

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

CRIMINAL APPEAL NO. 1009 OF 2023

Pintu Janardhan Surwase

...Appellant

vs.

The State of Maharashtra and Anr.

...Respondents

Mr. Taraq Sayed a/w Mr. Aditya Parmar i/by Ms. Sana Raees
Khan - Advocate for the Appellant

Ms. Amna S. Pai - Advocate for the Respondent No. 2

Mr. S. R. Agarkar - APP for the Respondent-State

PSI Dilip Salbatte - Solapur Police Station

CORAM : S. M. MODAK, J.

DATE : 15th DECEMBER, 2023

P. C. :-

1. Heard learned Advocate Shri Sayed for the Appellant-Accused No. 4, learned APP and learned Advocate Ms. Pai for the first informant-Dadaraao N. Kshirsagar.

2. Initially, an offence is registered under Sections 302, 307 read with Section 34 of the Indian Penal Code on 15/07/2021 with Mohol Police Station. This is the unique way of killing the person with whom there is enmity. It was pretended to be a regular accident involving an Eicher tempo being driven by accused no. 1-Bhaiya @ Birmal Aswale on one hand and Hero Honda motor cycle driven by the deceased-Satish Kshirsagar

and pillion rider was his friend Vijay Sarvade. Satish Kshirsagar died on the spot due to head injuries. Whereas Vijay Sarvade expired in the hospital. In all there are two charge-sheets. There are six accused. Later on Police have invoked the provisions of Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. However as the accused-Rohit, Santosh and this present Appellant and one Ramesh is not belonging to member of the Scheduled caste, they are not applied that section to them. However, the present Appeal is filed as per the provisions of the said Act are applied to offence. So by consent to go on with the matter, I have heard both of them.

Vehicular accident / murder

3. Learned Advocate Ms. Pai invited my attention to the spot panchnama at page no. 46 and the spot map on page no. 42. She has even invited my attention to the statement of one witness by name Ashok Gaikwad at page no. 93. On the date of the incident on 14/07/2021 at about 10.30 p.m. he had gone to one Sanskar Dhaba of Mohol Kurul Road and he had seen the incident. When he tried to give a signal by hand to the driver of the tempo he went ahead in the direction of village Mohol at great speed. Furthermore, he has stated that the motor cycle went below the tempo and in spite of that the driver of the

tempo who is none other than accused no. 1-Bhaiya, drove the tempo in speed.

4. In view of these material at the beginning itself, I observe that this is not the normal way of killing person. These are my *prima-facie* observations and ultimately, the trial Court has to go through the evidence.

Motive

5. It is true that the F.I.R. is lodged by Dadarao N. Kshirsagar who was brother of the deceased-Satish. He was not the eye witness to the incident, however he has quoted two reasons of rivalry. They are as follows:-

a) The deceased-Satish and another deceased-Vijay have lodged the application to Tahsildar Mohol thereby objecting about the bogus entries in Voters list. On their complaint the Sub-Divisional Officer conducted an enquiry and directed to remove bogus entries. The accused Rohit Phadtare got annoyed with deceased persons.

b) There was an earlier incident wherein the deceased was threatened by accused Rohit, Santosh Surwase of the dire consequences and present Appellant was also accompanying them.

c) The names of both deceased persons were there in the sanctioned list as per Ramai Gharkul Yojana, however their

files and other 28 files were missing from the Government Office. When the deceased-Satish inquired with the Collector Office and organized an agitation, the deceased was threatened by the accused-Rohit and accused-Santosh.

d) For all these reasons, all accused including the present Appellant were annoyed with his brother. According to him, for these reasons his brother and another deceased-Vijay are eliminated by these accused persons by hatching conspiracy.

6. Whereas according to the Mr. Sayed so far as these reason are concerned there is no material against the present Appellant and that he was annoyed due to cancellation of the bogus entries in the voters list and he was involved in misplacing of the file of Ramai Gharkul Yojana.

7. Admittedly, it is true that as per case of the prosecution this Appellant was not present. The murder by way of vehicular involvement took place. Whereas according to the prosecution, he is one of the Conspirator.

Circumstances against Appellant

8. Learned APP and Ms. Pai invited my attention to the following statements on the point of the actual incident, they are as follows :-

a) Ashok Dattatraya Gaikwad, at page no. 93 - present at the spot.

b) Vishweshwar N. Vitekari, who is owner of the Sanskar hotel situated at the spot which was on Mohal Kurul road, at page no. 106. He had seen the incident wherein eicher tempo gave dash to the motor cycle.

c) Vasim J. Talaphdar, at page no. 108 who runs the Kaveri Hotel wherein the both deceased, the accused no. 1-Bhaiya came on the date of the incident that is 14/07/2021 at about 9 to 9.15 p.m. All of them have taken dinner and they have consumed beer. They were there in the hotel till 10 p.m..

Learned Advocate Mr. Sayed's contention is that as all of them consumed beer, there is every possibility that death took place due to vehicular accident on the road having no traffic and they have lost control of vehicles.

d) Statement of the Sagar Legare is on page no. 110 who runs the permit room and he was paid Rs. 1,000/- by accused Bhaiya and instructed to supply beer to both the deceased and in fact, he has supplied them.

e) There are few more statements from vicinity of the spot on the same line.

9. Ultimately, the Court has to consider whether there is sufficient material to detain the present Appellant behind bar

till conclusion of the trial.

Ownership of tempo

10. On the point of the ownership of the tempo, Miss Pai brought to my attention the statement of the owner of the tempo on page no. 126. It is one Aariph Shaikh. He could not repay the loan installment to Shreeram Finance and that is how he has agreed to sell that tempo to accused Bhaiya. It simply indicates that accused no.1-Bhaiya was possessing that tempo.

11. My attention is also invited to statement of the Vishranta Kshirsagar, who is mother of the deceased-Satish and statement of Vimal Sarvade, who is also mother of the deceased. They have reiterated the rivalry in between their sons on one hand and the accused no. 1- Bhaiya on the other hand. It is true that Division bench of this Court has granted regular bail to co-accused Akash @ Gotu N. Barkade and Ramesh @ Gotu Sangram Sarvade. The order is on page no. 336. Therein the Division bench has considered the various statements of the witnesses and observed that facts stated by those witnesses on the basis of the hear say evidence and no specific role was attributed to the Appellants therein.

Order of trial Court

12. Whereas learned Advocate Ms. Pai invited my attention to the observations of the trial Court in the Order dated

08/08/2023, the trial Court observed that role of the present Appellant is different from the roles attributed to them. Furthermore, the trial Court observed that if the Appellant is released on bail there is likelihood of fleeing away from the justice, there is also possibility that he may pressurize witnesses.

13. Whereas learned APP has brought to my notice the previous antecedents of the present Appellant. There are in all three offences registered against him. Two at Mohol Police Station and one at Vijapur Naka Police Station. It is mentioned in para no. 4 of the report submitted today.

Further investigation

14. I have also read the statement of one Bhalchandra Kamble and Shekhar Hari Bansode recorded on 15/11/2021 which were submitted in further investigation. Both of them have also added one more reason of the rivalry, the sister-in-law by name Manish Phadtare of accused Rohit contested the Nagar Parishad election for one political party. Whereas one Vandana Surwase, who is wife of the arrested accused-Santosh Surwase won that election and these Appellants have assisted in her success.

15. From above materials, one can very well say that there are materials to say that both the deceased and the accused

Rohit and the present Appellant were in grudge with each other.

16. The materials do suggest that the arrested accused Bhaiya and both the deceased sat together in hotel prior to the accident. It is true that when case is based on the conspiracy, it is difficult for the Police to gather the materials. There can be materials of meeting of mind expressed in some meeting wherein the conspirator discussed amongst themselves about plan to eliminate one person and how to execute it. It consists of making of plan, preparation to execution of the conspiracy. It may consists of events that took place after execution of the conspiracy. One such material finds place by way of statement of Bhalchandra Kamble.

17. In addition to the political rivalry, he has also referred about one meeting that took place on 14/07/2021 in the afternoon, at 12.30 p.m., that is on the same date when the incident took place. All the accused have gathered near Rashtramata Kanya Prashala. This Appellant was also there and the accused-Rohit instructed to accused no. 1 how to eliminate both the deceased and he also explained manner in which all of them should consume liquor first and further plan of the running over the motor cycle by dashing them by eicher tempo.

18. Learned APP and Ms. Pai are right in their submissions that the role of accused Akash and Ramesh who were granted bail is different and their names are not included in the F.I.R.. Whereas present Appellant is named in the F.I.R. and he also referred as one of the associate of the Rohit and Santosh in threatening the deceased earlier on account of bogus voter entries and Ramai Gharkul Yojana.

19. So I do not think at this stage that Appellant can be granted bail, ultimately Court has to consider that two persons lost their life. It is important to note that there are three previous cases against the Appellant.

20. With these observations, I am not inclined to exercise discretion in favour of the Appellant. If the trial will not start within a period of one year he may apply for bail.

[S. M. MODAK, J.]