

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1384 OF 2019
IN
CRIMINAL APPEAL NO. 679 OF 2016

Mehboob Kasam Shaikh and anr. ... Applicants

Versus

Union Territory of Dadra and Nagar Haveli ... Respondents

Mr. C.R. Mishra a/w Mr. Pradeep Dubey i/by Mr. Shyam Keswani
for the applicants.

Mr.H.S. Venegaonkar a/w Mr. A.L.Bhise for the respondents.

CORAM : B.P. DHARMADHIKARI &
SANDEEP K. SHINDE, JJ.
DATE : OCTOBER 17, 2019

P.C.:

Heard Adv Mishra for the applicants and Mr. Venegaonkar
for the respondents. Perused the papers.

2. Mr. Mishra, learned counsel for the applicants has fairly
invited our attention to the earlier order dated 21/8/2018 and
pointed out that a liberty was given to the applicants to move a
fresh application for bail. In exercise of that right, the present
application has been moved. The applicants have put in more
than five years behind the bars as of now and as such even in
view of this period, their application for bail needs proper

consideration.

3. He submits that the incident was noticed first by PW 4, who informed the same on phone no. 108 for ambulance and intimated that it was a vehicular accident. The person in-charge there has accordingly transmitted the message to the Control room. The Control room however, with some other motive had made the entry of murder.

4. He further states that even in post mortem, there is no material to show that it cannot be a vehicular accident. As there are no eye witnesses, learned counsel submits that the motive assumes importance and here the motive has not been properly established. The conviction is based mostly on the confession which cannot be accepted.

5. For that purpose, he has taken us through the chronology of entries in the station diary to urge that as recorded in the station diary at 8.39 hrs, two accused persons had reported at police station at 7.45 hrs only. He submits that even if this position is presumed to be correct, no action in accordance with law was taken. Our attention is drawn to the fact that in FIR, the time of receiving the information in police station has been recorded as 12.42 hrs.

6. Mr. Venegaonkar submits that the liberty given by this court

on 21/8/2018 is after passing the order on merits and after holding that the bail could not have been granted. No fault can be found in that order on the strength of the arguments advanced as this court is not hearing the appeal against that order. He adds that during this period of one year, no change in circumstances has been pointed out so as to enable this court to re-examine the controversy.

7. He relies upon the report of post mortem to show that the stab injuries on neck and the resultant hemorrhagic shock and cardio respiratory arrest are found to be cause of death. He submits that the material on record does not support any theory of vehicular accident.

8. In reply Mr. Mishra submits that this court has on 21/8/2018 given liberty and that liberty permits the applicants to move a fresh application for fresh consideration. He further states that the expiry of one year and completion of five years behind the bars, itself is a relevant changed circumstance & he relied on the judgment of Hon'ble Apex Court in the case of Akhtari Bi Vs. State of MP reported at AIR 2001 SC 1528.

9. We have heard the arguments and perused the papers. PW 4 has deposed that he saw the vehicle and a person lying by the side of the road and felt that it was vehicular accident. The

communication accordingly by him therefore, does not mean that it cannot be vehicular accident or a murder. In any case, the impression of a witness cannot change the nature of death. Whether it is a homicidal or accidental has to be determined after investigation. Hence, the entries taken in the station diary by itself are not conclusive.

10. The autopsy report shows stab wounds and hemorrhagic shock leading to cardio respiratory arrest. The prosecution is relying upon the weapons which have come on record during the investigation to urge that the wounds are caused by said weapons.

11. The order of this court dated 21/8/2018 in paragraph 4 looks into the merits briefly and concludes that sufficient evidence was brought on record to show involvement of the applicants.

12. The arguments have been advanced to show that the cloths of accused persons or the knife allegedly recovered under section 27 of the Evidence Act or the confession cannot be relied upon to return the finding of guilt. Though the arguments may sound attractive, at this stage, we cannot appreciate the evidence threadbare. The accused persons have already completed five years behind the bar. We therefore, direct the

Registry to add the appeal to final hearing board and dispose of the Criminal Application.

(SANDEEP K. SHINDE, J.)

(B.P. DHARMADHIKARI, J.)