

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

***CRIMINAL APPLICATION NO. 414 OF 2018
IN
CRIMINAL APPEAL NO. 867 OF 2011***

Soheb Ashikali Kazi. ... Applicant/Appellant.

V/s.

The State of Maharashtra. ... Respondent.

Ms. Mallika A. Ingale for the Applicant/Appellant.
Ms. Sharmila Kaushik, APP for the Respondent – State.

***CORAM : S.S. Shinde and
Mrs. Mridula Bhatkar, JJ.***

DATE : 5th October 2018.

P.C. :-

Heard the learned Counsel appearing for the Applicant and the learned APP for the State.

2 The learned Counsel appearing for the Applicant submits that if the evidence of PW-4 Mohd. Jahir Idris and PW-5 Dawood Ibrahim Parkar is considered, conjointly, there are major discrepancy, in as much, as PW-4 Mohd. Jahir Idris,

in his deposition stated that the Applicant was holding knife, however, PW-5 Dawood Ibrahim Parkar has stated that the Appellant assaulted by bamboo to deceased Allabaksh. It is submitted that the statement of PW-4 Mohd. Jahir Idris has been recorded after 2 to 3 days of the incident. It is further submitted that the statement of the PW-5 Dawood Ibrahim Parkar has been recorded on 9th October 2008, as it is evident from the reading of his cross-examination. It is submitted that there are major discrepancies and contradictions in the evidence of prosecution witnesses and therefore, same deserves to be discarded. It is submitted that if the evidence of PW-4 Mohd. Jahir Idris and PW-5 Dawood Ibrahim Parkar is considered in respect of the present Applicant, certainly the Applicant deserves to be given benefit of doubt and is entitled to be released on bail during the pendency of the Appeal. It is submitted that the Applicant is in Jail since his arrest in the year 2008. It is submitted that the alleged recovery of weapons from the Applicant cannot be believed, since the prescribed procedure was not followed.

3. The learned APP appearing for the State relying upon the evidence of PW-4 Mohd. Jahir Idris and PW-5 Dawood Ibrahim Parkar i.e. the eye witnesses, and also the medical evidence and also the other evidence brought on

record by the prosecution agency submits that, the findings recorded by the Trial Court are in consonance with the evidence brought on record and the Applicant has been rightly convicted with the aid of Section 149 of the Indian Penal Code.

4. We have given careful consideration to the submissions of the learned Counsel appearing for the Applicant and the learned APP for the State. We have carefully perused the depositions of two eye witnesses PW-4 Mohd. Jahir Idris and PW-5 Dawood Ibrahim Parkar. Both the witnesses have stated the presence of the Applicant at the scene of offence. Their version gets corroboration from the evidence of each other. There may be minor discrepancy of mentioning of the weapons, however, PW-5 Dawood Ibrahim Parkar has stated the presence of PW-4 Mohd. Jahir Idris as well as active participation of the Applicant in alleged crime. Apart from it, the medical evidence clearly indicates that Allabaksh died homicidal death. There is sufficient evidence on record as against the Applicant. It is not desirable to elaborate the reasons, since the Appeal filed by the Appellant is pending for consideration on merits. Suffice it to state that the findings recorded by the Trial Court prima-facie appears to be inconsonance with the evidence brought on record.

5. Hence, the Application stands rejected.

6. The Registry is directed to list Criminal Appeal No. 867 of 2011 on the final hearing board in the week commencing from 22nd October 2018. We make it clear that, if an Appeal is not taken up for hearing within three months from today, liberty to apply a fresh for bail.

(Mrs. Mridula Bhatkar, J.)

(S.S. Shinde, J.)

Jyoti
Prakash
Pawar

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by Jyoti
Prakash Pawar
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