapped in car bearing No. MH 26 AF 1944 and murder was committed by strangulation in the car itself. Thereafter, the hands and legs of the deceased were tied and the dead body was tried to be disposed of by pouring petrol and setting it to fire.

03. In all 20 witnesses have been examined by the prosecution and after hearing both the sides, accused Nos. 1, 2 and 4 have been held guilty for committing offence punishable under Section 302 read with Section 34 of I. P. C. and have been sentenced to suffer rigorous imprisonment for life. They have been further held guilty for the offence punishable under Section 201 read with Section 34

of I. P. C. and have been sentenced to suffer rigorous imprisonment for 3 years and to pay fine of Rs. 5,000/- each, in default to suffer simple imprisonment for 3 months. Further, they have been held guilty of offence punishable under Section 364 of I. P. C. and have been sentenced to suffer rigorous imprisonment for 3 years and to pay fine of Rs. 5,000/- each, in default to suffer simple imprisonment for 3 months.

04. Heard Mr. G. A. Kulkarni, learned Advocate H/F Mr. R. S. Deshmukh, learned Advocate for Applicants and Mr. A. A. Jagatkar, learned A. P. P. for Respondent-State.

05. It has been submitted on behalf of the applicants that the learned Trial Court has not appreciated the evidence properly. Too technical and casual approach is seen from the Judgment which has led to the miscarriage of justice. Cause of death is in fact not proved and the dead body which was found was totally decomposed. Therefore, it was not in a position to be identified by anybody. The Trial Court has not taken into account the crucial fact that when discovery panchnama and memorandum panchnama were prepared by the Investigating Officer under Section 27 the Indian Evidence Act. At that time, the applicants / accused were not arrested and the

defence has brought on record that all these facts that those panchnamas were prepared on 10 AM in the morning, whereas, the applicants were arrested at 7.30 PM. The case was dependent on circumstantial evidence and the chain of circumstances were not at all established. He, therefore, prayed for suspension of substantive sentence and releasing the applicants on bail.

06. Per contra, the learned A. P. P. has submitted that the evidence of 20 witnesses examined by the prosecution has been properly scanned by the learned Trial Court. Though the case was based on circumstantial evidence, all those circumstances which were leading to the inference that the present applicants are the authors of the crime were established beyond reasonable doubt. Therefore, the applicants need not be released on bail.

07. The prosecution case is based on circumstantial evidence. The informant who is the brother of the deceased had filed initially missing report and thereafter, he says that he came to know from the Police that accused No. 1 has committed murder of his brother. He has thereafter stated that accused No. 1 had taken amount of Rs. 7,28,534/- from deceased and when the deceased was insisting for re-payment, accused No. 1 was

avoiding. In fact, deceased had purchased a house for Rs. 14,71,000/- and for that purpose he was in need of money and therefore, he was insisting the accused No. 1 to repay the amount. In order to avoid the re-payment, accused No. 1 had abducted the deceased and took him in Tata vista car and committed murder of deceased Satyawant Biloli-Nijamabad-Pitlam road. Thereafter, the dead body has been put to fire by pouring petrol in a jungle near high way No. 104 which was reserved for Shantapur Sector near Jagannath Palli on Sangha Reddy Deglur road.

08. It is to be noted that the dead body has been identified. It has come in evidence of the informant that though the face had received more burn injuries, yet, the lower part of the body was intact. Thereafter, the evidence that is against the present accused persons is in the form of discovery on the basis of the statements made by the applicants. The discovery is in the form of place of offence their own clothes, car, weapon used in the commission of the crime i.e. knife which was shown to the deceased. Though the murder was by strangulation, the motor cycle belonging to the deceased which was then thrown in the well, handkerchief used for strangulation, the gold ring of the deceased. The inquest panchnama as well as PM report would show that the cause of death is

not given in concrete way and it is stated that the cause of death could not be given due to advanced stage of decomposition. The fact, however, remains that the body was put to fire and the burn injuries were seen. Therefore, definitely, the death was homicidal in nature. The further piece of evidence is in respect of discovery of vehicle passing through the toll plaza. Though the persons who were sitting in the car were not visible, yet, the number of the vehicle can be seen. Now, the accused persons have stated that the discovery and memorandum can not be considered as they were subsequently arrested. A broad statement can be made that though the arrest may be afterwards, yet, they were in the custody of Police at that time and therefore, whatever discovery is made can be covered under Section 8 of the Indian Evidence Act. It is also to be seen that the present applicants were not on bail throughout the trial. Now, after full-fledged trial they have been convicted on merits. The pieces of evidence which are against them and the identification of the articles appears to have prompted the conclusion by the learned Trial Court. Whether those pieces of evidence would form a complete chain or not would be considered at the time of final hearing. We can not take up the task of assessment of evidence in that respect at this stage. All

those circumstances against accused persons will have to be considered. Therefore, no case is made out to suspend the substantive sentence of the applicants.

09. Hence, following order;

ORDER

Application is rejected.

[SMT. VIBHA KANKANWADI]

[T. V. NALAWADE]

JUDGE

JUDGE

Dahibhate/-.