

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRI.APPA.NO. 1388 OF 2017
WITH
CRI. APPA.NO. 116 OF 2018
WITH
CRI. APPA.NO. 163 OF 2018
WITH
CRI. APPA.NO. 659 OF 2018
IN
CRI. APPEAL NO. 120 OF 2013**

Sitaram Dada Sarode .. Applicant

Vs.

The State of Maharashtra .. Respondent

**WITH
CRI. APPA.NO. 165 OF 2015
IN
CRI. APPEAL NO. 120 OF 2013**

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Shantabai Revaji Masal .. Applicant

IN THE MATTER BETWEEN:

Sitaram Dada Sarode .. Appellant

Vs.

The State of Maharashtra ..Respondent

....
Mr. Sitaram Dada Sarode – Applicant in person in
Cri. Application No. 1388 of 2017, 116 of 2018, 163 of 2018 and
659 of 2018 & appellant - respondent in Cri.Application No. 165
of 2015
Mr. Arfan Sait A.P.P. for the State
....

**CORAM : SMT.V.K.TAHILRAMANI ACTING C.J.
AND M.S.SONAK, J.**

DATED : JUNE 29, 2018

ORAL ORDER [PER SMT. V.K.TAHILRAMANI, ACJ.]:

1 By judgment and order dated 30.1.2012 passed by the learned Sessions Judge, Pune in Sessions Case No. 816 of 2018 the applicant was convicted under Sections 302 and 498-A of IPC. The applicant was sentenced to life imprisonment for the offence under Section 302 of IPC and for the offence under Section 498-A of IPC the applicant was sentenced to R.I. for two years and fine of Rs.500/- in default R.I. for three months. Being aggrieved by the said conviction and sentence, the applicant has preferred Criminal Appeal No. 120 of 2013 which is pending before this Court.

2 In the said pending appeal, the applicant has preferred Cri. Application No. 1388 of 2017 and has prayed that he may be allowed to remain present or to direct the jail authorities to keep him present before the Court for arguing his application i.e. Cri. Application No. 1388 of 2017 and to put his grievances before the Court.

3 In the said appeal, the applicant has also preferred Cri. Application No. 163 of 2018 before this Court and prayed that he be allowed to remain present or to direct the jail authorities to keep him present before the Court for arguing his application No. 1388 of 2017 or he may be allowed to argue on video conferencing.

4 In view of the fact that the applicant has been allowed to argue his case in person, the prayers made in Cri. Application No.163 of 2018 does not survive, hence, the said application is disposed of accordingly.

5 In the said appeal, the applicant has also preferred other applications i.e. Cri. Application Nos. 116 of 2018 and 659 of 2018 and made some grievances and stated that he is returning the paper-book to this Court which was supplied to him as per his request through jail on the ground that the said paper-book is still defective.

6 Heard applicant – Sitaram Dada Sarode in person and the learned A.P.P. for the State.

7 At the very beginning of the arguments, we indicated to the applicant that we are willing to hear his appeal immediately however, the applicant stated that he wants to argue Cri. Application No. 1388 of 2017 & Cri. Application No. 116 of 2018 first, hence, the said applications are being heard. The applicant specifically stated that he does not wish to press his other applications. We have already observed that Cri. Application No. 163 of 2018 is infructuous and is disposed of. Cri. Application No. 659 of 2018 is disposed of as not pressed. We may state here that Cri. Application No. 165 of 2015 has been preferred by the mother of the deceased for intervention in the appeal. We are not dealing with the same at this stage and it be heard with the appeal.

8 In Cri. Application Nos. 1388 of 2017 and 116 of 2018, the applicant has made some grievances. The first grievance is that some of the exhibited documents are found missing in the paper-book. In view of the grievance of the applicant, the learned A.P.P. went through the record of the case and stated that Exh. Nos. 78, 95, 99 and 100 which are

referred to in the evidence of PW Nos. 11, 13 and DW-1 are not part of the paper-book. This is reflected in the order dated 28.2.2018 passed in Cri. Application No. 1388 of 2017. There is reference to Exh. 95 in the evidence of PW 11. There is reference to Exhs. 99 and 100 in the evidence of PW 13 and there is reference to Exh. 78 in the evidence of PW 7 and DW 1. In view of the grievance of the applicant, we directed the office to annex Exh Nos. 78, 95, 99 and 100 to the paper-book. The same was to be done by 17.4.2018. It was further directed that copy of the paper-book be supplied to the appellant who was in Nasik Road Central Prison. After the paper-book with all these four exhibits included therein, is furnished to the applicant, the applicant would be called to this Court to hear him in person. The office was also directed to communicate this order to the applicant who was in Nasik Road Central Prison. Accordingly, fresh paper-book was supplied to the applicant with the aforesaid exhibits. However, the applicant did not accept the said paper-book and he sent the same back to this Court which this Court has received back on 4.4.2018. According to the applicant, two pages in the said paper-book were torn, hence, the paper-book is not a proper paper-book, hence, he has

returned the same. We may state that the said two pages are in fact not part of the paper-book. On going through the said paper-book, which was furnished to the applicant, we noticed that two pages referred to by the applicant, are letter forwarding the paper-book to the applicant and the second page is a copy of the order of this Court dated 28.2.2018. Both these pages were torn from the bottom side. In the said two pages 2 words have been found missing because of torn portion of the two pages. On going through the forwarding letter and the order dated 28.2.2018, it seen that all the material and relevant information was conveyed to the applicant and just one word from the forwarding letter and the order was cut-off. However, on going through the forwarding letter and order dated 28.2.2018 as allegedly received by the applicant, we find that the entire purport of the same was conveyed to him. We again asked the applicant if he wants to argue his appeal, we are ready to hear the same. However, he insisted that only his applications should be heard and decided and his appeal should not be heard. We also interacted with the applicant and made it clear to him that we will decide his application today and we will also hear his appeal on the coming Friday i.e. on 6.7.2018,

however, the applicant was not willing for the same. It appears that the applicant is adopting delaying tactics in order to prolong the hearing of his appeal. However, in view of the prayer made by the applicant, we are deciding his applications first.

9 As far as first grievance of the applicant is concerned i.e. the paper book is defective, fresh copy of the paper along with all Exhibits therein were given to the applicant, however, he returned the same. Today, also we gave him the paper-book but he did not accept the same. The prayer of the applicant was to prepare one single paper-book including all exhibits which was done and furnished to him. But as stated earlier, he has returned the said paper-book to the High Court and also refused to accept the fresh copy of the paper-books.

10 The second prayer of the applicant is that the name of advocate Shri. Choudhari which is found in the judgment of the trial Court as representing the applicant should be deleted and applicant's name be shown as having argued his case in person. According to the applicant, he had not signed Vakalatnama of advocate Shri. Choudhari and hence, the name of advocate Shri.

Choudhari ought not to be shown in the judgment of the trial Court. As far as this contention is concerned, Roznama of the trial Court dated 31.3.2011 shows that the case was adjourned for evidence of the complainant and witness and accused to attend the Court on the next date.

11 From the Roznama, it is seen that on 29.3.2011 the applicant preferred an application before the trial Court wherein he prayed that in order to be convenient for the accused to argue his case, "the accused be shifted from Yerawada Central Prison to Nasik Road Central Prison. On 31.3.2011, the case was adjourned for evidence of the witness of the complainant and the matter was adjourned to 5.4.2011. On 5.4.2011, again the case was adjourned for evidence of witness of the complainant and for the applicant to appoint advocate and the matter was adjourned to 7.4.2011.

12 On 11.5.2011, advocate Shri. S.M. Shah had filed Vakalatnama at Exh. 79. On 25.5.2011, advocate Shri. S.M. Shah filed Pursis at Exh. 82 for withdrawal of his Vakalatnama. In the Roznama dated 8.6.2011, it is reflected that the applicant

informed the trial Court that he could not engage a lawyer, hence, the trial Court observed as under:

“Accused is not represented by lawyer though he has cross-examined witnesses examined in the case. While cross examining witness No. 8 Shantanu Sarode, accused prayed for time for engaging lawyer. But he has not engaged lawyer to conduct the trial. It appears that since the day of arrest, accused is in jail. He is required to provide legal aid. Hence, the Secretary, District Legal Aid Committee, Pune is requested to provide lawyer to accused for defending him in this case”.

13 On the next date i.e. on 10.6.2011, as legal aid was not provided to the applicant, the case was adjourned to 15.6.2011. The Roznama of the trial Court shows that the applicant was provided with legal aid by appointing advocate Shri. Choudhari. The applicant refused to sign Vakalatnama, hence, the Court requested Advocate Shri. Choudhari to go through the earlier evidence recorded in the case and to prepare himself for cross-examination of witness No.8. The accused then requested that he would continue the cross-examination and thereafter Adv. Choudhari be allowed to cross-examine the witness, if needed.

14 Roznama dated 21.7.2011 shows that Medical Officer Dr. Taware's examination-in-chief was recorded. The accused was allowed to cross-examine the witness. Accordingly, the applicant - accused cross-examined the witness. During cross-examination, the applicant alleged that Dr. Taware (PW 10) was giving false evidence, hence, he refused to continue the cross-examination. The trial Court asked the applicant to complete cross-examination as there was no material brought on record to show that the Medical Officer was giving false evidence, however, the applicant deliberately stopped cross-examination of the witness. The Court then allowed appointed advocate Shri. Choudhari to assist the Court as the applicant refused to engage an advocate and refused legal aid, hence, advocate Shri. Choudhari continued cross-examination and completed it. Then the matter was adjourned for further evidence.

15 In fact, the applicant was heard at length by the trial Court. This is clear from para 11 of the judgment of the trial Court which shows that the trial Court heard learned A.P.P. on behalf of the State and the accused in person and learned advocate Shri. Choudhari who was appointed by the Court for

the accused. Thus, it is seen that the applicant himself got adequate opportunity to defend his case by cross-examining the witnesses and arguing his case himself and in addition, legal aid was also provided by appointing advocate Shri. Choudhari from legal aid panel to represent the applicant during the trial. In fact, the report shows that the applicant has cross-examined the witnesses in detail.

16 We may also state here that the Sessions Court was directed to complete the trial expeditiously. Thus, the matter was a "time bound" one and the Sessions Court had to complete the trial by 30.10.2011. The time period was then extended till 1.2.2012. On one side, it is seen that the applicant was prolonging the trial on baseless pretext one after another and on the other hand, he approached the High Court. As per the High Court Writ i.e. SR 1/1580/2011 as reflected in the Roznama dated 24.8.2011, after considering the prayer made by the applicant, the High Court directed the trial Court to complete the trial as expeditiously as possible and in any case, within a period of six months from 24.8.2011. The time period was then extended to 30.10.2011, which was later extended to

1.2.2012.

17 Thus, it is seen that as the applicant was not appointing an advocate, the trial Court appointed advocate from legal aid panel to assist the Sessions Court and to defend the applicant in the trial Court. It is in these circumstances, the name of advocate Shri. Choudhari is shown in the cause title of the judgment of the trial Court. Under these circumstances, we cannot find any fault at all with the trial Court for showing the name of advocate Shri. Choudhari as appearing for the accused during the trial and no case is made out for deleting the name of advocate Shri. Choudhari from the judgment of the trial Court. Hence, the prayer of the applicant that name of advocate Shri. Choudhari shown in the judgment of the trial Court, should be deleted, cannot be allowed, hence, it is rejected.

18 Thereafter the applicant stated that in the paper book there is Exh. 95A and Exh.95A was not part of the original paper-book. On going through the original paper-book, we find that Exh.95 was part of the original paper-book and in fact, Exh. 95A

is the photo copy of the Exh.95. It appears that as there are many Exhibits in this case i.e. more than 114 Exhibits, hence, due to inadvertence, photo copy of Exh. 95 came to be annexed again and numbered as Exh.95A. Hence, there is no substance in the grievance of the applicant that prejudice was caused to him.

19 The last grievance of the applicant is about Exh. 78. He states that there are two exhibits at Exh. 78, due to which, he has been seriously prejudiced. The son of the applicant by name Shantanu Sarode who was just 13 years old at the time of giving evidence was examined as P.W.8. He was an eye witness to the incident and he has stated that his father used to beat and abuse him, his sister and his mother. He has stated that on 30.8.2008, his father sent him out of the house for bringing thread and fevi-quick. He has stated that when he returned back, he saw his father pouring something from bottle on his mother and there was strong odour. He saw that his mother had injury on her head. The gown of his mother caught fire and his father (applicant) ran away. It is to be noted that thereafter in the evidence of DW 1, there is reference to the case papers (of Surya hospital). PW 7 Dr. Kamble was examined and his

evidence is marked as Exh. 76. Dr. Kamble was attached to Surya hospital at the relevant time i.e. in August, 2008. Dr. Kamble in his evidence, has made a reference to dying declaration of the wife of the applicant wherein she stated that her husband had thrown acid on her, due to which, she was burnt. She also stated that her husband assaulted her with sharp weapon on the head and thereafter he ran away. This statement is marked as Exh. 77. Dr. Kamble was cross-examined by the applicant and some medical case papers were shown to Dr. Kamble by the applicant. Pursuant to that, Dr. Kamble stated that the medical case papers now shown to him are of Surya hospital. These medical case papers are collectively marked as Exh.78. Thus, it is seen that in normal sequence those medical case papers of Surya Hospital which were referred to by the applicant in the evidence of PW 7 Dr. Kamble and brought on record, have been marked as Exh.78, however, it appears that due to inadvertence, the Bench Clerk forgot to mention exhibit number of the medical case papers of Surya hospital in the Roznama dated 3.5.2011. Thereafter, no other documents were exhibited during the evidence of Dr. Kamble, hence, it is clear that medical case papers of Surya

Hospital ought to have been marked as Exh.78 which was done but not mentioned in the Roznama. Immediately thereafter Shantanu the son of the applicant, was examined as P.W. 8 and his evidence was also given Exh.78 directly. Thus, it appears that it is a clear case of oversight that the case papers of Surya hospital were also exhibited at Exh. 78 and the evidence of son of the applicant is also given Exh. 78. This is a clear case of inadvertence and it cannot be said that it is a case of conspiracy on the part of any one to falsely implicate the applicant as alleged by him. In fact, the applicant has admitted that his son was examined during the trial and his son has deposed against him. The applicant stated before us that his son was in the custody of the relatives of his wife and hence, his son deposed against him. On one hand, the applicant stated before us that his son was never examined and the evidence of his son was interpolated only with a view to convict him and on the other hand he admitted his son was indeed examined and his son deposed against him for the above mentioned reason. The applicant made allegations against the staff of the Sessions Court that they have falsely interpolated Exh. 78 which is his son's evidence to ensure that he is convicted. It appears that

the applicant is in the habit of making baseless and wild allegations against every one. He also made allegations against the staff of this Court and the Registry alleging that they purposely with malafide intention kept back exhibits and have inserted Exh.95A. We may also state that the applicant stated that only if his applications are allowed, would he have faith in the Court and would then argue his appeal before the Court and if his application is rejected he would have no faith in the Court and would not argue his appeal before this Court. It is noticed from the tenor of the arguments of the applicant that he is in the habit of making wild and baseless allegations against everyone and is for some reason delaying the hearing of his appeal.

20 The applicant also submitted that he has been given only 1 paper book whereas according to learned A.P.P., there are 3 files which is reflected in the order dated 14.12.2017 that Exhs. 78, 95, 99 and 100 were found in file III. There is only 1 paper-book which is supplied to all and as per usual practice there are always 4 files i.e. A, B, C and D or I to IV. The first file contains the evidence which is recorded in English. Except for

the main city of Mumbai throughout the State, the evidence is also recorded in Marathi which is given separate file number. All original documents are annexed to the Marathi file. There is also another file which contains the police papers. Sometimes there is also a Misc. papers file. The evidence in the present case was recorded at Nasik, hence, it is recorded in English and Marathi language. Thus, it is not correct to say that there are 3 files and the applicant has not been given the remaining files.

21 Thus, on going through the allegations and grievances made by the applicant, we find that there is no substance therein. From the conduct of the applicant before the Court, we find that he is trying to adopt delaying tactics and does not wish to conduct his appeal.

22 Accordingly, Cri. Application No. 1388 of 2017 & Cri. Application No. 116 of 2018 are rejected. Cri. Application No. 165 of 2015 for intervention by the mother of deceased to be heard along with the appeal. In view of para 4 above, application No. 163 of 2018 is disposed of as infructuous. In view of para 7 above, Cri. Application No. 659 of 2018 is disposed of

as not pressed.

23 Office to place the appeal for hearing in regular course.

24 Office to communicate this order to the applicant who is in Nasik Road Central Prison, Nasik.

M.S.SONAK, J.

ACTING CHIEF JUSTICE