

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 32 OF 2018
IN
CRIMINAL APPEAL NO. 803 OF 2017

Ananda Ramchandra Patil ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr. Manas Gavankar for the applicant.

Mr. Arfan Sait, APP for the respondent State.

**CORAM : B.P. DHARMADHIKARI &
MRS.SWAPNA JOSHI, JJ.**

DATE : JULY 11, 2019

P.C.:

Heard for some time.

2. The conviction of the accused no. 1 is on circumstantial evidence. The circumstances like last seen, recovery of body of the deceased at the instance of accused no. 1, recovery of rope from accused no. 1 under section 27 of the Evidence Act and motive are relied upon.

3. The deceased happened to be brother of the victim in other crime in which husband of acquitted accused no. 3 was accused. As the deceased did not help that accused (husband of acquitted accused no.3), the prosecution claims that accused

no.3 (wife) employed services of accused nos. 1 and 2 to kill the deceased. Accused no. 3 stands acquitted.

4. The submission of the learned counsel for the applicant is 'last seen' has not been established since nobody has seen the deceased in the company of the accused. An unidentified body in decomposed state is claimed to be discovered under section 27 of the Evidence Act at the instance of accused no. 1. The cause of death cannot be ascertained by the doctors and even the identity of that body is in dispute. The prosecution witness PW 3 Sambhaji who is witness to arrest of accused no. 1 has in the cross examination deposed that on 03/01/2014 itself, they were told by IO that on the next day they would be required to go to forest to recover body of the deceased. The disclosure statement made by accused no. 1 allegedly disclosing the location of the body of the deceased is recorded on 4/1/2014. Learned counsel submits that in this situation accused no. 1 has spent more than 5 years in jail and there is no likelihood that the appeal will be decided in the near future.

5. Learned APP is strongly opposing the application. He points out that accused no.1 was not on bail during the trial. He invites attention to the evidence of PW 10 Dattatraya to show how the accused persons hired a jeep and then PW 10 happened to

board it. Though PW 10 did not know the deceased, he has disclosed how the deceased was made to sit in the jeep and then in the jungle under the pretext of going to some Jaggery Unit, both the accused persons and deceased left the jeep and proceeded in the forest. Only accused persons came back after about 45 minutes and when PW 10 made enquiries about third person, they told him that the third person had gone to stay with his relative. Later on PW 10 learned that the said third person is not traceable. These circumstances and phone call allegedly made by accused no. 2 posing himself to be one Kiran Patil, to the daughter of the deceased and the recovery under section 27 are strongly relied upon by the learned APP. He submits that the stray answer favouring the accused given by PW 10 in the cross examination cannot be given undue importance and the entire material must be appreciated.

6. The facts on record show that the identity of the occupant in the jeep with PW 10 along with accused persons as deceased has not been brought on record at all. The answer given by PW 3 in the cross examination fairly shows that he is witness to arrest pancahama and told the trial court that on that day he was aware that on the next day, i.e. on 04/01/2014, they have to go to jungle (forest) to recover the body. The disclosure statement

made by accused no. 1 is dated 4/1/2014. This fact that body was in the forest appears prima facie to be in the knowledge of IO on the day of arrest itself.

7. We therefore, find that the accused no. 1 is entitled to grant of interim bail in the following terms and conditions :

(a) The applicant shall execute personal bond in the sum of Rs.20,000/- before the trial court for proper behaviour and for remaining present on due dates before the Court in the present matter with two independent sureties in the like amount.

(b) He shall give address at which he shall always be available during the pendency of this appeal along with his contact numbers.

(c) Similar details in relation to his sureties shall also be furnished.

(d) He shall not in any way directly or indirectly attempt to contact or pressurize either complainant or any of the witnesses in the matter.

(e) He shall keep vakalatnama of his advocate alive and valid till the appeal is finally decided by this Court and shall not be entitled to any fresh notice at the stage of final hearing.

(f) He shall report to the Superintendent/Registrar of District & Sessions Court, Islampur on first working Monday in every two

months as a condition of his release.

(g) His failure to observe any of the terms and conditions shall entitle the respondent State to take him in custody forthwith.

(h) Application is accordingly allowed and disposed of.

(MRS.SWAPNA JOSHI, J.)

(B.P. DHARMADHIKARI, J.)