

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 995 OF 2019
IN
CRIMINAL APPEAL NO. 553 OF 2019

Tejaswir Raosaheb Gulab Zende @ Kiran ... Appellant

Versus

The State of Maharashtra ...Respondent

Mr. Gaurav Bhawanani i/by Khan Abdul Wahab for the appellant.

Mr.H.J. Dedhia, APP for the State.

CORAM : B.P. DHARMADHIKARI &
MRS.SWAPNA JOSHI, JJ.
DATE : JULY 30, 2019

P.C.:

Original accused no. 4 convicted under section 302 read with section 149 IPC along with four others is seeking bail. Learned counsel submits that the conviction is based upon unacceptable testimony of PW 1 Ravi. He also takes us through relevant evidence to urge that the trial court found it safe to convict only those who were identified by PW 1 Ravi as also PW 4 hotel manager. Though PW 4 claims that he identified accused no. 4 in TIP, it has come on record that accused no. 4 was shown to him prior to TIP and PW 4 could not identify accused no. 4 in court. PW 1 happens to be a chance witness who had apparently

no reason to go to hotel Nilam to witness the incident. In the morning, accused no.1 allegedly had quarrel with him and in it deceased had intervened and saved PW 1. Therefore, he has deposed in favour of the deceased.

2. Learned APP submits that the alleged showing of accused no. 4 to PW 4 before TIP is not a fact brought on record. He further submits that accused no. 4 made disclosure statement in pursuance of which panch witness and police team visited the spot to find out cloths and knife. He states that PW 1 has deposed that after taking lunch when he came out of his house in the afternoon, he watched the incident in hotel.

3. The trial court has found that the cloths and knife has been recovered at the instance of the present applicant. however, it is clear that the panchanama does not support it and there is no recovery at all. The statement made by accused no. 4 if accepted, was to the effect that the cloths and knife was thrown by him in the dustbin. In the concerned dustbin nothing was found.

4. In so far as the identification in TIP is concerned, in

paragraph 11 of cross examination, PW 4 has accepted that he was shown accused in police station and he identified that person in examination in chief. Learned APP submits that thus accused no. 4 was shown after TIP and before recording of examination in chief in court. Learned counsel for accused no. 4 submits that at that time, there was no question of accused no. 4 continuing in police custody. We find substance in the contention of the learned counsel for the applicant. Not only this, after TIP, there was no need to show accused no. 4 to PW 4 in police station.

5. Therefore, prima facie it appears that accused no. 4 was shown to PW 4 in police station before TIP.

6. The role attributed to present applicant is of kicking the deceased Arjun after he fell down. Accused nos. 1 to 3 have used some weapons. Neither PW 1 nor PW 4 indicate use of any weapon by accused no. 4.

7. The trial court itself has found it unsafe to rely upon the testimony of only PW 1 or only PW 4. It has therefore, acquitted the remaining accused persons.

8. In this situation, when we find the evidence of PW 4 not

acceptable, we are inclined to release the applicant on bail during the pendency of the appeal 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, Greater 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 JOSHI, J.)

(B.P. DHARMADHIKARI, J.)