

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

CRIMINAL APPLICATION NO.185 OF 2019

IN

CRIMINAL APPEAL NO.307 OF 2019

Amit @ Chimya Raju Rajput ... Applicant

Vs

The State of Maharashtra ... Respondent

WITH

CRIMINAL APPLICATION NO.1616 OF 2017

IN

CRIMINAL APPEAL NO.981 OF 2017

Shishupal Rahul Rathod ...Applicant

Vs.

The State of Maharashtra ..Respondent

...

Mr. Nikhilesh Pote for the applicant in APPA 185 of 2019.

Mr. Aniket Nikam i/by Mr. Ashish Satpute for the applicant in
APPA 1616 of 2017.

Mr. Arfan Sait, APP for the Respondent-State.

CORAM : B.P.DHARMADHIKARI &

SANDEEP K. SHINDE JJ.

DATE : AUGUST 20, 2019

P.C. :

Applicants/Accused Nos.1 and 2 seek bail. They have
been sentenced to life imprisonment by Additional Sessions Judge,

Pune in Sessions Case No.168 of 2015 on 31st October, 2017 after finding them guilty of the offence punishable under Section 302 of the IPC.

2 Respective counsels appearing for the applicants state that only on the basis of circumstance of the last seen and the alleged recovery under Section 27, the Trial Court has found them guilty in the matter. There was no motive to kill auto driver Vasant and as per the prosecution story, both applicants were passengers in his auto on 21st November, 2014 at about 10 pm and they were proceeding to Kewre Vasahat.

3 P.W.4, who has deposed on the last seen has stated that when Vasant was carrying accused persons to Kewre Vasahat, he came in his auto, stopped it and had a dialogue with the deceased Vasant for about 15 seconds. Then he saw accused persons whom he already knew by the face. Submission is, there was darkness and no arrangement for any light was in auto. Only source of light was meter and that too was not running. This person learnt about the identity and names of the accused persons afterwards.

4 It is further submitted that the jacket allegedly worn by accused no.1 was discovered at the instance of accused no.2 under Section 27. At that time, T shirt worn by accused no.2 is also claimed to be recovered at the instance of accused no.2 himself. A knife has been recovered from a mine in Kewre Vasahat. It was filled with water. Witnesses of these recoveries had turned hostile. Panchanama does not mention any blood stains on knife though C.A. Report shows human blood on knife and clothes.

5 It is stated that pancha witnesses and witnesses like P.W.4 have deposed because of pressure of police constable daughter of the deceased and his son.

6 The learned counsel for the accused no.2 invited our attention to the statement of the disclosure of accused no.2 and submitted that accused no.1 did assault the deceased with knife on neck as deceased intervened in quarrel between the accused nos.1 and 2. He points out that accused no.2 has already registered an FIR in this respect against accused no.1. He also points out that though Doctor examining accused no.2 has reported injury on right hand,

the Investigating Officer has sought opinion on injury on left hand of accused no.2 and medical officer could not give any opinion as there was no such injury.

7 The learned APP submits that in preceding parts though there was no motive qua deceased, it appears that some dispute arose between the two occupants of Auto on sharing the rent and the deceased intervened in it. He points out though accused no.2 has attempted to blame accused no.1 in disclosure statement and as also FIR, no cross-examination of any witness to further that defence has been conducted.

8 In the present facts, we do not find it necessary to delve more in to the facts. Admissibility of the disclosure made by the accused no.2 under Section 27 or then relevance of the FIR filed on 9th December, 2014 by him against accused no.1 in the matter can be considered and its impact evaluated while hearing the appeal on merits.

9 Discovery memorandum of knife, no doubt, does not mention any blood stains on it but the Chemical Analyser has found

human blood. Not only this on jacket, which has been recovered as of accused no.1 and on T shirt recovered as of accused no.2, human blood has been found.

10 In this situation, we find accused persons not entitled to bail. Hence, their applications are rejected.

(SANDEEP K. SHINDE, J.)

(B.P.DHARMADHIKARI, J.)