

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 356 OF 2017
WITH
CRIMINAL APPLICATION NO. 730 OF 2017
IN
CRIMINAL APPEAL NO. 356 OF 2017

Pritam Chandrakant Shitole
Aged 26 years, Occ:
Res. At Korgaonmul,
Taluka Haveli,
District Pune
(presently detained at
Yerawada Central Prison, Pune.) .. Appellant

v/s.

The State of Maharashtra
at the instance of Lonikalbhor
Police Station at C.R. No.568 of 2016 ..Respondents

Mr. M.S.Mohite I/b. Shantanu Rajendra Phanse for the Appellant.
Mrs.M.H.Mhatre, AGP for the Respondent/State.

CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.

DATED : 07 AUGUST, 2018.

JUDGMENT (PER ANUJA PRABHUDESSAI, J).C. :

1. Heard Shri Mohite, learned Sr. Counsel for the appellant and
Mrs. Mhatre, learned APP for the State.
2. We have perused the records and considered the submissions

advanced by the learned Counsels for the respective parties.

3. The appellant herein was arrested on 24th July, 2016 in C.R.No. 568 of 2016 registered with Lonikalbhor Police Station for the offences punishable under Section 307, 143, 147, 148, 149, 341, 120(b) , 201 r/w. 34 of the Indian Penal Code and Section 3(2)(5) of the Scheduled Caste and Scheduled Tribes Act, and under Section 3, 4 and 25 of the Arms Act.

4. The aforesaid crime was registered pursuant to the first information report lodged by Priyanka Nagesh Londhe, widow of deceased Nagesh Londhe. The FIR reveals that Priyanka and Nagesh were married in the year 2009. It was an inter-caste marriage. Said Priyanka belongs to Hindu Mahar Caste, whereas her husband Nagesh belonged to Hindu Mang Garudi Caste. The marriage was opposed by her maternal uncle Sanjay More and his son Machindra.

5. On 20th July, 2016 at about 6.00 p.m, Adesh Shitole (Accused no.8) called the deceased Nagesh 2-3 times on his mobile phone and invited him for dinner at his residence. The deceased left his residence by Swift Car bearing No. MH-12-2109. The first informant had called her husband Nagesh on mobile at about 9.15 a.m. at

which time he told her that he would return after dinner. During intervening night of 20th July, 2016 and 21st July, 2016, first informant Priyanka woke up and realized that her husband had not returned. She called on his mobile phone, but there was no response. Hence, she and her brother went in search of her husband. The first information report states that Priyanka and her brother saw the swift car of the deceased parked near the main road near Shitole Vasti. They found that throat of Nagesh was slashed and there was gun shot injury on his forehead. She called her mother and Vithal Shitole to the place of the incident. In the meantime, police Officer Rama Jagtap from Urli Kanchan reached the spot. Nagesh Londhe was taken to the hospital, but was declared dead.

6. The body of Nagesh was sent for post mortem. The post-mortem report indicates that the death of Nagesh was due to traumatic haemorrhagic shock as a consequence of fire arm injury and incised wound over the neck. The death was homicidal. The crime was investigated, in the course of which statements were recorded, recoveries were made, and upon completion of

investigation, chargesheet was filed against the appellant and other accused named in the first information report as well as in the supplementary statement.

7. The application for bail filed by the appellant was dismissed by the Addl. Sessions Judge by order dated 31st March, 2017. Hence the present appeal.

8. The first information report prima facie suggests that the motive for committing murder was due to the previous quarrel between Vaibhav and Machindra. However, in the supplementary statement dated 21st July, 2016 the first informant had stated that there was some land dealing between her husband Nagesh and Vithal Shitole. Said Vithal did not pay money to her husband, hence there was a quarrel between Vithal and her husband Nagesh and they were not in talking terms with each other. She claimed that Vithal and Adesh committed murder of her husband with the help of the appellant and others named in the FIR.

9. On 2nd September, 2016 the first informant gave another statement wherein she claimed that Vithal and Adesh were not involved in the incident and that she had disclosed their names on

suspicion. On 26th September, she gave yet another statement stating that she had implicated Vithal and Adesh under pressure from some of the members from her community. On 12th October, 2016 she gave another supplementary statement stating that Mahesh, Deepak and Nikhil whose names are disclosed in the FIR are not involved in committing murder of her husband.

10. The first informant and the other witnesses viz. Deepali, Rekha, Akshay and Malti have alleged that the motive for committing murder was due to the previous incident /quarrel between Vaibhav and Machindra, whereas some of the witnesses namely, Lilabai, Akash and Nitin claim that the motive for committing murder was due to the dispute between the deceased and Vithal over non-payment of money received from land transaction. The statement of Ajay Kamble also prima facie reveals that he alongwith deceased Nagesh and Vitthal is involved in a fraudulent land transaction. Thus, prima facie there is no clarity regarding the motive, which assumes significance in a case based on circumstantial evidence.

11. It is also to be noted that Deepali, estranged wife of Machindra and cousin of the first informant claims that in January 2016 there

was a quarrel between Vaibhav and Machindra. She claims that the appellant and her husband had assaulted Vaibhav and Nagesh. She claims that her husband had told her that the appellant had placed an order for Koita (sickle) to kill Nagesh and further that the appellant would pay money to her husband on committing murder of Nagesh. The statement of Priyanka does not indicate that the Appellant had any personal animosity with the deceased so as to instigate Machhindra to cause his death and pay him money for the same. On the contrary, according to the first informant the initial quarrel was between Vaibhav and Machhindra and that the Appellant had abused Vaibhav at the instance of Machhindra. Prima facie, the statement of this witness is not in consonance with the FIR and the statements of Priyanka.

12. The other circumstance relied upon by the prosecution is that on 20th July, 2016 at about 9.00 to 9.30 p.m. the appellant and some others were seen chit chatting near the jaggery plant of Adesh. It is to be noted that the appellant is from the same locality and the jaggery plant belongs to his cousin. It also needs to be emphasized that the FIR reveals that till about 9.50 p.m. the deceased was having

dinner at the residence of Adesh. The fact that semi digested food was found in the stomach prima facie leads to an inference that the death was caused presumably about 1 -1/2 to 2 hours after his last meal. There is no prima facie material to indicate that the appellant was seen at the place of the incident immediately before or after the incident. In the light of these facts, mere fact that the appellant was chitchating with his friend near the jaggery plant at about 9.00 to 9.30 p.m. would not prima facie link him to the incident.

13. It is also alleged that a pistol (Exh.1) was recovered at the instance of the appellant. The ballistic report reveals that the bullets retrieved from the body at the time of post-mortem were fired from five different weapons and not from pistol (Ex.1) allegedly recovered at the instance of the appellant.

14. It is the case of the prosecution that ejector mark of one empty cartridge recovered from the spot, as per ballistic report, tallies with test fired cartridges through country made pistol at Ex.1. The learned APP therefore contends that the ballistic report indicates that the empty cartridge recovered from the spot was fired from the pistol recovered at the instance of the appellant and this fact prima facie

proves involvement of the appellant. Suffice it to say that said circumstance, may at the most raise suspicion and cannot be considered as prima facie proof of his involvement.

15. Another aspect which needs to be noted is that the co-accused Vithal and Adesh have been granted anticipatory bail, whereas the other accused Sachin, Deepak and Anil have been released on bail. In the light of the supplementary statement of the first informant, Mahesh, Deepak and Nikhil have been released under Section 169 of Cr.P.C. The appellant, who is placed in similar situation is in custody since 24th July, 2016. Chargesheet has already been filed and the presence of the appellant is not required for the purpose of investigation. Considering these facts vis-a-vis the nature of prima facie material as against this appellant, we are of the considered view that the appellant is entitled for bail.

16. Hence the Criminal appeal is allowed.

i) The appellant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two solvent sureties in the like amount, to the satisfaction of the Addl. Sessions Judge, Pune.

- ii) The appellant shall not interfere with the witnesses in any manner.
- iii) The appellant shall furnish his contact number and his permanent as well as local address, if any, in the bail bonds.
- iv) The appellant shall remain present before the Sessions Judge, on each and every date of hearing.
- v) The appellant shall not leave the limits of Pune district and shall not change his residence without prior permission of the learned Addl. Sessions Judge, Pune, .

. In view of disposal of the Criminal Appeal, Criminal Application No. 730 of 2017 does not survive and the same stands disposed of.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)

Prasanna
Pradeep
Salgaonkar

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by Prasanna
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