

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.560 OF 2019
IN
CRIMINAL APPEAL NO.398 OF 2016

Rashid Anis Pawale	... Applicant
Vs.	
The State of Maharashtra	... Respondent

Shri Meghashyam K. Kocharekar, advocate for the applicant/appellant.
Shri Arfan Sait, APP for the State.
PSI S. N. Chaudhari, Crime Branch, Unit-II, Bhiwandi.

CORAM : B.P. DHARMADHIKARI AND
MRS. SWAPNA S. JOSHI, JJ.

DATE : 5th AUGUST 2019.

P.C. :

1. Learned counsel appearing for the applicant/accused No. 1 seeks parity on the basis of the order dtd.13/02/2019 passed by this court in Criminal Application No.640 of 2016. Contention is observations therein squarely apply to the case of the present applicant, who happens to be accused No.1.

2. Without prejudice, it is submitted that with motive gone, in a case based on circumstantial evidence, the prosecution could not establish presence of accused No.1 at the spot. Contention is even time of death has not been established. As strangulation is cause of death, alleged finding of bloodstains on clothes or hand gloves is itself an indication of some

manipulation. Recovery under section 27 of the Evidence Act is also assailed by pointing out that no CCTV footage from said shop to prove actual visit and taking in custody of the ornaments has been produced. Our attention is invited to the deposition of defence witness, daughter of deceased, aged about 14 years, to urge that the investigating officer had collected the articles from residence of the accused No. 2, and then managed a farce of recovery under section 27 of the Evidence Act. The defence has been actually put to PW-20, the investigating officer.

3. Learned APP is strongly opposing the release. He points out that on 13/02/2019, the details were not pointed out to this court. PW-4 and PW-6 both show presence of all three accused persons at the spot. Not only this, the stolen articles from the house of the accused No. 2 were found in the shop of his brother at the instance of the present applicant, when he made a discovery under section 27 of the Evidence Act. It is submitted that the examination of the defence witness does not derogate in any way from said recovery.

4. It is pointed out that the accused No. 1 also disclosed preparation/purchases made by him for commission of offence and those establishments were visited and necessary evidence has been collected. The deceased had abrasions, which revealed bleeding injuries and explains bloodstains on hand gloves and clothes of the accused persons.

5. After hearing respective counsels, we find that various facts, to which our attention has been invited now, could not be pressed into service on 13/02/2019, and hence, that order on Criminal Application No.640 of 2016 cannot be looked into for finding out parity.

6. The evidence of defence witness shows collection of some material

from her home, however, identity and description of stolen articles was already there and those articles were found, according to the prosecution, in the shop of brother of accused No. 2. Accused No. 2 happens to be husband of deceased and he conspired with accused No. 1 and accused No. 3 to eliminate her. In the order dtd.13/02/2019, this conspiracy is found not borne out because of mutually inconsistent observations in its judgment by the trial court.

7. PW-4, who happened to pass the spot, has seen accused persons together. PW-6 also has deposed on same lines. It is true that they have surfaced as witnesses after almost three days.

8. Apart from recovery of stolen property, the investigating officer has brought on record the evidence to show purchase of clothes, hand gloves, rope, etc., by accused No. 1 for commission of crime.

9. Though, certain observations of trial court cannot be countenanced, we at this stage do not find that material to connect the accused No. 1 with the crime is lacking. No case is, therefore, made out.

10. Criminal Application is rejected.

11. As accused No. 1 is in jail and has put in about 9 years, we direct the Registry to add the appeal to final hearing.

(MRS. SWAPNA S. JOSHI, J.)

(B.P. DHARMADHIKARI, J.)