

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

**CRIMINAL APPLICATION NO. 500 OF 2018
IN
CRIMINAL APPEAL NO. 586 OF 2017**

Gulab Rambali Yadav	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Khan Abdul Wahab for the Applicant.
Mrs. M.H. Mhatre, A.P.P. for Respondent-State.

**CORAM : R.M. SAVANT AND
V.K. JADHAV, JJ.**

ORDER RESERVED ON : 21st NOVEMBER, 2018.
ORDER PRONOUNCED ON : 27th NOVEMBER, 2018.

ORDER

1 In pending Criminal Appeal No.586 of 2017, preferred against the judgment and order of conviction passed by the Additional Sessions Judge, Gr. Mumbai, dated 18.05.2017, in Sessions Case No.689 of 2014, the Applicant- Original accused No.3 has preferred this Application for getting released on bail and also for suspension of substantive part of the sentence passed against him.

2 The learned Counsel for the Applicant-Original accused No.3

submits that though the prosecution case entirely rests upon circumstantial evidence, the prosecution has failed to establish the chain of circumstantial evidence. There is incomplete chain of circumstantial evidence and missing links in between the circumstances. The learned Counsel submits that the prosecution has mainly relied upon the two circumstances, firstly, last seen together and secondly, extra judicial confession made by the present Applicant and other co-accused before the PW2. The learned Counsel submits that the evidence of PW2 does not inspire confidence. There was no reason for the accused persons to make the so called extra judicial confession to PW2. So far as the evidence of PW3 is concerned, there is no corroboration to his version and the prosecution has failed to establish the identity of the Applicant since no test identification parade was conducted for PW3 for whom the Applicant herein was unknown person. PW3 has identified the present Applicant for the first time before the Court and as such the said identification is very weak piece of evidence. Furthermore, there is an unexplained delay in recording the statement of PW3. The learned Counsel submits that the conviction of the Applicant is based on surmises and conjectures and prosecution story is based on presumption and assumption. The learned Counsel submits that the prosecution has failed to establish the homicidal death of the deceased. There is no proper

identification of the dead body. The Medical Officer who has conducted postmortem has not been examined by the prosecution. The prosecution did not produce the postmortem report before the Court and only the provisional cause of death has been proved and exhibited. The provisional cause of death given by the Medical Officer favours the defence. Further disclosure statement attributed to the Applicant is not admissible as nothing tangible has been recovered at this instance. The CDR record produced by the prosecution does not incriminate the Applicant and there is no evidence as to which mobile has been used by the Applicant and the other co-accused at the time of the offence. The learned Counsel thus submits that the Applicant is entitled to be released on bail pending appeal by suspending the substantive part of the sentence.

3 Learned A.P.P. has strongly resisted the application with the submissions that the prosecution has established the case against the Applicant and other co-accused persons and there is a chain of circumstantial evidence. Learned A.P.P. submits that there is a reliable trustworthy evidence, that deceased was lastly seen alive in the company of the present Applicant and other co-accused. Furthermore, PW2 is an independent witness before whom the Applicant and the other co-accused have made extra judicial confession about the commission of the crime.

Learned A.P.P. submits that there is a proper identification of the dead body and since the defence has admitted the postmortem report, there is no reason to consider the submissions made in this regard. Learned A.P.P. submits that there is an explanation for recording the statement of PW3 belatedly. He was an accused in the case in respect of the alleged kidnapping of the victim by the deceased and as such after his release on bail in connection with the said crime, the statement of PW3 came to be recorded in the present crime. Learned A.P.P. submits that there is no substance in this application and the application is liable to be rejected.

4 On careful perusal of the evidence led by the prosecution before the trial Court and after going through the judgment and order of conviction passed by the Additional Sessions Judge, Gr. Mumbai, in Sessions Case No. 689 of 2014, it appears that prosecution case is entirely based upon circumstantial evidence and the main circumstances on which the prosecution relied upon is the aspect of last seen together and secondly, the extra judicial confession. On going through the evidence of PW2, it appears that Applicant and the co-accused persons have specifically selected the auto-rickshaw of PW2 with whom they have previous acquaintance for travelling purposes along with deceased and the victim girl. As per the prosecution story appearing from the evidence of PW2, the isolated location

has been chosen by the Applicant and co-accused persons to facilitate the commission of the crime. Furthermore, they have made extra judicial confession before PW2. Since PW2 questioned them as to how they returned to auto-rickshaw without deceased. PW2 has deposed that the Applicant and co-accused took away deceased along with them by stopping the auto-rickshaw and thereafter they returned to auto-rickshaw without deceased being with them. If prosecution case entirely based upon circumstantial evidence, the motive plays great role. In the instant case there is enough evidence on record to draw an irresistible inference that it is a case of honor killing. The prosecution has succeeded in establishing the motive on the part of the Applicant for committing the murder of the deceased.

5 On going through the deposition of PW15 Dr. Vishwajit Wankhede, it appears that the postmortem report has been submitted before the Court and the same is marked as Exhibit-75. Prima facie, it appears that the opinion about the cause of death given by PW15 Dr. Vishwajit Wankhede coupled with other circumstances indicates that the death is homicidal death.

6 It would not be desirable at this stage to consider the merits of the case suffice to say that prima facie it appears that there are two strong

circumstances against the Applicant in the form of last seen together and extra judicial confession. Furthermore the prosecution has proved the motive as like any other circumstances. So far as the other aspects of the case, which have been argued by the learned Counsel for the Applicant vehemently, the same would be considered during the course of the hearing of the Appeal. We are not inclined to release the Applicant on bail. Hence, the following order:

ORDER

The Criminal Application is hereby rejected.

(V.K. JADHAV, J.)

(R.M. SAVANT, J.)