

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

**CRIMINAL APPLICATION NO.506 OF 2019
IN
CRIMINAL APPEAL NO.467 OF 2019**

Madurai @ Madra Devendra Mariappan

...Applicant/Appellant

vs.

The State of Maharashtra

...Respondent

Mr.Sandeep Pasbola a/w. Mr. Rahul Arote for the Applicant/Appellant.
Mr. J. P. Yagnik, APP for the Respondent.

**CORAM : B. P. DHARMADHIKARI &
MRS. SWAPNA S. JOSHI, JJ.
DATE : 7/8/2019.**

P.C.:

. Out of total 4 accused persons accused Nos.3 and 4 have been acquitted, accused No.2 has been punished under section 201 of IPC for washing of blood stained footrest from car.

2. Accused No.1 convicted under section 302 of IPC is before this Court for grant of bail. Submission is conviction is based on circumstantial evidence. Only motive is of some dispute between deceased and brother of accused No.4. Accused No.4 is already acquitted. Story that deceased had received a phone call from accused No.1 to meet him and therefore deceased left his residence for that purpose as narrated by the wife of deceased (PW-16) is not borne out from CDR. PW-2 has been introduced to bring on record last seen. He claims that the deceased had invited him to Costa Coffee Shop and accordingly he was waiting there. He saw deceased arriving on the other side of the road opposite said shop. From said spot he

gave a phone call on mobile to PW-2 and informed him that he would go with accused No.1 to Juhu side and return within 10-15 minutes. PW-2 claims that he saw accused No.1 as also the deceased. Deceased then boarded white colour scorpio vehicle which was driven by accused No.1 and then both left in the direction of Juhu. Some time thereafter at Costa Cofee shop, PW-2 claims that he heard news of murder of deceased. PW-2 claims that then he called one Harish Pawar and thereafter PW-3.

3. Contention is the call exchanged between parties deciding to meet at Costa Coffee shop are not on record. Call allegedly made by PW-2 to Harish Pawar is also not on record and call made by PW-2 to PW-3 is at about 5.43 p.m.

4. It is submitted that at 4.27 p.m. deceased had made a call on mobile of PW-2. Contention is if both were to meet at Costa Coffee shop and had actually met, this call was unnecessary.

5. Circumstance of finding human blood on mat in the car is challenged by pointing out that the car is shown to be discovered under section 27 of the Evidence Act, 2 days after the arrest of accused No.1 on 23/8/2014 itself. PW-15 watchman however has deposed that car was removed by police on the same day in the evening. It is further submitted that accused No.2 has been convicted under section 201 of IPC for washing that car in an attempt to remove blood stains from it. If blood stains are removed it is incredible that blood stained knife and clothes were left behind in the car.

6. It is further said that the trial Court has found that accused has not given explanation regarding injury on his palm. After arrest when accused No.1 was sent for medical examination, Doctor did not notice any

such injury as such no explanation was required.

7. Learned APP is opposing release on bail. He states that because deceased was on the other side of the road and accused No.1 came there and deceased decided to go with accused No.1 at 4.27, he made phone call to PW-2 and informed him about his plan. PW-2 has deposed that he has seen accused No.1 getting out of car and then both boarding it and leaving together. The contention that information of call made by accused No.1 to deceased is not borne out from CDR is also challenged urging that it was not necessary for wife of deceased to give incorrect information.

8. It is pointed out that PW-15 security guard was declared hostile and as such his evidence that car was taken by police in their custody on 23/8/2014 itself cannot be accepted. Discovery under section 27 of the Evidence Act of clothes and knife with blood group "O" which is blood group of deceased therefore must be given due weightage.

9. Submission is in this situation the judgment of conviction is well reasoned and no case is made out for bail.

10. It is not in dispute that accused No.1 was not on bail during trial.

11. PW-16 claims that in the afternoon when deceased was having food, he received a phone call from accused No.1 and he went to meet accused No.1. Story of prosecution shows that deceased was scheduled to meet PW-2 at Costa Coffee shop and accordingly PW-2 was waiting for him and deceased after getting down on the other side of road opposite Costa Coffee shop informed PW-2 on mobile that he would go first with accused No.1 who had then arrived at that place. This PW-2 claims that he saw

deceased occupying a white colour scorpio car which was brought there by accused No.1 and then both leaving in the direction of Juhu.

12. The call made on 4.27 p.m. by deceased to PW-2 is supported by CDR. However, the later call made by PW-2 to Harish Pawar immediately after getting knowledge of murder is not supported by any CDR. Call made by him to PW-3 is more than one hour after the alleged murder i.e. at 5.43 p.m.

13. PW-15-Mr.Bhola Qushwaha, security guard has on oath stated that white car was removed by police in night on 23/8/2014 itself. PW-2, if a witness on last seen, ought to have definitely informed police about said car brought by accused No.1 and might have also given description of that car. Police therefore might have taken car in their possession immediately on that day. Story that the car was taken in possession after section 27 disclosure by accused therefore prima facie appears unbelievable.

14. Conviction of accused No.2 under section 201 for washing out blood stains from the car is not in dispute. We therefore find it difficult to believe that blood stained clothes and knife were then left behind in the car.

15. The circumstance of accused No.1 not explaining injury on his palm accepted by trial Court is again not acceptable. The trial Court has observed that purpose of medical examination of accused is only to find out whether he is subjected to any torture by police. When medical officer did not notice any such injury there is no question of accused No.1 tendering any explanation about it.

16. In this situation, taking overall view of the matter we find

accused No.1 entitled to bail on 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 Sessions Court, Mumbai 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.)