

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.531 OF 2019

IN

CRIMINAL APPEAL NO. 282 OF 2019

Ravji Topale and anr. ... Applicants

Versus

State of Maharashtra ... Respondent

Mr. H.E. Palwe I/by Ms. Rukmini Khairnar for the Applicants.

Mr.Arfan Sait, APP for the respondent State.

**CORAM : B.P. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.**

DATE : APRIL 30, 2019

P.C.:

The applicants are convicted by the judgment dated 2/1/2019 under section 302 for committing murder of one Sahadu Amruta Topale. The Trial Court has looked into and found following events and held that these events constitute a chain and indicated the applicants only as accused persons.

- (i) Both accused and deceased last seen together.
- (ii) Motive – dog of deceased bite to accused no. 2 Subhash Topale therefore, they killed the dog and on questioning by deceased, committed his murder.

(iii) dog-bite on right calf of A-2.

(iv) recovery of wooden stick and blood stain cloths of accused at the instance of A-2.

2. Perusal of evidence of PW 6 Navsu Fasale shows that the deceased had been to his shop at about 5.00 pm when Sahadu was consuming liquor. Both the accused persons also entered his shop. Sahadu then left for his village and thereafter accused persons also left. He then heard call from Sahadu to come to his rescue as his dog was killed. He therefore, rushed out but then could not find anything there. On the next day, Deonath PW 1 who happens to be the son of Sahadu came to him and enquired.

3. This evidence therefore, does not show that the accused persons and deceased were seen together. PW 1 Deonath states that the incident has taken place on 3/3/2015. Holi was celebrated on 5/3/2015 and as his father was not present, he went to PW 6 to make enquiry. According to him his mother told him that on 3/3/2015 the deceased had gone to hut of PW 6 at Ganga Mhalungi Shivar for consuming liquor. He has lodged the FIR on 6/3/2015.

4. The date on which the deceased came to shop/hut of PW 6 is not certain. Whether the dog of the deceased was killed by the

accused persons because it had bitten the accused no. 2 is also not certain. The incident of dog bite itself has not been established with any convincing evidence and the Investigating Officer has pointed out that the death of dog was not being proved by any cogent evidence.

5. Learned APP however, has pointed out to us the post mortem report. He is seeking time to find out whether that post mortem report was produced before the trial court. It is not in dispute that in the judgment delivered by the trial court, there is no reference to such report of post mortem of dog. Doctor then conducted post mortem of deceased wherein in paragraph 4 deposed that on the request of police he issued medical certificate showing that he examined the accused no.2 and treated him for dog bite. However, in cross examination, he accepted that no signature of accused no.2 was obtained by him to prove that the accused no.2 was treated on that day.

6. In this situation, we find at least at this stage that accused persons are entitled to grant of bail. It is to be noted that they were on bail during the pendency of the trial.

7. Accordingly we direct their release on bail subject to their furnishing bail bonds in the sum of Rs. 15000/- each and

separate surety also in the same sum for their appearance before this court as and when required and to abide by the terms and conditions of this order.

8. They shall also give their addresses at which they always be available during the pendency of the appeal with their contact numbers.

9. They shall mark their attendance on every first working day after the period of two months with the Superintendent/Registrar of Trial Court at Nashik during the pendency of the appeal.

10. They shall also keep vakalatnama of their advocate filed on record alive during the pendency of this appeal and shall not be entitled to any fresh notice of final hearing in the matter.

11. Failure to observe the terms and conditions of this order shall entitle the trial court to take the accused persons in custody.

12. Criminal Application is accordingly allowed and disposed of.

(PRAKASH D. NAIK, J.)

(B.P. DHARMADHIKARI, J.)