



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2868 OF 2024
IN
CRIMINAL APPEAL NO.641 OF 2024

Sanket Bhagwat Wagh
Age: 29 years, Occu: Education,
R/o. Canal Road, Yashwantnagar,
Beed, Tq. and Dist. Beed.

....Applicant

VERSUS

The State of Maharashtra
Through Police Station Officer
Peth Police Station, Beed,
Dist. Beed

.....Respondent

.....
Mr. Nitin V. Gaware Patil a/w Mr. Z. H. Farooqui, Advocate for the
Applicant
Mrs. U. S. Bhosale, APP for the Respondent - State

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**CORAM : R. G. AVACHAT &
NEERAJ P. DHOTE, JJ.**
DATE : 23.10.2024

FINAL ORDER : [PER NEERAJ P. DHOTE, J.]

1. This is an Application filed under Section 389 of the Code of Criminal Procedure, 1973 [hereinafter referred to as 'Cr.PC'] for suspension of sentence and grant of bail. The Applicant is convicted by the learned Additional Sessions Judge, Beed, in Special Atrocity Case No.04/2019, vide Judgment and Order dated 16/05/2024, for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 [hereinafter referred to as 'IPC'] and sentenced to suffer imprisonment for life with fine of Rs.5000/-, in default, to suffer rigorous imprisonment for two [2] months.

2. The Prosecution's case as revealed from the police report is that, the Informant - Bhagyashri Sumet Waghmare married Deceased - Sumet, against the wishes of her family members. Before marriage, they both were studying together and fell in love. Their relations and marriage did not go well with her family members. On account of their love relations, on many occasions, the family members of the Informant threatened the Deceased with dire consequences.

3. On 19/12/2018, the Informant and Deceased appeared for the examination between 2.00 p.m. to 5.00 p.m. After the examination, when they came out from the examination center, the brother of Informant i.e. Accused No.1 and the Applicant [Accused No.2] assaulted the Deceased. Deceased was assaulted with knife by Accused No.1 and the Applicant caught hold the Deceased. When the Informant intervened, she was pushed by the Applicant. After the assault, Accused No.1 and the Applicant fled in a Car. Deceased succumbed to the injuries. The incident was reported to the Police. After the investigation, the Applicant, the Accused No.1 and two others came to be Charge-sheeted and after the trial, the Applicant and Accused No.1 came to be convicted by the learned Trial Court, as referred above.

4. It is submitted by the learned Advocate for the Applicant that, PW - 2 - Informant and PW - 9, the tea stall owner, who were examined as the eye witnesses to the incident, did not support the case of Prosecution. The Applicant had no animus with the Deceased. The circumstance of blood stains on the seat of the Car was not put to the Applicant by the learned Trial Court in the statement recorded under Section 313 of Cr.PC. There is no evidence to connect the Applicant with the Crime. The testimony of the witness, who did not support the case of Prosecution, can be

made use of by defence as well. The Applicant was arrested on 25/12/2018 and since then, he is behind the bars for a period of five [5] years and nine [9] months. He submitted that, the Application be allowed.

5. It is submitted by the learned APP for the State that, PW – 2 - Informant is the eye witness to the incident and in her examination-in-chief, she narrated the entire incident. Since the cross-examination was conducted after a gap of some days, she was won-over by the accused persons and therefore, she deposed in favour of accused in her cross-examination. The Car, in which, the Accused fled after commission of the Crime, was owned by father of the Applicant and blood stain was found on the seat of the said Car. The CA report and DNA report confirmed that, the blood stain was that of Deceased. All incriminating circumstances were put to the Applicant by the learned Trial Court while recording the statement under Section 313 of Cr.PC. She relied on the Judgment of the Hon'ble Apex Court in the case of **Selvamani Vs. The State Rep. By the Inspector of Police, in Criminal Appeal No.906/2023 dated 08/05/2024**, in support of her submission that, the testimony of PW – 2 - Informant can be considered along with corroborative evidence. She submitted that, the Application be rejected.

6. We have perused the evidence available on record with the assistance of learned Advocate for the Applicant and learned APP. The Informant, who was the wife of Deceased, is examined as PW – 2. In her examination-in-chief, she narrated about the previous incidents of threatening by her family members to the Deceased, on account of love relations between her and Deceased. Regarding the incident, she deposed that, on 19/12/2018, she and Deceased had appeared for the examination between 2.00 to 5.00 p.m. After the examination, they came out. The Deceased removed his

motorcycle and she sat on the motorcycle as the pillion rider. They both proceeded on the motorcycle for some distance. She noticed a white Car of the Applicant in the parking of College. The Applicant was standing near the door of the Car and her brother - Accused No.1 was sitting aside the Car. When their motorcycle was coming nearer to the Car, the brother - Accused No.1 alighted from the Car and came towards them along with the Applicant. Her brother - Accused No.1 was having knife in his hand and he gave blows with the knife in the stomach and chest of Deceased. Due to the assault, Deceased fell down. She also fell from the motorcycle. When Deceased tried to getup, the Applicant caught hold of the Deceased and her brother - Accused No.1 inflicted the blows on him. When she intervened, the Applicant pushed her. When she again intervened, her brother - Accused No.1 asked her to leave or else she would also be killed. When Deceased was trying to run, her brother - Accused No.1 gave blow in his back. Her brother - Accused No.1 and the Applicant fled in the Car. She went near the Deceased. Though people had gathered and took videos, no one came to their help. She somehow managed with the help of two three friends, to take the Deceased to the Hospital in the rickshaw.

7. Her further evidence shows that, in her cross-examination, she resiled from the version as deposed in examination-in-chief and deposed that, her brother - Accused No.1 and the Applicant had no connection with the incident and she did not saw them on the date of incident. She went on to depose that, she did not know the Applicant. One aspect which needs to be taken note of is that, her examination-in-chief was recorded on 06/03/2020, her further examination-in-chief [which was limited to the extent of her blood stained cloth] and cross-examination were recorded on 13/03/2020 and her further cross-examination was recorded on

05/08/2021, 23/08/2021, 03/09/2021. It is thus clear that, her examination-in-chief and cross-examination by the defence was not recorded in one-go. It is recorded in piecemeal. Therefore, it appears that, she was won-over by the accused persons and therefore, she resiled from her version deposed in the examination-in-chief, which gives the full account of the incident showing the involvement of the Applicant in the Crime. It would not be out of place to reproduce the relevant observations from the above referred Judgment cited by the learned APP, in *Selvamani Vs. The State Rep. By the Inspector of Police [Supra]*, having more or less similar situation, which reads as under:

“13. In the present case also, it appears that, on account of a long gap between the examination-in-chief and cross examination, the witnesses were won over by the accused and they resiled from the version as deposed in the examination-in-chief which full incriminates the accused. However, when the evidence of the victim as well as her mother [PW-2] and aunt [PW-3] is tested with the FIR, the statement recorded under Section 164 Cr.PC and the evidence of the Medical Expert [PW-8], we find that there is sufficient corroboration to the version given by the prosecutrix in her examination-in-chief.”

Here also in the case in hand, the Prosecution has brought on record the Report and statement under Section 164 of Cr.PC by PW – 2 vide Exhibits – 119 and 120 for corroboration.

8. The evidence of father of Deceased, who is examined as PW – 3 [Shivaji Ambadas Wagh], shows that, in between 5.00 p.m. to 5.30 p.m. of 19/12/2018 i.e. on the day of incident, he received phone call from PW – 2 – Informant informing him about the incident of the assault by her brother - Accused No.1 and the Applicant. The evidence of this witness would become relevant pursuant to Section 6 of the Indian Evidence Act, 1872 [hereinafter referred to as ‘the Evidence Act’]. His evidence further shows that, after the incident, the Informant - PW – 2 was residing with him and as she was frightened, she applied for police

protection and she was given police protection. This goes to show that, she was under the threat or fear of the accused persons. This being so, no wonder that she resiled from her evidence in the cross-examination.

9. The evidence on record goes to show that, the Investigating Officer forwarded the articles seized during the investigation, to the Forensic Science Laboratory, Aurangabad vide communication dated 14/01/2019 at Exhibit - 343. The said communication gives the details of the articles sent for the Chemical Analysis. The CA report at Exhibit - 458 shows that, the Top [Cloth] of the Informant and the cotton swab at Exhibit - L, on which, the blood stain from the front seat of the white Hyundai Car was lifted, were having the blood stains of human species of ABO grouping as 'B'. The CA report at Exhibit - 462 is the report in respect of result of DNA, which shows the following interpretation and opinion :

"Interpretation and Opinion :

The DNA profiles obtained from Ex 5 - blood detected on Odhani, Ex. 12 - blood detected on cotton swab, Ex.21 - blood detected on dagger, Ex. 23 - blood detected on full shirt and Ex. 24 - blood detected on full jeans pant in R.F.S.L.M.L. Case No. Ba - 106/19 (DNAa-297/19) are **identical and matched** with control DNA profile obtained from Ex.1 - blood of Sumit Shivaji Waghmare in R.F.S.L.M.L. Case No.DNAa - 18/19".

10. It is, thus, clear that, scientific evidence shows that, the blood of Deceased was found on the seat of the Car and Odhni [Cloth] of the Informant - PW - 2. The record, as pointed by the learned APP shows that, the Car bearing No. MH-23 AD-3253, wherefrom, the blood stain was lifted was in the name of Bhagwat Ganpat Wagh, who was the father of Applicant and he had taken custody of the said Car by executing Bond pursuant to the order dated 30/01/2019, passed by the learned Magistrate on the Application under Section 457 of Cr.PC. The evidence of Investigating Officer, who is examined as PW - 29, shows that, the said Car was that of father of the Applicant.

11. It would not be out of place to refer the relevant observations of the Hon'ble Apex Court of India in **Omprakash Sahni Vs. Jai Shankar Chaudhary & Anr.; 2023 DGLS [SC] 509**, in respect of Suspension of sentence, which reads as under:

“33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. 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. Such would not be a correct approach”.

12. As discussed above, this is not the case of no evidence at all against the Applicant. The above discussed material on record, *prima facie* links the Applicant with the Homicidal Death of the Informant's husband. The incident had taken place in broad daylight. We do not find the Applicant's case fit for Suspension of sentence and bail. Hence, we proceed to pass the following order :

ORDER

[I] Criminal Application is rejected.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

Sameer/Oct-2024