

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 498 OF 2022

Ashok Bhagwan Mulik
Age : 24 Years, Occupation : Driver,
R/at : Rupinagr, Talvade, Nigdi,
Pune. ...Appellant

vs.

1. The State of Maharashtra
[Through Officer-in-charge,
Paud Police Station, Dist. Pune] ...Respondent

2. Sunil Tulshiram Adagle
R/at : Dehugaon, Tal. : Haveli,
Dist. Pune. ...Complainant

Mr.Satyavrat Joshi a/w Mr.Sachin Zalte-Advocate for Appellant.
Mr.S.R.Agarkar - APP for Respondent No.1 - State.
Mr.Advait Tamhankar-Appointed Advocate for Respondent
No.2.
Mr.Gaikwad - API - Paud Police Station.

CORAM : S. M. MODAK, J.
DATE : 4th DECEMBER 2023

P. C. :-

1. Heard learned Advocate Shri.Joshi for the Appellant,
learned APP and learned Advocate Shri.Tamhankar - Appointed
for Respondent No.2.

2. One Swati Sunil Adagle was murdered and her body was
found in stone quarry on 8th September, 2021 by a local
resident at 7.00 a.m. It was reported to Paud Police Station and
an accidental death was registered. An enquiry was conducted.

It culminated into lodging of FIR by her father Sunil on 13th September, 2021. An offence under Sections 302, 201 of Indian Penal Code, 1860 [“IPC”] and under Sections 3(2), 3(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 [“SC & ST Act”] came to be registered. During investigation, Police have recorded the statements. Case is based on circumstantial evidence. The Prosecution relied upon the following circumstances :-

(a) Statement of one Apoorva :-

Who is a daughter of the deceased recorded on 15th September, 2021 (Page No.40). She has disclosed about visit of one Ashok in auto rickshaw. While identifying auto rickshaw, she has given a description of photo Shivaji Maharaj on the auto rickshaw. He was not behaving properly with them.

(b) Statement of Kumar Bhimrao Bodade dated 14th September, 2023 (Page No.48) :-

He is neighbour of the deceased. He has quoted two incidents. They are one- phone call received on 6th September, 2021. This witness inquired about her children with the witness and gave some instructions. Both children were crying for the reason that mother has not returned home. Second --7th September, 2021 :-The witness called on that number, one male talked. However, he has disconnected.

(c) The missing complaint given by Dattatraya Tanhu Surve on 8th September, 2021 (Page No.57).

(d) One mutual understanding agreement dated 25th August, 2021 in between the deceased and the Appellant. The Appellant has paid Rs.50,000/- to the deceased.

- (e) The *post mortem* and viscera report which rules out the possibility of pregnancy, because it is the motive for murdering her by the Appellant. They were in extra marital affair. The cause of death is head injury – unnatural.

3. Mr.Joshi is right in his contention that :-

- (a) There are no eye witnesses who had seen the actual assault.
- (b) There are no statements who had seen how the deceased went to the spot and whether Appellant accompanied her.
- (c) There is no seizure of weapon or any other incriminating article.
- (d) There is a reference of two mobiles and one seizure of mobile but call details report are not there.
- (e) The mutual understanding agreement do suggest the relationship in between both of them.

4. It is true that all the circumstances in case of circumstantial evidence are important. That can be seen at the time of trial. But, these materials are not sufficient to continue his detention. The trial Court rejected his Bail Application. The trial Court has noticed that there is a strong suspicion. Charge-sheet was also filed at that time but it was not considered by the trial Court. Once the charge-sheet is filed, Court has to go through the materials filed along with charge-sheet. They are not sufficient to detain the Applicant. It has not been considered properly. Hence, order :-

O R D E R

- (i) Appeal is allowed.
 - (ii) The order dated 8th March, 2022 passed by the learned Special Judge - Pune in Criminal Bail Application No. 7181 of 2021 is set aside.
 - (iii) Applicant - Ashok Bhagwan Mulik be released on bail in connection with C.R. No. 243 of 2021 registered with Paud Police Station - Pune Rural on furnishing personal bond and surety bond of Rs.25,000/-.
 - (iii) Applicant not to threaten the Prosecution witnesses or to allure them in any manner.
 - (iv) Applicant to attend the trial Court punctually.
5. These are my prima facie observations. Let the learned trial Court need not be influenced by them.
6. In view of the above, Appeal is disposed of.

[S. M. MODAK, J.]