

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL INTERIM APPLICATION NO.1557 OF 2019
IN
CRIMINAL APPEAL NO.694 OF 2017

Sandip Dadaso Mali : Applicant/Appellant.

Versus

State of Maharashtra : Respondent.

Mr. Sachin B Chandan, Advocate appointed for the Applicant/Appellant.

Ms. Veera Shinde, APP for the Respondent/State.

CORAM : S. S. SHINDE,
SARANG V. KOTWAL, JJ

DATE : 05th April 2022

P.C.

1 This is an application through jail filed by the Applicant/Accused for releasing him on bail during pendency of Criminal Appeal No.694 of 2017.

2 By Criminal Appeal No.694 of 2017 the Applicant/Appellant, who was the original accused, challenged the judgment and order dated 02/02/2017 passed by the Additional Sessions Judge-2 Kolhapur by which order the Applicant/Accused was convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life.

3 The case of the prosecution is about the murder of one Baburao Patil in the field of PW-2 Yuvraj Tilwe sometime between 14/10/2015 and 15/10/2015. According to the prosecution case, because of some quarrel

regarding consuming of liquor, the Appellant committed murder of the deceased by using stick and stone. As per Post Mortem Report, the deceased had suffered six external injuries. The fatal injuries were on the head of the deceased. The cause of death was, “injury with intra cranial hemorrhage.”

4 We have heard Mr. Sachin Chandan, the learned advocate appointed for the Applicant and Ms. Veera Shinde, the learned APP for the Respondent/State.

5 Learned counsel for the Applicant submits that there is no direct evidence and the prosecution case is based on circumstantial evidence. He further submits that the prosecution has failed to prove the chain of circumstances, and the only circumstance against the Applicant/Accused is of last seen together with the deceased. But even that evidence is too vague. He, therefore, submits that the conviction based on that circumstance alone cannot be sustained.

6 On the other hand, the learned APP for the Respondent/State, relying on the same circumstance of ‘last seen together’, submits that the chain of circumstance is complete which proves the involvement of the applicant in the crime.

7 We are considering the application for bail during pendency of the appeal for final hearing. Therefore a detailed analysis of the evidence is not necessary. We have examined the evidence led by the prosecution for the purpose of grant or refusal of the bail to the present Applicant.

8 The major circumstance against the present Applicant, as submitted by the learned counsel for the Applicant, is theory of 'last seen together with the deceased'. In this respect, the prosecution had examined Yuvraj Parshuram Tilwe as PW-2. He stated that earlier his father used to sell liquor, however, his father had stopped that. On 14/10/2015 the deceased and Applicant came to him and asked for liquor. He informed them that he had stopped doing that business. At that time there was a quarrel between the deceased and the accused as the the deceased was asking money from the accused for purchasing/consuming liquor. PW-2 asked them not to quarrel there and to leave his place. They told PW-2 to go from there as they would solve their problem. In his evidence, PW-2 deposed that on 15/10/2015 when he went to his field, he found Baburao Sakharam Patil in a pool of blood lying under a tree near the cattle shed of PW-2. PW-2 informed his father about the same. His father came there with police patil who in turn informed the incident to Bhudargad Police Station. Thereafter the police came on the spot. During the course of investigation, spot panchanama, inquest panchanama as also seizure of clothes of accused and deceased were conducted. The articles

were sent for chemical analysis. The statement of witnesses were recorded. The accused was arrested on 15/10/2015 and since then he is in custody.

9 There was no eye witness to the incident. There is no evidence to show that the Applicant was seen together with the deceased on 15/10/2015. Through the evidence of PW-2 the prosecution tried to prove that the deceased was in the company of Applicant on 14/10/2015, however, his evidence is vague. He has not mentioned the time when he had seen them together. The only serious circumstantial evidence against the Applicant is of PW-2. In the entire deposition, PW-2 did not mention such time. The proximity of the time when the deceased was in the company of the accused and the time of death is important. This time gap was not shown to be small to rule out the possibility that somebody other than the Applicant could have committed this offence.

10 The brother of the deceased Kashinath Patil was examined by the prosecution as PW-1. He stated that on 14/10/2015 he went to field at 6.30 am and came back at about 9.30 am. At about 9.30 to 10.30 am he saw the deceased Baburao leaving his house. He further stated that on the next day in the morning at about 9.00 am he received the phone call about Baburao's death.

11 In so far as motive is concerned, there is no special motive alleged

against the Applicant/Accused. At this stage, it appears that, there is no sufficient evidence to prove that the offence was committed by the Applicant/Accused.

12 Therefore considering the evidence on record, in our opinion, the Applicant has made out a case for grant of bail during the pendency of the Appeal. Hence the following order :-

ORDER

- (i) Interim Application No.1557 of 2019 is allowed.
- (ii) During pendency and final disposal of Criminal Appeal No.694 of 2017, the Applicant – Sandip Dadaso Mali is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand only) with one or two sureties in the like amount.
- (iii) Interim Application is disposed of accordingly.

[SARANG V. KOTWAL, J]

[S. S. SHINDE , J]