

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

**CRIMINAL APPLICATION NO.205 OF 2019
IN
CRIMINAL APPEAL NO.1262 OF 2018**

Parmeshwar Malleshi Khyadagi @ Parmeshwar
Gurulingappa Lachyan

...Appellant
(Orig. accd. No.1)

vs.

The State of Maharashtra

...Respondent

Mr. Vikrant V. Phatate for the Appellant.
Mr. H. J. Dedhia, APP for the State.

**CORAM : B. P. DHARMADHIKARI &
MRS. SWAPNA S. JOSHI, JJ.
DATE : 16/07/2019.**

P.C.:

. Heard learned counsel for the applicant and learned APP for the State. Applicant was accused along with two other persons and has been convicted for offence punishable under section 302 of IPC. Prosecution claims that he has aided murder of one Shivanand Lachhan, the father of PW-1. Trial Court has acquitted accused No.2 and 3.

2. Learned counsel for the applicant submits that accused Nos. 2 and 3 were charged with instigation as prosecution claimed that they were instigating present applicant not to vacate the premises of deceased. Learned counsel submits that there is no eye witness and the alleged offence has come to light after dead body was seen by some relative. Report was lodged by PW-2-Anuj after getting information on phone from his relative. He has stated that it was only on account of suspicion that he doubted applicant.

3. It is submitted that the present applicant was not seen by anybody on 13/8/2015 and the investigation papers show anomaly in relation to time of recording inquest and spot panchanama. If the time reflected is presumed to be correct, report of crime is received by police station long thereafter. Only because there was some dispute or quarrel of deceased with the present applicant, the applicant cannot be roped in the matter. PW-8 has not supported seizure of clothes on person of accused and recovery of knife under section 27 of the Evidence Act does not inspire confidence.

4. Learned APP points out that a day prior to incident the police had inquired from accused in relation to dispute with deceased. Deceased on that day had come from Solapur to Akkalkot and there he was murdered by present accused. He had concealed the knife under stack of woods in back side of his house and it was unearthed by him in presence of panch witnesses. It was found to contain human blood. Even clothes on his person were found to contain human blood.

5. In reply learned counsel for the applicant submits that the applicant is now 72 years old.

6. Motive or quarrel between parties by itself cannot be used as circumstance unless and until there is some other clinching evidence. Deceased had left his home on 13/8/2015 at about 9.00 a.m. and report of his death is received by PW-2 on same day at about 3.00 p.m. from some relative. Death has taken place at Akkalkot. There is no witness who has seen deceased and accused together at Akkalkot. However, it needs to be noted that accused resides at Akkalkot.

7. Inquest panchanama and spot panchanama both carry

reference to crime number, though actual report of crime is registered few hours after recording of these documents. Not only this, PW-8-Lokhande examined by prosecution to show recovery of blood stained clothes from person of accused has turned hostile. He was cross examined and he has denied suggestion given to him by learned APP. He has denied that accused was present in police station and police seized clothes in his presence. Arrest panchanama, does not mention that accused was wearing blood stained clothes at the time of his arrest. Investigating officer has admitted that arrest panchanama does not mention the fact that clothes of accused were having blood stains at the time of his arrest. Thus, seizure of blood stained clothes in this backdrop *prima facie* becomes doubtful.

8. In this backdrop when recovery of knife under section 27 of the Evidence Act is looked into, it is three days after the incident, Thus, recovery of knife by itself cannot in this situation be seen as clinching piece of evidence. Discovery under section 27 of the Evidence Act cannot be seen as substantive piece of evidence.

9. In this situation, we find the applicant entitled to grant of bail on following 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 Sessions Court, Solapur 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 S. JOSHI, J.)

(B. P. DHARMADHIKARI, J.)