

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 193 OF 2019
IN
CRIMINAL APPEAL NO. 189 OF 2019

Byatrya @ Krushna Sadanand Chandwadkar ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr. Hrishikesh Mundergi i/by Shradha Sawant for the applicant.

Mr.J.P. Yagnik, APP for the respondent State.

CORAM : B.P. DHARMADHIKARI &
SMT.SWAPNA JOSHI, JJ.
DATE : JUNE 27, 2019

P.C.:

Accused no.2 seeks release on bail. He has been convicted under section 302, 394 and 201 IPC.

2. Submission is three witnesses examined to show that accused nos.1 and 2 were drinking liquor together at the place where body of the deceased was subsequently found have turned hostile. It is submitted that this evidence in any case cannot be viewed as evidence of last seen as nobody has seen the deceased with accused persons.

3. It is further pointed out that there is no other evidence which puts accused nos. 2 and 1 together at that time.

4. The recovery of blood stained sickle under section 27 of the Evidence Act from accused no. 2 is challenged by pointing out that the witnesses examined as panch accepted that in disclosure panchanama, the spot from which the recovery was done has not been mentioned. It is further submitted that the grouping of blood on that weapon has not been successful.

5. Inviting attention to the circumstance of recovery of cloths from accused no. 2, it is submitted that blood found on it is not shown to be of deceased and though effort was made to urge by the prosecution that after alleged murder, accused persons tried to burn and destroy the body, no material on record has been brought to support it. Thus a burn hole on the T shirt of accused no. 2 has not been explained.

6. Lastly it is submitted that the recovery made from accused no. 1 cannot be correlated and used against accused no. 2. The alleged recovery is of two wheeler used by the deceased and on that account, no finding can be recorded against accused no. 2.

7. Learned APP submits that the deceased left place of his employment at late hours in the night. His body was found at the spot and investigation then revealed that the accused persons were drinking liquor at that place. After further investigation and interrogation, material sufficient to connect the

accused persons with the crime has been produced before the trial court.

8. Our attention is invited to the fact that the stone used as murder weapon was found on spot while iron sickle has been discovered under section 27 at the instance of accused no. 2. Accused no. 2 also led the investigation team to his house and there he surrendered blood stained cloths on which burn hole was found. Learned APP adds that at this juncture, contention that the recovery of two wheeler of deceased from accused no. 1 cannot be seen as an incriminating circumstance, cannot be accepted.

9. He further states that at the time of arrest, accused no. 2 had injury and that injury has not been explained.

10. The conviction is based upon circumstantial evidence. Police traced out the accused persons because according to three witnesses accused persons were drinking liquor together at the place where the body of the deceased was found. Further investigation has thereafter been carried out. Though the witnesses who mentioned seeing accused persons together drinking at the place have turned hostile, the witnesses on recovery under section 27 have stood firm. The blood stains on cloth of accused no. 2 are of human blood and accused no.2 has

not explained it in any manner. The Government servant was witness to recovery of sickle who also supported the prosecution and that sickle has human blood stains.

11. In this situation, we are not inclined to accept the contention that at this stage, no association can be seen between the accused no. 1 and 2. The two wheeler of the deceased has been recovered at the instance of accused no. 1.

12. In the result, application is rejected.

(SMT.SWAPNA JOSHI, J.)

(B.P. DHARMADHIKARI, J.)