

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 3759 OF 2019
IN CRIMINAL APPEAL NO. 1215 OF 2019**

Pradeep s/o Premnath Kawathe
Age : 33 years, Occ: Nil,
R/o Nalwadil, Tq. Omerga,
Dist. Osmanabad
(C-8608)

... Applicant

Vs.

The State of Maharashtra
Through PP High Court Bench
at Aurangabad

... Respondent

...

Advocate for Applicant : Mrs. S. G. Chincholkar
APP for Respondent – State : Mr. K. S. Patil

...

**CORAM : RAVINDRA V. GHUGE
AND
B. U. DEBADWAR, JJ.**

**RESERVED ON : 15th JANUARY, 2021
PRONOUNCED ON : 27th JANUARY, 2021**

JUDGMENT [PER: B. U. DEBADWAR, J.]:

1. This is an application under Section 389(1) of the Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.) for suspension of sentence and bail.
2. Being aggrieved by the judgment and order dated 08-05-2018, passed by the learned Additional Sessions Judge, Omerga, in Sessions Case No. 14 of 2016, whereby the applicant has been convicted under Section 235(2) of Cr.P.C. for the offence

punishable under Section 302 of the Indian Penal Code and sentenced to suffer life imprisonment and pay fine of Rs.5,000/-, in default, simple imprisonment for three months, applicant has preferred the appeal and moved this application for suspension of sentence and bail.

3. Facts of the case in short are that, deceased Kamlakar Manik Kawathe and applicant both are resident of village Nalwadi, Tq. Omerga, District Osmanabad. Marriage of the applicant was not performed, though he had crossed 30 years of age. There was suspicion in his mind that deceased Kamlakar knows black magic and he has practiced black magic on him, and therefore, his marriage was not being settled. Out of the said suspicion, in the intervening night of 12-05-2016 and 13-05-2016, applicant went to the field of deceased Kamlakar with a solid wooden log and committed his murder by giving blow of the said wooden log on his head. The blow was so severe that after assault it was broken down in two pieces. At the time of assault deceased Kamlakar was asleep in the cattle shed. Soon after killing Kamlakar, applicant left the field along with piece of broken wooden log in his hand and reached to the village Nalwadi. After reaching to the village, first of all he had telephoned Shivram Surwase (PW6) and informed him about the aforesaid incident and then to other villagers including Sadna Dasme (PW4), who at that time had come to the public

borewell of village to fetch the water. While disclosing Shivram Surwase (PW6) about the incident, applicant had requested him to inform the same to Motiram Manik Kawathe (PW2), elder brother of deceased Kamalakar Kawathe. Accordingly, Shivram Surwase rushed to the house of Motiram Kawathe (PW2) and informed him about the incident, which he has heard from the applicant himself.

4. In pursuance of that information, Motiram Manik Kawathe (PW2) along with some of the villagers rushed to the field of deceased Kamlakar. On reaching there, he noticed Kamlakar lying dead in the cattle shed with profuse bleeding due to severe head injury. He had also noticed, piece of the wooden log, stained with blood, lying near the dead body of deceased Kamlakar. After confirming the death of Kamlakar due to severe assault, Motiram Kawathe (PW2) returned back to village with the persons accompanied with him and saw the applicant sitting on the platform near the public borewell holding remaining piece of the wooden log, stained with blood.

5. In pursuance of the information received from villagers, police officials of Murum Police Station rushed to the village Nalwadi, after taking entry of the same in Station Diary No.134 of 2016 vide Entry No.3, and visited the spot. After verifying the situation, first of all they drew the spot panchanama and then drew

the inquest panchanama of the dead body of deceased Kamlakar. They, forwarded the said dead body to Rural Hospital, Omerga for postmortem.

6. Meanwhile at about 08:35 a.m. on 13-05-2006, Motiram Kawathe (PW2), elder brother of deceased Kamlakar lodged the FIR. On the basis of that FIR, crime bearing Cr. No. 48 of 2016, for the offence punishable under Section 302, came to be registered against the applicant. During the course of investigation, applicant was arrested. His medical examination got conducted from Medical Officer. The piece of wooden log used as a crime weapon, which he had carried with him, and his clothes, having blood stains, were attached. Statements of material witnesses were recorded. Articles seized from the spot and the applicant were sent to forensic lab for examination. Postmortem report and medical certificate of the applicant were collected and after completion of investigation applicant was charge-sheeted.

7. After framing the charge under Section 302 of Cr.P.C. on 19-06-2017 (Exhibit-9), learned Sessions Judge, Omerga conducted the trial and held the applicant guilty for the offence punishable under Section 302 of Cr.P.C. and sentenced him as stated above.

8. Heard Mrs. S. G. Chincholkar, learned advocate for the applicant and learned APP for the respondent – State.

9. Case of the prosecution is based on extra judicial confession and circumstantial evidence. To prove the case, prosecution has examined as many as eight witnesses. Postmortem report (Exhibit-20) proved in the evidence of Dr. Dinkar Narayan Joshi (PW1), Medical Officer, who conducted postmortem on the dead body of deceased Kamlakar demonstrates that he died due to assault. Dr. Dinkar Joshi (PW1) in his evidence (Exhibit-19) not only stated that the head injury suffered by deceased Kamlakar was possible by the wooden log like muddemal wooden log broken into two pieces, when shown, but also stated that the head injury suffered by the deceased Kamlakar was sufficient to cause death in ordinary course of nature.

10. Medical certificate (Exhibit-26) proved in the evidence of Dr. Vasant Babre (PW3) makes it clear that applicant had not suffered any injury (bleeding or not bleeding).

11. Evidence of Sadna Baburao Dasme (PW4) and Shivram Surwase (PW6), evidences that immediately after the incident, applicant had informed them about the murder of deceased Kamlakar, which he had committed. CDR report (Exhibit- 55 to 58) along with certificate issued under Section 65(B) of the Indian Evidence Act, issued by the Nodal Officer (Exhibit- 55 and 55A), corroborates to the evidence of Shivram Surwase (PW6), that he

received call on his mobile phone from the mobile phone belonging to the applicant and on the phone applicant informed him about the incident, more particularly, act of murder of deceased Kamlakar committed by him.

12. Nothing is brought on record through the cross examination of Sadna Dasme (PW4) and Shivram Surwase (PW6) on the basis of which their evidence can be discarded at this juncture.

13. Evidence of Motiram Kawathe (PW2) speaks about his rushing to the spot of incident, in pursuance of the information given by Shivram Surwase (PW6), and noticing brother Kamlakar lying dead in the field having severe head injury with profuse bleeding, and then, noticing accused on the platform near the public borewell of village with a piece of broken wooden log in his hand. He withstood the cross-examination.

14. Panchanama (Exhibit-30) proved in the evidence of Hanmant Vithalrao Shinde (PW5) demonstrates that on 13-05-2016, during 09:05 a.m. to 09:35 a.m., piece of the wooden log stained with blood along with clothes on his person having blood stains, were seized from the applicant.

15. Spot panchanama (Exhibit-36), proved in the evidence of PW7 Ambadas Kawathe (PW7), not only describes the spot but

also speaks volumes about the article seized from the spot viz. blood stained piece of wooden log, lying near the body of the deceased Kamlakar.

16. Evidence of investigating officer Vilas Gobade (PW8) not only proves the manner in which he conducted the investigation but also proves that he had sent muddemal articles seized from the spot, clothes of the deceased Kamlakar, piece of the wooden log along with clothes seized from the applicant and blood samples of the deceased Kamlakar and the applicant / accused, collected by the medical officer, to the forensic lab under requisition (Exhibit-49) in sealed condition.

17. C.A. reports (Exhibit-50) evidences that all the ten muddemal articles, received from Murum Police Station, with requisition (Exhibit-49) were in sealed condition and seals were intact. C.A. report (Exhibit-51) also evidences that blood samples of deceased Kamlakar and the applicant / accused were sealed and the seal applied were intact, when received at the forensic lab.

18. According to C.A. report (Exhibit-51), blood group of deceased Kamlakar was 'A', whereas according to C.A. report (Exhibit-52) blood group of applicant / accused was 'O'. C.A. report (Exhibit-50) speaks volumes that piece of the wooden log seized from the spot (Ex.No.E2), piece of the wooden log seized from

applicant (Ex.No.E1) and full manila and night pant (Ex.No.D1 & D2) seized from the accused, were having blood stains of human blood. Besides, C.A. report (Exhibit-50) makes it clear that blood found on the full manila of applicant and both the pieces of wooden log used as a crime weapon, seized from the spot and another seized from the applicant / accused, were having blood of 'A' group which is the blood group of deceased Kamlakar. Thus, the C.A. reports establishes complicity of the applicant in the homicidal death of deceased Kamlakar.

19. In view of the above, it is prima facie clear that the applicant / accused has committed murder of deceased Kamlakar, out of the suspicion of black magic practiced by deceased Kamlakar on him. Therefore, the application is liable to be rejected.

20. Hence, the criminal application is rejected.

(B. U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)