

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.84 OF 2022
IN APEAL/677/2021

PRANIL @ SONU RAJENDRA MARATHE
VERSUS
THE STATE OF MAHARASHTRA

...

Mr. M. S. Deshmukh, Advocate for applicant.
Mr. S. D. Ghayal, APP for the respondent – State.

...

WITH
CRIMINAL APPLICATION NO.3356 OF 2021
IN APEAL/693/2021

KOMAL YUVARAJ PARDESHI
VERSUS
THE STATE OF MAHARASHTRA

...

Mr. P. C. Mayure, Advocate for the applicant.
Mr. S. D. Ghayal, APP for the respondent – State.

...

WITH
CRIMINAL APPLICATION NO.286 OF 2022
IN APEAL/677/2021

DIPAK BHILA PARDESHI
VERSUS
PRANIL @ SONU RAJENDRA MARATHE AND ANOTHER

...

Mr. C. C. Deshpande, Advocate for applicant.
Mr. M. S. Deshmukh, Advocate for respondent No.1.
Mr. S. D. Ghayal, APP for respondent No.2.

...

WITH
CRIMINAL APPLICATION NO.287 OF 2022
IN APEAL/693/2021

DIPAK BHILA PARDESHI
VERSUS
KOMAL YUVARAJ PARDESHI AND ANOTHER

...
Mr. C. C. Deshpande, Advocate for applicant.
Mr. P. C. Mayure, Advocate for respondent No.1.
Mr. S. D. Ghayal, APP for respondent No.2.
...

**CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATE : 7th October, 2022

ORDER :-

- . Criminal Application Nos.286 of 2022 and 287 of 2022 filed by the informant seeking permission to assist learned APP stand allowed and disposed of.
2. Criminal Application Nos.84 of 2022 and 3356 of 2021 have been filed by original accused Nos.1 and 2 for suspension of sentence.
3. The applicants/appellants have been convicted in Sessions Case No.98 of 2016 by learned Additional Sessions Judge, Dhule on 26.10.2021 and they have been sentenced thus :-

“(1) Accused No.(i) Pranil @ Sonu Rajendra Marathe and (ii) Komal Yuvaraj Pardeshi, are hereby, convicted under Section 235(2) of the Code of Criminal Procedure for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.5,000/-

in default of payment of fine they have to undergo S.I. for 3 months.

(2) Accused No.(i) Pranil @ Sonu Rajendra Marathe and (ii) Komal Yuvaraj Pardeshi, are hereby, convicted under Section 235(2) of the Code of Criminal Procedure for the offence punishable under Section 120-B of the Indian Penal Code and sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.5,000/- in default of payment of fine they have to undergo S.I. for 3 months.

(3) Accused No.(i) Pranil @ Sonu Rajendra Marathe and (ii) Komal Yuvaraj Pardeshi, are hereby, convicted under Section 235(2) of the Code of Criminal Procedure for the offence punishable under Section 201 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 3 years and to pay fine of Rs.2,000/- in default of payment of fine they have to undergo S.I. for 1 month."

4. Heard both sides and perused the notes of evidence/paper-book made available by both the applicants.

5. At the outset, it can be seen that the case is based on circumstantial evidence as it went to trial, however, from the testimony of P.W.16, the child witness, who is the son of the deceased, it has been later on tried to be posed that he is the eye

witness also. The prosecution has come with the case that deceased Yuvaraj was the vegetable commission agent and he got married to accused No.2 on 13.02.2010. They are blessed with son and daughter. Accused No.2 lodged missing report on 06.07.2016 with Dhule Taluka Police Station regarding missing of her husband from 02.07.2016. It was her story that her husband had returned at about 1.45 a.m. on that day and started saying that he had quarrel with some persons and then those persons had lodged case against him. Therefore, he would be required to go out of the city. Thereafter at about 3.30 a.m. about four police persons went to the house of Yuvaraj and started making inquiry about him. Accused No.2 told police that Yuvaraj has gone out of the house and has no idea as to when he would return. Thereafter accused No.2, Yuvaraj and their child went in Indica car and according to her, her husband got down at Shirud choughuli and ask the driver to take back the vehicle to Dhule along with accused No.2 and children. She states that she had informed about the said fact to the sister-in-law as well as the mother-in-law. She also states that she had received phone call from Yuvaraj on 03.07.2016 informing that he is at Indore and would return after about 7-8 days. Since after 7-8 days he did not return, she lodged the missing report, however, it is also the further prosecution story that the brother of the deceased smell some foul play and, therefore, made a complaint on 11.07.2016 to

the Police Inspector, Dhule Taluka Police Station, Dhule. Once again the complaint application was filed on 16.07.2016 and 25.07.2016. Thereafter, his complaint i.e. FIR was lodged on 27.07.2016 and in the said FIR he alleges that accused No.2 had illicit relations with accused No.1 and he has every suspicion that both the accused would have committed murder of his brother and disposed of the dead body.

6. The evidence has been recorded by the trial Court and perusal of the said evidence would show that mainly the prosecution relied upon the circumstances. The dead body is said to have been discovered by accused No.1 and it is from Sita Khai, Toranmal, Tq. Dhadgaon, Dist. Nandurbar. P.W.5 Honsing Naik, who was the Police Patil of village Toranmal and P.W.6 Ramesh Choudhary would disclose that upon the request of police, they had gone down the valley and a bale i.e. gunny bag having foul smell was brought up, however, they do not say that what the said bag was containing. P.W.4 is the panch witness to the said memorandum panchanama. His evidence needs to be assessed thoroughly, however, apparently i.e. at this *prima facie* stage, what can be considered is that accused No.1 is stated to have given the memorandum, which has led to the disclosure. He says that after the gunny bag was brought up, it was seen that the body was

beheaded. Postmortem report as well as the evidence of the medical officer, who conducted the autopsy, would also show that the body was beheaded, however, it was reduced to literally skeleton. At the most, it can be said that the death was homicidal in nature, however, the question of identity will have to be considered. The femur bone could not trace out the DNA and, therefore, whether on the basis of alleged discovery under Section 27 of the Indian Evidence Act by accused No.1 the circumstances strongly established or not will have to be considered at the time of final hearing. Another point that is required to be considered is that the evidence that has been tried to be brought on record is in the form of blood stains, which were found in the car in which the dead body was taken, which was allegedly matched with the blood samples of the mother of the deceased as well as the son of the deceased. However, what is missing that is apparent is that the gunny bag in which the dead body was carried whether had blood stains and why it was not sent for forensic tests.

7. P.W.1 Deepak - informant is the brother of the deceased and it appears that he had visited the house of the deceased many times since the date of missing of his brother, but then he says that nothing suspicious was found in the earlier visits. Even the police officer, who was making inquiry regarding the missing report, had

also visited the house of the deceased and he has specifically stated that he had not found any suspicious circumstance, however, at a later stage, after about 25 days, it is stated that blood stains were found on the wall as well as near TV. This circumstance will have to be then tested. The prosecution is also heavily relying on the testimony of the child witness. His testimony will have to be scrutinized minutely in view of the fact that the mother i.e. accused No.2 came to be arrested on 28.07.2016 and the child was examined on 29.01.2020. Accused No.2 was never released on bail, therefore, the child appears to be in the custody of the informant. With this background whether the child was tutored will have to be considered. There appear to be *prima facie* discrepancy in his statement under Section 161 of Cr.P.C. and his testimony before the Court because in his statement under Section 161 of Cr.P.C. he has claimed ignorance about the whereabouts of his father.

8. We cannot go much into further details at this stage, however, both the learned Advocates appearing for the applicants have pointed out the improvements and omissions in the evidence of the witnesses. On the basis of this kind of evidence, it is required to be seen as to whether the chain of circumstance had been established or not and whether each segment of the chain is pointing out

towards the accused persons as the author of the crime. When the evidence of the prosecution rests on circumstantial evidence, the prosecution should prove the motive also. As regards the motive is concerned, it is stated that there was illicit relations between the accused No.1 and 2, however, even at this stage, it can be said that there is no positive evidence to show that any conversation on telephone so that the CDR and SDR could have been recovered. Rather, the complaint application that was filed by the informant with the Police Inspector as well as Superintendent of Police would show that he had made allegations that accused No.2 had illicit relations with two other persons. It can also be said from the testimony as well as FIR and the complaint application of P.W.1 – Deepak that he had no personal knowledge about the alleged illicit relations. With this kind of evidence, when the appeals have been admitted, it would take long time to decide the appeals, the applicants deserve to be released on bail by suspending the sentence imposed on them, however, the interest of the prosecution is also required to be protected at the same time. Merely because both the accused persons were not released on bail throughout the trial will not be the point for not suspending their sentence. Hence, the following order :-

ORDER

- I) Both the applications stand allowed.
- II) The sentence imposed on both the applicants in Sessions Case No.98 of 2016 by learned Additional Sessions Judge, Dhule on 26.10.2021 is hereby suspended till the final hearing and disposal of Criminal Appeal Nos.677 of 2021 and 693 of 2021 respectively.
- III) The applicant in Criminal Application No.84 of 2022 i.e. Pranil @ Sonu Rajendra Marathe and the applicant in Criminal Application No.3356 of 2021 i.e. Komal Yuvaraj Pardeshi be released on P. R. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.
- IV) The applicant in Criminal Application No.3356 of 2021 i.e. Komal Yuvaraj Pardeshi shall not meet the children till the conclusion of the trial.
- V) The applicants/appellants shall not commit any criminal activity.
- VI) Applicants/appellants to remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeals, starting from the date they tenders a bail papers and, thereafter, the Trial Judge to fix dates for their subsequent appearances.
- VII) In case of two consecutive defaults on the part of the applicants/appellants to remain present before the Trial Court, the Trial Court to inform this Court about the same, and in

that case the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicants/appellants.

VIII) Bail before the Trial Court.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm