

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

CRIMINAL APPEAL NO. 415 OF 2022

Rupesh s/o Ashok Wadekar .. Appellant

Versus

The State of Maharashtra and another .. Respondents

Mr. Nilesh S. Ghanekar, Advocate for the Appellant.

Mr. K. S. Hoke Patil, APP for the Respondent-State.

**WITH
CRIMINAL APPEAL NO. 1056 OF 2019**

Somnath Dattu Wadekar .. Appellant

Versus

The State of Maharashtra and another .. Respondents

Mr. Avinash Patil Barhate, Advocate h/f Mr. S. S. Chapalgaonkar,
Advocate for the Appellant.

Mr. R. D. Sanap, APP for the Respondent-State.

Ms. Sunita Sonawane, Advocate for Respondent No. 2.

**CORAM : SARANG V. KOTWAL
AND
BHARAT P. DESHPANDE, JJ.**

DATED : 28th JUNE 2022.

PER COURT :-

. Both these appeals are decided by this common order, because they arise out of the same investigation and same registered crime. The pendency of these appeals reflects disturbing state of affairs.

The incident is quite old. The incident had taken place on 16.05.2015. In the incident the deceased Sagar Shejwal was assaulted and murdered. Both the applicants are facing the trial. The Criminal Appeal No. 1056 of 2019 was filed on 20.11.2019. Thereafter notice was issued on 09.12.2019. Vide order dated 09.12.2019 the Division Bench of this Court (Coram : T. V. Nalawade and M. G. Sewlikar, JJ.) called for record and proceedings. The record and proceedings were received on 13.01.2020. Since then, there was absolutely no progress in the trial because the record and proceedings are before this Court. In the order dated 14.02.2020, it was observed that the matter was adjourned to 28.02.2020 and if the matter was not argued, it would be dismissed. On 28.02.2020 again adjournment was sought on behalf of the appellant/Somnath Wadekar. The order mentions thus :

*“Even when relief of bail is sought for, the learned counsel for the appellant seeks time.
Stand over to 19th March, 2020, in urgent category.”*

2. On 19.03.2020 the following order was passed :

“No interest is shown by the counsel for the appellant thought it is bail application. Keep on 23.04.2020.”

3. Since then, the matter is simply pending before this Court for disposal. The matter was not listed. No efforts were made by the learned counsel for the appellants to seek circulation of the appeal. Because of the pendency and since the record and proceedings are

sent to this Court, the trial also could not proceed further. In this view of the matter, we are immediately deciding these appeals so that the record and proceedings can be sent back immediately and the trial can proceed further.

4. Other Criminal Appeal No. 415 of 2022 was preferred in the year 2022. The learned counsel appearing in Criminal Appeal No. 415 of 2022 made only one submission that the incident is old. The appellant is in custody since 20.05.2015 and therefore he should be released on bail. No arguments were advanced on merits of the matter.

5. We have already noted above as to why the matter was pending and as to why the trial could not proceed further. Therefore, we are deciding these matters on the merits of the case.

6. As far as the merits of the case are concerned, the FIR was lodged by the first informant Satish Gaikwad. The FIR mentions that on 16.05.2015, the informant along with the deceased Sagar had gone to a Beer Bar. At that time, both these appellants alongwith one Vishal Kote and one Sunil Jadhav were sitting and they were drinking Beer. At that time, Sagar's mobile phone started ringing. The ringtone played a song. The accused got angry and suddenly started assaulting Sagar by fist and kick blows. The accused Vishal Kote assaulted Sagar on his

head with a Beer bottle. The informant tried to intervene. At that time, appellant Somnath and other three assaulted and held him. After that, accused Vishal Kote and appellant Rupesh kept Sagar on their motorcycle and took him away towards a place known as Sawalivihir. After that, the informant was released. On this basis, the first informant gave his FIR. His supplementary statement was recorded on 19.05.2015, which sheds more light on the incident. He has given details of the incident. He has further stated that after Sagar was taken away by the accused, search was taken for him. The FIR was lodged and then again search was taken. At about 7.00 p.m. Sagar was found in a field. All his clothes were removed. There was only one sock on his leg. He was brutally assaulted and then his dead body was thrown in the field. The spot panchanama was carried out. Certain articles and a stone were seized from the spot.

7. The informant is supported in his story by other witness, namely Sandip Ghorpade. He was a cashier at that Beer Shop. He has described the incident. One of the victims was dragged by his leg. Both the victims were assaulted by all the persons who were consuming Beer there. This witness also stated that the Vishal and appellant Rupesh had taken away the deceased towards Sawalivihir. This witness is supported by another witness Avinash Pachore. He has also described

the incident. He has specifically named both the appellants. He has stated that both these appellants had assaulted this witness Avinash Pachore, the informant and the deceased.

8. The post mortem notes show that the deceased was brutally assaulted. He had suffered as many as 33 injuries. The cause of death was 'due to the multiple injuries'. It is without doubt that the deceased was brutally assaulted by all the accused including both the appellants. The injury certificate of the informant mentions that the he had suffered four injuries. One was Blunt trauma (BT) to occipital protubance centrally over scalp swelling, tenderness, second was BT to (Lt) eye- black eye swelling, third was attempted neck throttling showing swelling and tenderness and difficulty in swallowing and fourth was Blunt trauma to chest, Nose, Abdomen, (Rt) arm Back, (Rt) thigh, (Lt) ankle.

9. It can be seen that the victim and the first informant were assaulted by all the accused. The role of the appellants is clearly mentioned. All the accused had assaulted not only the deceased but the informant as well. Thereafter the deceased was taken at a distant place by the appellant Rupesh and other accused. In this view of the matter, the prosecution has sufficient evidence against the appellants.

10. Learned counsel for the appellants submitted that no specific role is attributed to Somnath. However, this submission is not correct. The injured witnesses, eye witnesses and victim attributed specific role of assaulting all the victims at the spot to him. Thereafter, the deceased was taken at a distant place and finally he was brutally assaulted. Even at the Beer Shop, all the three victims were assaulted by both the appellants and other accused. Considering the seriousness of the incident, the bail cannot be granted to the appellants. The disturbing feature in this case is that, the matter is pending for trial since the year 2015. It undoubtedly is an inordinate period. The record and proceedings are in this Court since the year 2019. There was inaction on the part of the appellant Somnath to argue this matter at the earliest. The appellant Somnath in particular is responsible in delaying the trial. Therefore, at this stage, no sympathy can be shown to either of the appellants. The trial needs to be conducted on urgent basis. Therefore, following order is passed.

ORDER

- (i) The appeals are dismissed.
- (ii) The bail applications of both these appellants are rejected.
- (iii) The record and proceedings be immediately sent back to the Trial Court.

(iv) The Trial Court is requested to take up the trial for disposal on urgent basis. The trial shall be concluded within a period of five (05) months from today. With these directions the appeals are dismissed.

11. The learned APP points out that both these appellants as on today are on temporary bail because of spread of Covid-19. The investigating agency as well as the trial Court shall take steps to take them into custody so that the trial can commence and conclude as directed above.

(BHARAT P. DESHPANDE)
JUDGE

(SARANG V. KOTWAL)
JUDGE

P.S.B.