

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 CRIMINAL APPLICATION NO.1086 OF 2023
IN APPEAL/240/2023

MEENAKSHI W/O RAVI GAIKWAD

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. S.S. Jadhav, Advocate for applicant

Mr. A.M. Phule, APP for sole respondent

...

WITH

CRIMINAL APPLICATION NO.898 OF 2023
IN APPEAL/190/2023

PARVATI VITTHAL MORE

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. G.G. Suryawanshi, Advocate for applicant

Mr. A.M. Phule, APP for sole respondent

...

CORAM : SMT. VIBHA KANKANWADI AND
Y.G. KHOBRAGADE, JJ.

DATE : 25th APRIL, 2023

ORDER :

1 Both these applications have been filed for suspension of

substantive sentence imposed on the applicants by the learned Additional Sessions Judge, Parbhani in Sessions Case No.138/2019 on 07.02.2023. The present applicants are accused Nos.6 and 7. They both are held guilty for the offence punishable under Section 114 read with Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs.1,000/- (Rupees One Thousand only) each, in default to suffer rigorous imprisonment for 15 days. It will not be out of place to mention here that both of them have been acquitted by the learned Trial Judge from the offences punishable under Section 120-B, 201, 329, 143, 144, 147, 148 read with Section 149 of the Indian Penal Code and under Section 135 of the Bombay Police Act.

2 The prosecution story is that one Sanjay Bharade gave First Information Report on 31.03.2019 to Police Station, New Mondha. It was informed that his brother-in-law Amardeep @ Bhaiyya Ramchandra Rode was the Corporator of Ward No.3, HUDCO. When Amardeep had gone to Jayakwadi Vasahat around 10.00 a.m., Amardeep and one Kiran Dake were standing. Sanjay invited Amardeep for lunch at his house, but Amardeep replied that he will come after visiting Jayakwadi Vasahat. There dispute arose between one Ravi Gaikwad and other persons on account of water supply. Informant states that Kiran Dake and Amardeep went towards Social

Welfare Office in Jayakwadi Vasahat. It is then stated that they had gone in a Scorpio vehicle, purchased by Amardeep, on installment in the name of Kiran Dake. Amardeep was giving amount of the installment to Kiran, but Kiran was not depositing the said amount with finance. The vehicle was parked by Amardeep in front of house of Ravi Gaikwad (accused No.1) near Dnyandeep School. Two unknown persons, wife of Ravi Gaikwad and Parvati More were standing. Informant had then seen accused No.1 giving blow of axe on the neck of Amardeep. When the blood started oozing, Amardeep asked Kiran to start the vehicle and would leave from the said place. But then Kiran took the axe from the hands of Ravi and replied that there is no diesel in the vehicle. Then Ravi brought sword from his house and then Kiran had given blow of axe to Amardeep. Two unknown persons had assaulted Amardeep by stick. Wife of Ravi Gaikwad i.e. applicant Meenakshi and applicant Parvati were instigating the assailants by shouting “mara salyala khup majlay”. Amardeep was trying to save himself by running but fell down in the pit and then it is said that Kiran took a stone and smashed the head of Amardeep. Ravi Gaikwad has also smashed the head of Amardeep by stone. Gold ornaments were not found on the person of Amardeep which he was carrying.

been conducted. It appears that prosecution has examined in all 25 witnesses to bring home the guilt of the accused, voluminous evidence has been produced and after the completion of the trial accused Ravi Gaikwad, Kiran Dake have been held guilty of committing offence punishable under Section 302 read with Section 34 of the Indian Penal Code. Accused Prakash Pawar, Saurav Bharade and Satish Uphade have been acquitted of all the charges and as aforesaid, the present applicants have been held guilty.

4 With the able assistance of the learned Advocates for the respective applicants and learned APP we have gone through the Record and Proceedings. There are three eye witnesses, who remained loyal to the prosecution story, however, the informant himself has turned hostile. From the evidence that has been adduced, there appears to be no doubt as regards the death of Amardeep being homicidal in nature. While considering the present applications we are required to consider the role that has been attributed to the applicants. The eye witnesses are consistent in saying that both the ladies had instigated/abetted the co-accused by uttering “mara salyala khup majlay”. This appears to have been considered as proved beyond reasonable doubt and, therefore, the learned Trial Judge by invoking the provisions of Section 114 read with Section 302 of the Indian Penal Code convicted them. At the costs of repetition, we would like to say that the

position stands as it is as on today is that both the applicants have been acquitted for the offence punishable under Section 120-B as well as 149 of the Indian Penal Code. There was no charge against them for the offence punishable under Section 109 of the Indian Penal Code. Apparently we feel that for proving offence under Section 114 of the Indian Penal Code there has to be abetment prior to the commission of offence and it should be complete by itself. In **Kulwant Singh @ Kulbansh Singh vs. State of Bihar** reported in **(2007) 15 SCC 670** it has been observed that -

“Section 114 is not applicable in every case in which the abettor is present at the commission of the offence abetted. While Section 109 is a section dealing generally with abetment, Section 114 applies to those cases only in which not only is the abettor present at the time of the commission of the offence but abetment has been committed prior to and independently of his presence.”

We would also say that whether Section 109 of the Indian Penal Code can be considered as lesser offence to Section 114 or Section 109 and 120-B are the independent offences having no connection with each other will have to be considered at the time of final hearing. What we could get at this stage and in view of the acquittal of both the applicants from the offence under Section 120-B and 149 of the Indian Penal Code that there was no prior meeting of minds. Therefore, it is also required to be considered, as to

whether the alleged instigating words were uttered at the spur of the moment, whether applicant Parvatibai had any independent motive in the murder of Amardeep is also required to be considered. Therefore, with the said evidence we found that this is a fit case where both the ladies should be released on bail by suspending their sentence. They were on bail throughout the trial. Hence, following order.

ORDER

1 Both the applications stand allowed and disposed of.

2 The substantive sentence awarded against the applicants/ appellants viz. Meenakshi w/o Ravi Gaikwad (in Criminal Application No.1086 of 2023) and Parvati Vitthal More (in Criminal Application No.898 of 2023) in Sessions Case No.138/2019 by learned Additional Sessions Judge, Parbhani on 07.02.2023 stands suspended till the final hearing and disposal of Criminal Appeal No.240 of 2023 and Criminal Appeal No.190 of 2023.

3 Applicants Meenakshi w/o Ravi Gaikwad and Parvati Vitthal More be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) each and two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only) each.

4 The applicants shall not commit any criminal activity.

5 The applicants shall remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeals, commencing from the date they tender bail papers and thereafter, the Trial Judge to fix dates for their subsequent appearances.

6 In case of two consecutive defaults on the part of the applicants to remain present before the Trial Court, the Trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicants.

7 Bail before the Trial Court.

(Y.G. Khobragade, J.)

(Smt. Vibha Kankanwadi, J.)

agd