

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APPA) NO.161/2019

IN

CRIMINAL APPEAL NO.102/2019

Prakash Trinath Jalwar Vs. State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri Tarun Parmar, Advocate (Appointed) for Applicant/Appellant.
Shri M. K. Pathan, A.P.P. for Non-applicant/Respondent-State.

CORAM : V. M. DESHPANDE AND
AMIT BORKAR, JJ.

DATE : 04/04/2022.

1. This is an application for suspension of substantive jail sentence and for grant of bail.

2. Heard Shri Tarun Parmar, learned Advocate appointed by High Court Legal Services, Sub-Committee, Nagpur to represent the applicant and Shri M. K. Pathan, learned A.P.P. for the respondent/State. With the assistance of the learned counsel, we have gone through the relevant portion of the record and proceedings and also the impugned judgment.

3. The applicant/appellant along with one Surendra were charged (Exh.15) in Sessions Case No.98/2016 that on 31.08.2015 at mouza Nandgaon, Tahsil Korpana, District, Chandrapur the applicant/appellant and co-accused in furtherance of their common

intention, committed house trespass by entering into the building, which was in possession of Dr. Devrao Pandurang Jogi, which was used as a human dwelling. As per the charge, after lurking house trespass they killed Dr. Devrao Pandurang Jogi and his wife Dr. Sudha Devrao Jogi. They were therefore charged for the offences punishable under Sections 302, 460, 201 read with Section 34 of the Indian Penal Code. Both the accused abjured their guilt.

4. In order to prove the charge, the prosecution has examined in all 22 witnesses. They were cross-examined by the defence counsel. None of the accused has examined any defence witness. After appreciating the entire prosecution case, by the impugned judgment and order dated 10.05.2018, though the learned Judge of the Trial Court has acquitted co-accused Surendra Dakhare for all the offences, he convicted the applicant/appellant for the offences punishable under Sections 302, 460 and 201 of the Indian Penal Code and directed to suffer life imprisonment.

5. According to the learned counsel for the applicant, the entire case is based on circumstantial evidence inasmuch as there is no eye witness. He submitted that the recoveries made at the behest of the applicant are from open space and therefore those cannot be relied upon at all. He submitted that therefore, the applicant be released on bail.

6. As per Exh.69 i.e. Postmortem Report of Dr. Devrao Pandurang Jogi, his age was 62 years, whereas as per Exh.70, which is a Postmortem Report of his wife Dr. Sudha Devrao Jogi, her age was 55 years. From the Postmortem Report, it is clear that the postmortem surgeon Dr. Vijay Kadaskar (PW-4) found the following external injuries on the dead body of Dr. Devrao Jogi.

- i) Abrasion on right nostril, size 1.inch x 1 inch.
- ii) Horizontal lacerated wound on mid posterior parietal bone of size 3 inch x 1 inch x bony cavity deep.
- iii) Commuted fracture of mid posterior parietal bone of size 4 inch x 4 inch palpable. Aforesaid injury is corresponding injury to injury No.2 in column No.17.
- iv) A sub-dural haematoma of size 6 inch x 6 inch present in posterior parietal region.
- v) Commuted fracture of mid posterior parietal bone of size 4 inch x 4 inch palpable. Aforesaid injury is corresponding injury to injury No.2 of column No.17.

Whereas he found the following external injuries on the dead body of Dr. Sudha Devrao Jogi.

- i) Lacerated wound on mid forehead of size 2 inch x $\frac{1}{4}$ inch x bony deep. I have mentioned both injuries in column No.17.

- ii) Lacerated cut wound to upper lip of left side $\frac{1}{2}$ inch deep.
- iii) Contusion on both upper and lower lip with cynosis and laceration on inner aspect of both lips with bleeding seen.
- iv) Contusion on nose size 1 inch x 2 inch.
- v) Upper three incised teeth on left side rooted out.
- vi) Upper three teeth on right side loosen with palpable fracture to jaw.
- vii) Lacerated wound to right upper eyelid size $\frac{1}{2}$ inch x $\frac{1}{4}$ inch.
- viii) Nasal bone have palpable commuted fracture.
- ix) Petechial haemorrhages seen on brain substance.

7. From the nature of injuries, as observed by the Autopsy Surgeon in the Postmortem Report and from his substantive evidence, there cannot be any doubt in anyone's mind that the death of this couple was homicidal death.

8. From the prosecution case, it appears that this couple was residing alone inasmuch as their three daughters were already married and they were residing at different places in the State of Maharashtra. From the

prosecution case, it is clear that the offence was registered against unknown person in view of oral report given by Sachin Uddhavrao Junghari (PW-1), who is the son-in-law of the deceased couple. Oral Report is at Exh.58. Though from the prosecution case it appears that the offence was registered against unknown person, the Police Officer kept searching the culprit. As per the prosecution case, after gap of about 9 months, the police machinery got location of the offender inasmuch as the applicant used the handset of the deceased, which was stolen away at the time of committing their murder. The cyber cell came to know about use of the instrument by the applicant, which was the mobile of Dr. Sudha Jogi by using SIM card. After getting that particular clue, the investigating machinery knocked the door of the applicant and he came to be arrested. During the investigation, his statement under Section 27 of the Evidence Act was recorded, leading to the discovery of various articles. The golden ornaments, which were looted, were also recovered and those golden ornaments were duly identified by the daughters of the deceased.

9. The learned Judge of the Trial Court, in our view, at least *prima facie* has rightly culled-out the events, which complete the chain showing the finger of guilt towards the applicant alone. The various circumstances which are culled-out by the learned Judge can be seen in paragraph No.54 of the impugned judgment.

10. During the trial, the applicant was not on bail. Though the learned counsel for the applicant has tried to impress upon the Court that the recovery of iron rod is from the open space, at least, at this stage we are not impressed by his argument inasmuch as that will be the final appreciation of the prosecution case and that can be considered at the time of final hearing. However, *prima facie*, it is clear that the mobile phone, which was looted from Sudha was proved to be used by the applicant by using the SIM card and that is proved by Shri Sachin Shinde (PW-19), the Nodal Officer of Idea Cellular Company.

11. In view of the aforesaid, we are not inclined to exercise our discretion in favour of the applicant, who is found to be guilty of committing murder of two elderly helpless persons and thereafter looting their valuable property.

12. Resultantly, we pass following order :

- i. The application is rejected.
- ii. Since the applicant/appellant is in jail, the Registry is directed to take immediate steps for preparation of the paper-book and place the appeal for final hearing.
- iii. The application is disposed of accordingly.

13. Shri Tarun Parmar, learned counsel for the applicant/appellant will be entitled to receive Rs.3,500/- (Rs. Three Thousand Five Hundred Only) towards his fees for arguing this application from the High Court Legal Services Sub Committee, Nagpur.

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