

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

44 CRIMINAL APPLICATION NO.1010 OF 2022
IN
CRIMINAL APPEAL NO. 625 OF 2021

SAMBHAJI S/O MAHADEV THORAT
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Nilesh S. Ghanekar
APP for Respondent-State : Mr. A. V. Deshmukh
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**CORAM : SARANG V. KOTWAL AND
BHARAT P. DESHPANDE, JJ.
DATED : 18th JULY 2022**

PER COURT:-

1. This is an application for bail pending the hearing and final disposal of the criminal appeal. The prosecution case is that the deceased was suspected of having illicit relationship with the wife of the accused. The applicant-accused therefore eliminated him near a field by assaulting him and crushing his head with stone. The applicant was arrested on 6.4.2017 and since then he is in custody. Investigation was carried out. Trial was conducted. He was convicted and sentenced by the learned Additional Sessions Judge, Shrigonda in Sessions Case No. 81 of 2019 for the offence punishable under Sections 302 and 201 of I.P.C. The major punishment was of life imprisonment.

2. Learned counsel for the applicant submitted that the case is

based on circumstantial evidence. The circumstances are not sufficient to form a complete chain. Even the individual circumstances are not incriminating.

3. Learned A.P.P. submitted that there are circumstances which are enumerated and discussed by the learned Judge in the impugned judgment and order. The circumstances mentioned in paragraph 68 are sufficient to hold that the applicant had committed that offence.

4. We have considered the submissions and we have perused the depositions of the witnesses. P.W.3 was wife of the deceased. She has stated that her husband had left the house on 04.04.2017 at about 6.00 p.m. to bring fodder for his cattle. He did not return. On the next day, she gave complaint to the police for his missing. Thereafter, the dead body was found near the field of the applicant.

5. P.W.4 is another important witness for the prosecution. He was the pancha, in whose presence the applicant had allegedly shown the spot of incident, the spot where the stone was thrown by him and the spot in his house where he had concealed the clothes which he was wearing at the time of the incident. These two witnesses are the main witnesses. The other witnesses are police witnesses and a medical officer.

6. The medical evidence shows that the deceased had suffered four injuries. The first two injuries were contusions on chest and neck. The main injury was on the head, which was a CLW 2x3x3 c.m. in size and the fourth injury was blunt trauma to external genitalia. The cause of death was mentioned as head injury. These are the broad features of the prosecution case.

7. The learned Judge has discussed the circumstances against the applicant as follows:-

- i) Homicidal death suffered by the deceased;
- ii) The baniyan lying near the dead body which allegedly was that of the applicant;
- iii) The motive;
- iv) Recovery of stone;
- v) Recovery of clothes at the instance of the applicant.

8. As far as motive is concerned, the only evidence is of P.W.3 which is in the nature of her own suspicion. There is nothing brought on record to show that this suspicion had any base regarding any past incident. She has also not given reasons for entertaining such suspicion.

9. As far as the finding of baniyan of the applicant at the spot is

concerned, the prosecution case is that it was belonging to the applicant. For that purpose reliance is placed on the steps taken by the Police Officer with the help of dog squad. The dog from the squad had taken smell of the baniyan and had gone near the house of the accused. This version is vague as the dog had not actually gone to the house of the applicant and had not entered the house but had lingered near the house of the applicant. Therefore, it is not a clinching circumstance.

10. The third circumstance of pointing the spot is innocuous because the dead body was already found and the police were already aware of the spot. The stone was recovered from an open space accessible to all.

11. The only circumstance which needs serious consideration is about recovery of blood stained clothes from the house of the applicant. The clothes were stained with blood having blood group "A" which was that of the deceased. However, from the above discussion, it appears that this is the only circumstance against the applicant which is also not proved beyond reasonable doubt. The pancha and the police have described the piece of clothes differently. However, at this stage it is not necessary to go into the details of the difference between them. At the highest, this being the only circumstance, since it is not a strong circumstance, the applicant has made out a case to release him on bail. Hence, the following order:-

O R D E R

- I. During pendency of criminal appeal No. 625 of 2021, the applicant be released on bail on his furnishing P.R. bond of Rs.25,000/- (Rupees twenty five thousand only) with one or two sureties in the like amount.
- II. Criminal application is disposed of.

(BHARAT P. DESHPANDE, J.)

(SARANG V. KOTWAL, J.)

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