

Digitally
signed by
BHAGYAWANT
TATYARAO
PUNDE
Date:
2021.12.22
14:06:36
+0530

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

INTERIM APPLICATION NO. 2912 OF 2021

IN

CRIMINAL APPEAL NO. 734 OF 2021

WITH

CRIMINAL APPEAL NO. 734 OF 2021

Balu @ Pandurang Dadaso Patil
Age- 57 years, Occ- Agriculturist,
R/o. Katpan Mala, Kapil,
Tal. Karad, District-Satara,
(Appellant at present Kalamba Jail,
Kolhapur)

...APPLICANT
[ORIG. ACCUSED]

Versus

The State of Maharashtra

...RESPONDENTS

...

Mr. Umesh R. Mankapure for applicant.
Mr. S.S. Hulke, APP for State.

...

**CORAM : S. S. SHINDE &
S. P. TAVADE, JJ.**

DATE : 16th DECEMBER, 2021.

P.C.:

1. The present application is filed for suspension of sentence and to enlarge the accused on bail.

2. Learned counsel appearing for the applicant submits that the FIR was lodged on 13.08.2015 at 11.44 pm, but the accidental death report against as unknown was registered prior to

lodging of FIR, and the statement of three eye witnesses was recorded by an inordinate delay and there is no explanation for the said delay. The statement of Suraj (PW11), the star witness, his statement was recorded on 15.08.2015 i.e. after two days of the incident. The statement of PW6 was recorded on 26.09.2016 i.e. after 40 days of the incident and the statement of PW7 was recorded on 20.08.2015 i.e. after 8 days of the incident. The investigating officer has given no explanation of the said delay in recording the statements. It is submitted that there are many material discrepancy in the statements of the witnesses which is also considered by the learned Sessions Judge, but still their statements are accepted by the learned Sessions Judge. The statement of PW7 cannot be accepted as his statement regarding the apparel of the accused has changed, which shows that he was not present at the spot. The statement of PW11 also cannot be accepted as in his cross examination he had admitted that when he approached to his tuition teacher i.e. PW8, immediately after witnessing the incident he did not disclose about the assailants. This is the natural conduct of PW11 and PW8, as PW11 would have certainly said the names of the accused and PW8 would have also asked. It is further submitted that even the story of PW12 cannot be accepted as in his cross examination he agreed that he did not enquire about the incident

with PW11 and has made no inquiry about the incident. The statement of PW11 on the description of the weapon is also different from the weapon so recovered.

It is further submitted that there are many errors on the part of police department also, and these errors were not taken into consideration by the learned Sessions Judge. PW17 who was a carrier to deposit the muddemal to CA, Pune, had mention the date as 07.08.2015 instead of 13.09.2015, he had deposited the muddemal on 14.09.2015 with CA, Pune letter. The second error was by the PW16 who had drawn seizure panchnama and he had mentioned the date as 14.07.2015 instead of 14.08.2015. The learned Sessions Judge has failed to consider all these errors. It is submitted that the evidence of witnesses and the medical report both are not credible, trustworthy, and therefore, deserves to be disbelieved. The medical officer in his cross examination has admitted that sharp and pointed weapon needs to cause the injury of sternum noth. He further admitted in his cross examination that both the weapons were not shown to the medical officer. Therefore, relying upon the grounds taken in the application for releasing the applicant on bail, the learned counsel appearing for the applicant submits that the application may be allowed.

3. On the other hand, the learned APP appearing for Respondent-State vehemently opposed the application for bail. He submits that there is overwhelming evidence of witnesses, which gets corroboration with the medical evidence. Therefore, the application may be rejected.

4. We have given careful consideration to submissions of learned counsel appearing for the applicant and learned APP for State. With their able assistance we have carefully perused the grounds taken in the application and annexures thereto. At the outset, it needs to be mentioned that since the appeal filed by the applicant is pending before this Court, it may not be appropriate to discuss the evidence of witnesses in detail.

It is true that there is delay in recording the statements of eye witnesses. However, if the act attributed to the applicant is viewed, it was brutal attack by the accused along with co-accused, and as a result Suresh (deceased) died. From the attending circumstances it can be gathered that, the terror created by the accused would ordinarily prevent the witnesses from immediately coming forward for giving statements. We have carefully perused the evidence of child witness. It appears that his statement was recorded on 15.08.2015 and alleged incident had taken place on

13.08.2015, therefore, there is no inordinate delay in recording the statement. The trial Court has rightly believed the evidence of said witness, so also other eye witnesses and the medical evidence. There is direct evidence of eye witnesses which gets corroboration from the medical evidence.

5. In the light of discussion in foregoing paragraphs, the application stands rejected.

6. The Registry to expedite the process of preparing the paperbook. After receiving the entire record and proceedings, liberty to mention.

(S. P. TAVADE, J.)

(S. S. SHINDE, J.)