



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1318 OF 2024
IN
CRIMINAL APPEAL NO. 304 OF 2023

Sachin Pandusing Pardeshi

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....
Mr. A.D. Ostwal, Advocate i/b Mr. K.D. Jadhav, Advocate for applicant
Mr. S.D. Ghayal, A.P.P. for respondent - State
....

CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ
DATE : 12th AUGUST, 2024

PER COURT :

1. This is an application for suspension of substantive sentence of imprisonment imposed by Additional Sessions Judge, Ambad in Sessions Case No. 227 of 2021 vide judgment and order dated 01st March, 2023 thereby convicting the applicant for the offence punishable under Section 302 of the Indian Penal Code.

2. It is the case of prosecution that the applicant and the deceased were working in a bakery situated at Tirthpuri. Fifteen days before the incident, there was a quarrel between the applicant and the deceased, due to which the deceased left the job and went to his home. At the instance of

owner of the bakery, the deceased returned back to his job. In the night of 22nd February, 2021, when the applicant and the deceased were sleeping in the bakery, the applicant went to the nearby house of P.W.6 - Sandip Mapare and informed him that thieves had come. When Sandip Mapare went to the bakery, he saw the deceased was lying in injured condition. The matter was reported to police. The applicant came to be arrested and after investigation he came to be charged with.

3. In the trial, the prosecution examined relevant witnesses. Learned trial Court convicted the applicant on the ground that he failed to explain the circumstances as to how death of the deceased occurred as envisaged under Section 106 of the Indian Evidence Act.

4. It is submitted by learned counsel for the applicant that the evidence on record show that the applicant had immediately rushed to the house of nearby resident i.e. P.W.6 - Sandip Mapare and informed him that thieves have come to the bakery. He submits that the applicant did not flee away. He submitted that merely on suspicion the applicant has been implicated. He submitted that the applicant has accepted that he was present in the bakery and the evidence on record went to show that defence of the applicant was probable. He submits that the C.A. reports do not show blood on the applicant's clothes. The result of analysis of blood group of deceased

was inconclusive. The applicant was behind the bars for more than three years. He submits that there are no criminal antecedents and the application be allowed.

5. The application is vehemently opposed by learned A.P.P. He submits that the evidence on record show that the applicant and the deceased were sleeping in the bakery, where they were working. He submits that defence taken by the applicant is not at all probable. The evidence on record establishes that the applicant was the author of the crime and application be rejected.

6. Admittedly, the prosecutions' case is based on circumstantial evidence. The law in respect of circumstantial evidence is well settled by catena of decisions of Hon'ble Supreme Court of India from the decision in ***Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116***, wherein following principles are laid down :-

- “(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.*
- (2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.*
- (3) The circumstances should be of a conclusive nature and tendency.*
- (4) They should exclude every possible hypothesis except the one to be proved, and*

- (5) *There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”*

7. It is true that the evidence on record show that fifteen days prior to the incident, there was quarrel between the deceased and the applicant and the deceased left the job and returned home. At the instance of bakery owner, he resumed the job. Evidence of P.W.6 – Sandip show that in the night before the incident, he himself, the deceased and the applicant took meal and thereafter he went to his home, near the bakery. His evidence further show that in the night of 22nd February, 2021 the applicant came to his house and banged his door telling that thieves had come. Evidence of this witness show that the said place of incident i.e. bakery was situated in the portion of his land. Further the evidence P.W.5 – Digambar show that he was one of the employee of the said bakery and on the earlier occasion attempt of theft had taken place in the said bakery. His further evidence show that there was no axe in the bakery before the incident. Evidence of owner of the bakery show the applicant was honest person. The C.A. reports do not indicate blood of deceased on the clothes of the applicant. Evidence on record show that the applicant had also suffered injuries and the prosecution has not proved the injury certificate of the applicant. The evidence available on record, in our prima facie view, show that the applicant’s defence cannot

be lightly brush aside. There is no possibility that the appeal would be heard in near future.

8. In view of above, the execution of substantive sentence of imprisonment to stand suspended pending the appeal. The applicant be released on his executing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

9. Criminal application stands disposed of accordingly.

SSD (NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)