

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 343 OF 2018
IN
CRIMINAL APPEAL NO. 217 OF 2018

Shendya @ Mangesh Subhash Malche .. Applicant
V/s
The State of Maharashtra .. Respondent

Mr. Umesh Nikam for the appellant.
Mr. J.P. Yagnik, APP for the State.

**CORAM: S.C. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.**

DATE : 5TH APRIL 2018

P.C.:

We have heard Mr. Nikam for the applicant. With his assistance, we have perused the application, the annexures thereto and the judgment of the Trial Court.

2. The document at page 14 of the Criminal Application is a copy of the deposition of PW No.3 – Gola Raju Kuvar. After perusing the examination in chief of the said witness, it is contended that the said witness has not been consistent in his version for he has not at any time stated in his deposition before the Court that he had seen the deceased in the company of the present applicant. The version that this witness gives is based on what is narrated to him by the

applicant-accused and that too after consuming liquor. In such circumstances, it is urged that based on the deposition of this witness as also PW No.4 – Govinda Bakaram Sonawane, the charge could not have been proved. Eventually, these are coolies / labourers working at Satana Market. Shri Narayan Datta Rahate, the deceased, was not working at Satana Market nor was PW No.4 in the company of the present applicant prior to the incident. In the circumstances, on their version or what is narrated to them, the prosecution could not have established the charge.

3. Further, as far as the deposition of the daughter of the deceased is concerned, there has been no identification / TI parade. The daughter is supposed to have identified the accused in Court. In the circumstances, her version that the deceased, who was her father, and the applicant came together to the house of the deceased and left immediately, will not establish the last seen theory. Thus, this is a case of circumstantial evidence, but the chain has broken down and thus there is no consistency. The chain cannot be said to be leading to a link and by which a conclusion can be reached that it is none other than the applicant who caused the death of the deceased. All the more, when the medical evidence is also inconsistent, in his cross examination the doctor, who carried out the post mortem on the body, answered that it is possible that the injuries can be caused even by a vehicle dashing against the deceased. In the circumstances, this is a fit case for enlarging the

applicant on bail where the applicant is in custody for more than 4 years.

4. Mr. Yagnik, learned APP, on the other hand, submits that this is not the stage at which the Court must record any definite opinion. Prima facie, the learned Judge has relied upon not only the version of these witnesses, but that of the daughter of the deceased. The daughter has deposed before the Court. Her testimony has not been shaken in any manner. In the circumstances, we should not proceed to enlarge the applicant on bail.

5. After hearing both sides, we are of the opinion that prima facie it is the applicant-accused who was last seen in the company of the deceased. PW No.1 – Latabai Narayan Rahate, whose deposition is at page 8 of the paper-book, is the wife of the deceased. She has stated that she has a daughter by name Manisha. Her daughter was with her husband at Satana. It is further stated by her that one Dhanraj Jadhav gave a telephone call informing her that there was a quarrel at Satana and on reaching Satana, she saw the dead body of the deceased. Her daughter narrated to her that the husband of this witness had been for weekly market for purchase and when he came back with the material, one boy was with him. Now when the daughter was examined, she stated that her father was in the weekly market and returned at about 9.00 p.m. along with the applicant-accused, who was present before the Court. The deceased called the

daughter and asked her to prepare tea for both of them, but the present applicant-accused thereupon asked the deceased to reach him to the road or rather see him off. Both of them left the house. However, the deceased did not return back. It is in these circumstances together with the deposition of other labourers that the learned Judge infers that it was the applicant-accused in whose company the deceased was last seen. There was, therefore, a likelihood of their indulging in a fight and particularly under the influence of liquor. That apart, the incident took place away from Satana Market. It also took place away from the home of the deceased. The applicant-accused is supposed to have assaulted the deceased with a stone after felling him down. The stone was recovered and with blood stains on the same. It is in these circumstances that we are not inclined to presently hold that the prosecution case is weak and has not been established and proved. All the witnesses were not consistent in their version or rather only tutored. Prima facie, this is not the stage to record such a conclusive opinion.

6. In the circumstances, we are not inclined to release the applicant on bail. The Criminal Application is dismissed.

(PRAKASH D. NAIK, J.)

(S.C. DHARMADHIKARI, J.)