



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1434 OF 2024
IN
CRIMINAL APPEAL NO. 180 OF 2024

1] Shyam Yuvraj More,
Aged about 26 years, Occ- Labour,

2] Sandeep Fulchand Pawar,
Aged about 25 years, Occ- Labour,

Both resident of Khalane,
Taluka – Shindkheda, District – Dhule,
At present undergoing the sentence imposed upon them
at Nashik Central Prison, Nashik. **...Applicants**

Versus

The State of Maharashtra **...Respondent**

.....
Mr. Pankaj D. Kavale h/f Mr. Ravi B. Gite – Advocate for the Applicants
Mr. Govind A. Kulkarni – APP for respondent/State
.....

**CORAM : R. G. AVACHAT
AND
NEERAJ P. DHOTE, JJ.**

DATED : 22ND AUGUST, 2024

PER COURT : -

1. By this Application, the Applicants seek suspension of substantive sentence awarded by the learned Additional Sessions Judge, Dhule, vide Judgment and Order dated 16.12.2023 passed in Sessions Case No. 251 of 2021, for the offence punishable under Sections 302 read with 34 and 394 of the Indian Penal Code.

2. Perused the papers on record. The Prosecution's case in brief is that, deceased - Premsing Rajendra Girase, the informant – Jagdish Jaising Parmar and their one more friend, namely, Samadhan Girase had gone to take delivery of new motorcycle 'Platina' for the deceased in the afternoon on 06.09.2021. They had taken delivery of the said motorcycle from the showroom situated at Shindkheda. The deceased was riding newly purchased motorcycle and his friends viz. Jagdish and Samadhan were riding on separate motorcycle on their way back to village. The informant and Samadhan, who were riding on a separate motorcycle, went ahead and the deceased remained behind. Though Jagdish and Samadhan reached village Darane, the deceased did not reach. The informant learnt that the deceased was lying in an injured condition near Songir – Shindkheda road. When the informant and others reached the spot, they came to know that the deceased was taken to the hospital. Eventually, it was learnt that the deceased succumbed to the injuries. The informant learnt from one of the villagers that the Applicants and one more person i.e. acquitted accused, assaulted the deceased and robbed his motorcycle and mobile phone. The report was lodged and Crime No. 0216 of 2021 came to be registered with Sindkheda Police Station, Dist. Dhule, on 07.09.2021. During the course of investigation, the Applicants and the acquitted accused came to be arrested. After they were charge-sheeted, the trial

commenced which resulted into conviction of applicants [accused nos. 1 and 3] and acquittal of accused no. 2.

3. It is submitted by the learned advocate for the Applicants that there are no eye-witnesses to the incident in question. The entire case is based on circumstantial evidence. He submits that, so far as Applicant/Accused No. 1 is concerned, the only evidence is that of discovery and recovery of motorcycle, which was allegedly purchased by the deceased and the knife from the house of his father-in-law. He submits that the case of the Prosecution is that the delivery of the said motorcycle was taken from the showroom at Shindkheda, whereas; the document brought on record is shown to have been issued by the dealer at Dhule, which does not bear the signature of the customer. He further submits that, it creates doubt as to whether the said motorcycle was really purchased and the delivery thereof was taken by the deceased. He submits that the Insurance Policy, which was issued in the name of the deceased, shows that the insurance commenced on 07.09.2021 i.e. the next day of the incident, though as per the provisions of Motor Vehicle Act, no vehicle can be plied on the road without insurance and therefore the Prosecution's case that the incident took place on 06.09.2021 is doubtful. He submits that, no person from Bajaj Finance Company was examined. He submits that, the evidence in the nature of CCTV footage showing the tattoo marks and linking the same with

Applicant/Appellant No. 1 cannot be accepted in view of the evidence of Scientific Expert where he deposed that, a person can be best identified from his face and physical features but he had not examined the face and physical features of Applicant/Appellant No. 1. He submits that, except this i.e. discovery of motorcycle and knife upon which blood stains were allegedly found, cannot be the basis to confirm the conviction. He further submits that as far as Applicant No. 2 i.e. accused No. 3 is concerned, only evidence against him is of discovery and seizure of mobile phone, which is not established to be belonging to the deceased as per the evidence of Investigating Officer i.e. PW.16-Sunil Bhabad. He submits that the Application be allowed. He cited the following Judgments in support of his contentions.

- [i] **Radhey Shyam & Ors. Versus State of Rajasthan**, Criminal Appeal No. 2203 of 2020, delivered by the Hon'ble Supreme Court of India on 12th April, 2023.
- [ii] **Laxman s/o Utrayya Dongre Versus State of Maharashtra**, Criminal Appeal No. 110 of 2018, delivered by the Division Bench of Bombay High Court on 18th August, 2021.
- [iii] **The State of Punjab Versus Bhajan Singh and Others**, (1975) 4 SCC 472.

4. It is submitted by the learned APP that the Tax Invoice issued by the dealer at Dhule is in the name of deceased and though there is no signature of the customer, the Engine number and Chassis number shown thereon is similar to the Engine number and Chassis

number mentioned in the Discovery and Seizure Panchanama at Exhs. 62 and 63. He submits that the said discovery and recovery show that the motorcycle was hidden in the pit and covered with the grass. He submits that though the discovery and seizure panchanama in respect of the knife show that it was washed by the water, the CA report show blood stains on the knife of the blood group of the deceased. He submits that the said discovery and seizure is at the instance of Applicant No. 1. He submits that the evidence of Scientific Officer show that the tattoo appearing on both the hands of Accused No. 1 are the same which he examined from the photographs as well as from the CCTV footage images. He submits that this evidence is more than sufficient to show involvement of Accused No. 1 in the crime in question. He submits that it is settled position under the law that at this stage, minute scrutiny of the evidence on record is not permissible.

5. Learned APP fairly submits that as far as Applicant No. 2 i.e. Accused No. 3 is concerned, the only evidence against him is that of seizure of mobile of the deceased.

6. Learned APP submits that the Application be rejected.

7. We have gone through the evidence of Samadhan Girase. Perusal of the same would show that while he was passing from the

Songir-Dondaicha road near M.S.E.B. sub-station, he found the deceased lying along the road and when he went near him, deceased told him that three persons assaulted him and robbed his motorcycle and mobile phone and left towards Dhule side. His further evidence show that, he admitted the deceased to the hospital. This show that, there is oral dying declaration made to the villager, who was not an interested person. The medical evidence i.e. Post-mortem report show the cause of death as “hemorrhagic shock due to stabbing (injuring vital organ heart)”.

8. The incident took place on 06.09.2021, around 03:00 p.m. Accused No. 1 came to be arrested in the intervening night of 6th and 7th September, 2021. The evidence on record go to show that one motorcycle was seized pursuant to the voluntary statement of Accused No. 1 under Section 27 of the Indian Evidence Act on 9th September, 2021 i.e. within two days, which was hidden in a pit covered with grass. The place from where the motorcycle was seized was 20 kms., away from the spot of incident. Secondly, the evidence on record go to show that the Engine number and Chassis number of the said motorcycle discovered and seized at the instance of Applicant No. 1 is similar to the Engine number and Chassis number mentioned in the Tax Invoice issued in the name of deceased by the Dealer at Dhule, which is at Exh 134. Further, the Insurance Policy- cum-Certificate, which is at Exh. 135, is of

the same motorcycle as seen from the Engine number and Chassis number mentioned therein and the name of deceased as mentioned therein.

9. The other evidence is that of Scientific Expert, who extracted the CCTV footage from cloned hard-disc with the help of forensic software and uploaded the relevant file in which Applicant No.1 was visible. His evidence further show that, Applicant No. 1's photographs were also examined and tattoo appearing on both the hands of Applicant No. 1 were the same which he had examined from the photographs as well as CCTV footage images wherein Applicant No.1 was seen. Though in his cross-examination he admits that a person can be best identified from his face and physical features and he had not examined the face and physical features of Applicant No. 1, will not create any dent in his above referred evidence given in examination-in-chief. Thirdly, the knife was discovered and seized at the instance of Applicant no. 1 pursuant to voluntary statement under Section 27 of the Indian Evidence Act from the house of his father-in-law. Though the memorandum show that the knife was washed, the CA report indicate blood stains of group 'B' thereon. The CA report in respect of blood group of deceased show that the blood group of deceased was also 'B'.

10. We have gone through the judgments cited by the learned advocate for the Applicants. There can be no dispute in respect of the law laid down in the said judgments. However, the facts of the present case and the cases relied upon by the learned advocate for the Applicants are different. Therefore, at this stage, the authorities cited by the learned advocate for the Applicants would be of no assistance to him. With this evidence available on record and considering the legal position that the Appellate Court should not reappreciate the evidence at the stage of Section 389 of the CrPC and try to pick up few lacunas or loopholes here or there in the case of the prosecution, we see no case for suspension of substantive sentence and bail for Applicant No.1 - Sham Yuvraj More.

11. So far as Applicant No. 2 is concerned, only evidence against him is that of discovery and seizure of mobile phone. Though Prosecution claims that the said mobile was that of deceased, the evidence of Investigating Officer show that he could not collect any document nor made any inquiry about ownership of mobile phone. Therefore, it is clear that there is no evidence to show that the said mobile was that of deceased. Except this, there is no evidence against Applicant No. 2 i.e. Accused No. 3 – Sandip Fulchand Pawar.

12. In view of above, we proceed to pass the following order : -

ORDER

- [i] Application to the extent of Applicant No. 1 – Sham Yuvraj More is rejected.
- [ii] Application to the extent of Applicant No. 2 – Sandip Fulchand Pawar is allowed.
- [iii] The substantive sentence imposed upon Applicant No. 2 – Sandip Fulchand Pawar by the learned Additional Sessions Judge, Dhule, vide Judgment and Order dated 16.12.2023 passed in Sessions Case No. 251 of 2021, for the offence punishable under Sections 302 read with 34 and 394 of the Indian Penal Code, is suspended during the pendency of the present Appeal.
- [iv] The Applicant No. 2 – Sandip Fulchand Pawar be released on bail on his furnishing P. R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only) with one surety in the like amount.
- [v] The Applicant No. 2 / Accused No. 3 – Sandip Fulchand Pawar shall not change his residential address without informing the concerned Police Station.
- [vi] Bail before the Trial Court.

13. Criminal Application stands disposed of accordingly.

[NEERAJ P DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE