

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 985 OF 2017
IN
CRIMINAL APPEAL NO. 475 OF 2018**

Gaurav Shankar Bhole @ Bholya ..Appellant
V/s.
The State of Maharashtra ..Respondent

Ms. Payoshi Roy i/b. Dr. Yug Mohit Choudhary, for the
Appellants.
Ms. M. M. Deshmukh, APP for the Respondent / State.

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**CORAM : NITIN JAMDAR AND
C. V. BHADANG, JJ.**

DATE : 17 August 2021

P.C.

. This is an Application for suspension of sentence and to be enlarged on bail during the hearing and disposal of the Criminal Appeal No.475/2018.

2. The Applicant viz Accused No.1 is convicted alongwith Accused No.2 for offence punishable under Section 302 r/w. Section 34 of the IPC and he is sentenced to undergo imprisonment for life.

3. As per the prosecution case, in the night intervening 30 April 2015 and 1 May 2015, between 9.00 p.m. to 2.30 a.m., the Applicant alongwith other Accused, with common intention, assaulted the deceased Damodar Padala with wooden logs and committed his murder. The Accused were arrested and chargesheeted. The charge was framed and the learned Sessions Judge has recorded the conviction and sentence as above.

4. The prosecution has examined mother of the deceased, panch witnesses, the informant Avinash Nikam, Medical Officer, the Executive Magistrate who conducted the Test Identification Parade, Investigating Officer and one Vijay Soni who is the eye witness.

5. The learned counsel for the Applicant submitted that the case of the prosecution as regard the identity rests only on the evidence of P.W.4 Vijay Soni, and the informant P.W.5 Avinash Nikam only saw the dead body lying on the road and that there was a mob which had gathered. The learned counsel submitted that a bare perusal of the evidence of the eye witnesses shows that it is entirely untrustworthy as regards the identity of the Accused. The learned counsel submitted that there is no details whatsoever in the evidence of the Doctor as to the extent of injuries and how they are cause of death. The learned counsel submits that

nothing has been brought on record as regard the aspect of enmity or how the deceased was known to P.W.4 – Vijay Soni.

6. Learned APP submitted that the evidence of eye witnesses is trustworthy and he has identified the Accused in the Test Identification Parade.

7. The mother of the deceased -P.W.1 has given no details. She has deposed that the deceased was jobless and he was in habit of vices and would not return home at night. She deposed nothing about any enmity or any connection with P.W.4 Vijay Soni. P.W.4 Vijay Soni had deposed that he used to drive auto-rickshaw on rent and used to stay on footpath. He has deposed that on 30 April 2015 he was proceeding for drinking liquor when the deceased met him and asked for lift. Then he has stated that when he dropped him, the deceased again asked him to take him to some other spot. P.W.4 stated that before incident, he visited the bar but did not have any drink. He then deposed that for 2½ to 3 k.m., the Accused chased his rickshaw and he drove zigzag to avoid them. As per his deposition, the chase was in the Thane City but he stated that there was no traffic at that time for 3 kms. in Thane City, which as rightly contended by the learned counsel for Applicant is not believable even in the time of night. Most importantly, on the aspect of identity, firstly P.W.4 states that he had known the Accused prior to two years. Then he stated that

he knew them by face only. Then he deposed that he did not state before the police that he knew Accused by face. Then again he stated that he has given whole description of the Accused before the police. P.W.4 admitted that he had stated before police that three unidentified persons assaulted the deceased and pertinently he gave a reason for stating so that because there was darkness on the spot. P.W.4 also stated that he was called to the Police Station and he identified the Accused in the Police Station and says nothing about the Test Identification Parade. Though prosecution has relied upon the Test Identification Parade, the evidence of P.W.4, on the face of it, is full of contradictions. Furthermore, the prosecution has not examined any of the person who has stated to have witnessed the incident, sine as per deposition of P.W.4, there were others who had witnessed the incident. P.W.4 has also not informed the police about the incident neither took the deceased to any hospital. As regards the injuries, the Doctor has not given any details whatsoever. Thus, considering the state of evidence, even *prima facie*, we find that there is a serious doubt regarding the identity of the assailants.

8. The Appeal is of the year 2018 and is not likely to reach for hearing in near future. Considering these aspects, we are of the opinion that case for suspension of sentence and enlarging the Applicant on bail is made out.

9. Hence, the following order:

ORDER

- i) The substantive sentence awarded to the Applicant is suspended, pending disposal of Appeal.
- ii) The Applicant be released on bail on furnishing a PR Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.
- iii) The application is accordingly disposed of.

(C. V. BHADANG, J.)

(NITIN JAMDAR, J.)