

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.547 OF 2022
IN
CRIMINAL APPEAL NO.641 OF 2021

Umesh Suresh Sonawane ... Applicant
Vs.
State of Maharashtra ... Respondent

Ms. Rebecca Gonsalvez i/b. Dr. Yug Mohit Chaudhary for Applicant.
Mr. V. B. Konde-Deshmukh, APP for Respondent-State.

**CORAM : S. S. SHINDE &
SARANG V. KOTWAL, JJ.**
DATE : APRIL 26, 2022

P.C. :

. This is an application for bail pending Criminal Appeal No.641 of 2021.

2. Heard Ms. Rebecca Gonsalvez, learned counsel appearing for the applicant and Mr. V. B. Konde-Deshmukh, learned APP appearing for the respondent - State.

3. The applicant is convicted for commission of offence punishable under Section 302 of the Indian Penal Code (IPC) and sentenced to suffer life imprisonment. There is conviction under Section 201 of IPC for which he is sentenced to suffer RI for five years. In addition to substantive sentences, fine was also imposed on him.

4. The prosecution case is about commission of murder of one Nivas Yashwantrao Mohite. According to the prosecution case, the applicant was in employment with deceased as a driver on his tempo. The deceased and his brother, both, were managing brick kiln. It is the case of the prosecution that the deceased had not paid wages to the applicant and therefore, the applicant was holding grudge against the deceased.

5. On 11.01.2015, in the morning, the applicant approached the deceased and demanded payment of his wages. Some quarrel took place. After that, nobody had seen either the applicant or the deceased. However, body of the deceased was found in his car at Dhaba at the Village Kogganoor, District Davangere in the State of Karnataka at about 11:00 p.m. The local police station registered an offence. They contacted Shirolu Police Station on the basis of documents found in the car. The relatives of the deceased went there and identified the dead body and then the investigation was carried out by both the police stations viz., Davangere Police Station and Shirolu Police Station. The applicant was arrested on 23.01.2015 and since then he is in custody.

6. Ms. Gonsalvez, learned counsel appearing for the applicant, submitted that there are following circumstances against the applicant:-

- a. Last seen together theory;
- b. Extra-judicial confession to P.W.7;
- c. Finding of the key at the instance of the applicant; and
- d. Motive.

6.1. Learned counsel for the applicant submitted that according to P.W.4, 9 and 17, the alleged quarrel had taken place at around 9:00 a.m. to 10:00 a.m. on 11.01.2015 and the dead body was found at 11:00 p.m. at a place which was at the distance of 365 Kms from the brick kiln of the deceased where the quarrel had taken place. She submitted that the test of proximity of time and distance is not satisfied in this case, and therefore, this circumstance is not an incriminating circumstance.

6.2. She further submitted that the extra-judicial confession was made to P.W.7 - Sunil Raghunath Patil, who was the owner of brick kiln situated near the brick kiln of the deceased. She submitted that there was no reason for the applicant to call this witness (P.W.7). They were not even friends. There was no reason for the applicant to make confession to P.W.7. There is no other independent witness or corroboration to this extra-judicial confession, and therefore, it cannot form basis of conviction.

6.3. So far the third circumstance i.e., finding of a key at the instance of the applicant is concerned, she submitted that the key was not matched with the car that was found at Davangere. The prosecution failed to prove that the key which was found at the instance of the applicant was the key of the car of the deceased and therefore, it is not an incriminating circumstance.

6.4. As far as motive is concerned, she submitted that, there was no strong motive as the deceased had asked the applicant to resume shortly and there was no cause for dispute.

7. Learned APP, on the other hand, submitted that the aforesaid circumstances are sufficiently proved by the prosecution and they form a complete chain of circumstances against the applicant. The applicant, therefore, does not deserve to be released on bail.

8. We have considered the submissions made by learned counsel appearing for the parties and we have perused the evidence of witnesses referred to hereinabove, besides evidence of other witnesses.

9. As far as theory of last seen together is concerned, the important witnesses are P.W.4 – Babasaheb Sadashiv Veer, P.W.9 – Shivaji Rangrao Samudre and P.W.17 – Sadashiv Uchappa Chokale. They all speak about quarrel on 11.01.2015 which had taken place at around 9.00 am to 10.00 am. There is some variance in the timings but generally all of them had stated that the quarrel occurred around that time. The evidence shows that the dead body was found at Davangere in the night at 11.00 pm. The relevant witness in that connection is P.W.20 – PSI Mr. M. D. Siddesh, who was on patrolling duty in that area. He stated that he broke open the window glass of the car, opened the door of the car and found the dead body of a male person in the car. The medical officer who had conducted post mortem examination is P.W.18 – Dr. Santosh Chandrappa Sidhadhappa. He had found 9 external injuries on the dead body and, according to him, the cause of death was “Asphyxia as a result of combination of compression of the neck and smothering”. Importantly he has stated that the estimated time of death, according to him, was 24 to 30

hours prior to conducting the post mortem examination which he had conducted between 3.10 pm to 4.10 pm on 12.01.2015, therefore that time could be any time between 9.00 am to 3.00 pm on 11.01.2015. Thus, it can be seen that though the murder was possibly committed between that period, the proximity of distance is an important issue, and in this case dead body was found at a far away place of distance of 365 Kms from the brick kiln of the deceased where the quarrel had taken place. Therefore the possibility that somebody else could have committed the murder is not positively ruled out by the prosecution. There is absolutely no evidence on record to show that anybody else had seen the deceased and the applicant going towards Devangere. The evidence shows that there was toll plaza. Even the evidence is lacking to show whether either the deceased and the applicant together had travelled to Devangere or whether the Applicant had carried the dead body in the same car.

10. As far as motive is concerned, though there are allegations that the deceased had not paid wages to the applicant and therefore, the applicant was holding grudge against the deceased, there is not enough material on record brought by the prosecution to prove the applicant's complicity in the commission of crime, particularly in the facts of this case.

11. So far as the other circumstance of finding of a key at the instance of the applicant is concerned, in the absence of matching that key with the car in which the dead body was found, it is not incriminatory. It could have been the simple exercise for the Investigating Officer to match the key with the car, but that was not done, therefore, it cannot said to be an

incriminating circumstance.

12. As mentioned earlier, P.W.7 Sunil Patil, who was the owner of brick kiln situated near the brick kiln of the deceased, was not a close friend of the applicant. There was absolutely no reason for the applicant to call this witness (P.W.7) telephonically and inform about the commission of offence. In this case, the extra judicial confession is not reliable. There is no independent corroboration to this extra-judicial confession, and therefore, it cannot form basis of conviction.

13. The cumulative effect of this discussion is that, the Applicant has made out a case for enlarging him on bail during pendency of his appeal. Hence the following order :

O R D E R

- 1) The Criminal Interim Application is allowed;
- 2) During the pendency and final disposal of Criminal Appeal No.641 of 2021, applicant - Umesh Suresh Sonawane is directed to be released on bail on executing P. R. Bond in the sum of Rs.30,000/- (Rupees Thirty Thousand only) with one or two sureties in the like amount;
- 3) Criminal Interim Application is disposed of accordingly;
- 4) Needless to say that the observations made herein above are prima facie in nature and confined to the adjudication of this Interim Application only.

(SARANG V. KOTWAL, J.)

(S. S. SHINDE, J.)