

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1369 OF 2018  
IN  
CRIMINAL APPEAL NO. 457 OF 2017

Chidanand Hanmant Konur. ... Applicant.  
V/s.  
The State of Maharashtra. ... Respondent.

Mr. Prosper D'Souza, advocate appointed for the applicant.  
Ms. P. P. Shinde, APP for the respondent- State.

CORAM : A.S.OKA AND A.S.GADKARI, JJ.

DATE : 6<sup>th</sup> March 2019.

P.C. :

Heard the learned counsel appointed to espouse the cause of the applicant. By the impugned judgment and order which is subject matter of challenge in the appeal, the applicant has been convicted for the offence punishable under section 302 of Indian Penal Code (for short "IPC") for committing murder of a woman and a child. The case rests on circumstantial evidence. One of the main circumstances pleaded is of last seen together on the basis of evidence of PW3- Shrikant Suryawanshi. The other circumstance forming part of the chain is seizure of hammer which is the alleged weapon used in the offence at the instance of the applicant and seizure of blood-stained clothes on the person of the applicant.

2. Our attention is invited to the evidence of PW3. According to his case, on 5<sup>th</sup> June 2014 at about 12.30 pm, the applicant- accused came to his hotel on a motorcycle. He parked his motorcycle on the road. He was accompanied by a woman and a child. He purchased one bottle of beer. He drunk half of the bottle and thereafter went near the motorcycle. The said witness states that thereafter he saw the applicant proceeding towards Jalihal Road along with the woman and child. He claims that on the next day, in the morning around 10.30 am, he went to the spot where bodies of the deceased were found and he felt that the deceased woman and child had come to his hotel earlier day along with the man who purchased beer. In the cross-examination, he admitted that when the Police came to his hotel, he informed the Police that he was not aware about anything about the incident. He accepted that on seeing the dead bodies he did not contact the Police. In fact, in the examination-in-chief, he accepted that when the Police called him for inquiry, he refused to identify the dead bodies and, because he felt guilty, he went to the police station on 11<sup>th</sup> July 2014. Thus, the witness claims that though he saw the dead bodies on 6<sup>th</sup> June 2014 and he felt that the dead bodies were of the woman and child who accompanied the man who visited his bar/hotel on earlier day, he kept mum for about five weeks. Moreover, in the cross-examination, he accepted that he did not see the complete face of the person who came on motorcycle to purchase beer. He also accepted that he did not see the woman and the child from a close distance. He has not given the details of the motorcycle.

3. Prima facie, it appears to us that the case of last seen together cannot be believed. It is a very important circumstance forming part of the chain of circumstances pleaded by the prosecution. As far as weapon of assault is concerned, it was lying at the close distance of the bodies of the victims as found by the PW5.

4. Hence, a prima facie case is made out to enlarge the applicant on bail. The applicant is in custody from 9<sup>th</sup> June 2014.

Accordingly, we pass the following order:

O R D E R

- (i) Pending the hearing and final disposal of the appeal, the substantive sentence imposed upon the applicant vide judgment and order dated 21<sup>st</sup>/24<sup>th</sup> January 2017 passed by the learned Sessions Judge, Sangli in Sessions Case No.191/2014 shall stand suspended and the applicant shall be enlarged on bail in the sum of Rs.15,000/- with one or two local solvent sureties to make up the said amount;
- (ii) The applicant is granted bail subject to the condition that the applicant reports to the concerned trial Court on every first Monday of January and July of every calendar year at 11.00 a.m. till the disposal of appeal. If such Monday is a Court Holiday, the applicant shall report to the concerned trial Court on the next immediate Court working day;
- (iii) In the event the applicant commits default in marking attendance before the trial Court as directed above, the said Court shall forthwith submit a report to this Court through the Registrar

(Judicial-I) who, in turn, shall place the said report before the appropriate Division Bench for necessary orders;

- (iv) Application is disposed of on the above terms.
- (v) A copy of this order shall be forwarded to the applicant to the Jail Superintendent of the concerned jail.

(A.S.GADKARI, J.)

(A.S.OKA, J.)