

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2024 OF 2023
IN
CRIMINAL APPEAL NO. 636 OF 2023

Vitthal Shrirang Sule and anr .. Applicants
Versus
The State of Maharashtra .. Respondent

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Mr. Karan Bhosale i/b Datta Mane for the applicants.
Mr.S.V. Gavand, APP for the State.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 21st JUNE, 2024.

P.C:-

1 The present application is filed by two appellants i.e accused nos.1 and 2, who on being tried by Addl. Sessions Judge, Malshiras in Sessions Case No. 636 of 2013, were found guilty of committing an offence punishable u/s.302, 201 r/w Section 34 of the IPC and sentenced to suffer Life Imprisonment for their entire life and to pay fine of Rs.5,000/- each and in default to undergo Rigorous Imprisonment for one year.

On being aggrieved by the judgment and order passed by the judgment on 24/3/2023, the appellants preferred an Appeal, being registered as Criminal Appeal No. 636/2023 and the same is admitted by this Court.

During its pendency, the present application is taken out by invoking Section 389 of Code of Criminal Procedure, seeking suspension of the substantive sentence imposed on them and further for securing their release on such terms and conditions, as this Court may deem it appropriate.

2 We have heard Advocate Karan Bhosale for the applicants and Mr. S.V. Gavand, the learned APP for the State.

The applicants were arraigned as accused in C.R.No. 18/2013 registered with Malshiras police station, District Solapur, which invoke offences under Section 302, 201, 202, 120B and Section 34 of the IPC and charge-sheet was filed against 10 accused persons, the present applicants being arraigned as accused nos.1 and 2. The applicant no.1 came to be arrested on 5/2/2013, whereas the applicant no.2 was arrested on 6/2/2013 and after initial police custody, they were remanded in judicial custody and lodged in jail.

3 By order dated 27/5/2013, during the pendency of the trial, both the applicants were released on bail. However, upon pronouncement of the impugned judgment dated 24/03/2023, they surrendered themselves and are presently incarcerated.

4 According to Mr. Bhosale, the prosecution has failed to establish the charge of murder against the present applicants and the prosecution witnesses did not support its case, which

resulted in they being declared hostile and according to him despite no material on record being brought by the prosecution to establish that they are responsible for the death of Kavita, who is alleged to have met with a suspicious death, merely on the basis of assumption, the trial Judge deemed it appropriate to record that the prosecution has proved its case beyond reasonable doubt and it is these two applicants, who are held to be responsible for killing Kavita, whereas the other accused persons, namely, accused no.3 and 4, are found guilty of assisting them in cremating her dead body, whereas accused nos. 5 to 9 were acquitted of the said offence, the ground that they were unaware of killing of deceased by accused no.1 and 2. As far as accused no.10 is concerned, since he died during the pendency of the trial, the appeal stood abetted against him.

5 With the able assistance of Mr.Karan Bhosale and Mr. S.V. Gavand the learned APP, we have perused the paper book, which is kept ready and we also perused the impugned judgment of conviction and imposition of sentence which is assailed in the Appeal.

As per the case of the prosecution, the informant, a police inspector attached to Malshiras police station received an envelope from Police Constable from Pilliv outpost, where it was mentioned that Police Patil, Sulevadi along with his associates, had chopped Kavita into pieces and cremated her on 31/02/20123 in a clandestine manner.

Accordingly on 3/2/2013, a report was submitted by ASI Jagtap upon confidential inquiry being carried out, which revealed that she was alive till 10.00 a.m and suddenly at 5.00 p.m, she was dead and her relatives performed her last rites in a great haste.

It was also alleged that six months ago, the deceased Kavita had eloped with one person and returned after about 10-15 days and this event resulted in registration of a missing complaint invoking Sections 363, 366A 376, 506 read with Section 34 of the IPC.

It was specifically noticed that whenever proposal was received for her marriage, she used to clearly tell the person about her affair with Umaji and therefore, her marriage could not be settled and the family therefore imposed restriction on her movement by keeping her in captivity. It is therefore alleged that accused Vitthal mercilessly thrashed Kavita, as he was angry about his reputation of the family being maligned, and by cremating her body, an impression was given to the people, who attended the last rites that she died of heart attack. It was thus alleged that there was a conspiracy to kill Kavita and the evidence was destroyed by cremating her.

6 It is in the wake of these accusations, the prosecution lead its case before the trial Judge through seven witnesses.

PW No.1 Duryodhan was examined, as he received phone call from accused Vitthal who gave information that his daughter was dead and therefore, he proceeded towards graveyard at village Pilliv, where villagers had gathered for the funeral. When he inquired as to cause of death, he was told that she died due to heart attack.

He also deposed that Kavita was pursuing her education and while she was in school, one boy Umaji Bodare had kidnapped her, resulting into registration of a crime.

According to PW No.1, accused Vitthal complain that his daughter is not listening to him and except this, Vitthal narrated nothing.

7 Since PW 1 did not support the case of the prosecution and hence, he was declared hostile and was cross-examined by the Public Prosecutor, but nothing helpful to support the prosecution case was extracted from this witness.

The statement of Duryodhan was recorded under Section 164 Cr.P.C by the Magistrate, which was exhibited as Exhibit-71, which also is devoid of any incriminating circumstance, as he stated that when he inquired with Vitthal as to what had happened suddenly, as Kavita was seen in the morning in a fit condition, he was told that she suffered a heart attack.

Duryodhan further stated that 5 – 6 months before Kavita's marriage was arranged and when the marriage was to be solemnized, she eloped with a boy from the village and upon being traced, her custody was handed over to her father Vitthal, but she was not ready to get married to any other person, and this was disclosed to him by Vitthal.

8 The second witness was examined, as he was called by Duryodhan on receipt of call from Vitthal to attend the funeral.

In examination in chief, he state that he had been to the saw mill to collect fuel wood to be taken to the graveyard and he was also instructed to bring elderly persons in tempo from Sulewadi to the graveyard, but denied the suggestion that accused Vitthal directed him to bring dead body of Kavita towards graveyard.

Even he has been declared hostile and no other material in support of the prosecution case has come on record, though he was cross-examined by the prosecution.

9 Another witness i.e. the panch witness, who acted as a panch to show the place where the accused had committed murder of his daughter and cremated her and to witness the production of a rope which had concealed in the house has also turned hostile. Even PW4, panch witness to the memorandum statement of accused Vitthal is declared hostile. In addition, PW

5, the panch who accompanied the accused to Sulewadi has also been declared hostile.

10 The prosecution therefore, rest its case upon the evidence of PW 6, PI attached to Malshiras police station who referred to the manner in which the information was received and deposed that during interrogation, it was revealed that Vitthal and his brother-in-law committed murder of Kavita in the house and disposed off her dead body and therefore, he lodged the report which was exhibited through him (Exhibit-86). The witness is extensively cross-examined and it is clearly admitted by him that on the chit, which is received by him, on the basis of which the inquiry was initiated, did not mention the date and it was written by an unknown person and the names of accused nos.1 to 10 were not mentioned in the said letter.

Further, he admit that witness Duryodhan, Natha Solankar and Hiroji never disclosed names of accused as suspects while recording their statement. He also admit that he had not made any interrogation with the neighbors of Vitthal Sule.

The last witness examined by the prosecution is Mr. Sanjay Kumar Patil, another Investigating Officer, who revealed the progress of investigation and the steps taken to collect the necessary evidence.

11 It is in light of the above evidence the learned Judge appreciated the case of the prosecution to the effect that Kavita

was not ready to marry with anybody, except Umaji and therefore she was killed by accused nos.1 to 3 as it caused disrepute to their family.

On finding substance in the said case, what the learned Judge has recorded is interesting to read:

“35. It is not the case of the accused that, after finding the deceased Kavita the accused nos.1 to 4 were ready and willing to perform the marriage of the deceased Kavita with Umaji Bodare. This itself goes to show that they were reluctant to marry the deceased Kavita with Umaji Bodare. It is not the case of the accused that they were not trying to settle the marriage of the deceased Kavita with another person and she was allowed to study further”

The conviction is only based upon the aforesaid reasoning which is stretched further by the learned Judge where he record as below:

“37 The accused no.1 is the father of the deceased Kavita. If the deceased Kavita had suffered a heart attack, naturally as a father, he will rush his daughter to a hospital. He will try his level best to see that she lives. However, here that has not happened. It is pertinent to note that when deceased Kavita has died, he has not informed to the police or to the Medical Officer. There is hardly any explanation for not doing so. Had the dead body of the deceased Kavita was available for post mortem, then certainly the cause of death could have been ascertained. However, the accused have cremated the dead body of deceased Kavita”.

12 It is in light of the aforesaid observation the learned Judge reached an inference that the prosecution has proved that accused nos.1 to 4 had a strong motive to commit the crime and the absence of medical evidence to show that she had suffered

heart attack and the cremation of the body proves that she was murdered.

In our considered opinion, the aforesaid reasoning adopted by the learned Judge is highly perverse, as without any material to that effect being brought on record by the prosecution, the inference is drawn.

It is trite position in criminal jurisprudence that the burden to prove an offence lies upon the prosecution and an accused is presumed to be innocent unless proven otherwise.

The key witnesses of the prosecution having failed to support its case, merely by referring to the past incident that the girl had eloped with someone and was opposed to her marriage with any person, the inference is derived in a perfunctory manner.

In fact, PW 1 and 2, the villagers supported the version of the prosecution that Vitthal was often cribbing that his daughter was not ready to perform marriage with anyone in their 164 statement.

In our considered opinion, the learned Judge has grossly erred in jumping to a conclusion that only on the basis of a previous C.R registered when the deceased Kavita had eloped, she was done to death by the two applicants.

13 We therefore, find that the conclusion recorded by the learned trial Judge is prima facie perverse, being not based on

any evidence and the Appeal filed by the appellants is already admitted and since they were released on bail during trial, we deem it appropriate to suspend the sentence imposed upon them and also release them on bail during the pendency of the present Appeal.

ORDER

- (i) The sentence of Life Imprisonment imposed on applicant no.1 Vitthal Shrirang Sule and applicant no.2 Santosh Jaggnath Madane by judgment dated 24/3/2023 in Sessions Case No. 36/2013, is suspended during pendency of Appeal No.636/2013.
- (ii) The applicant no.1 Vitthal Shrirang Sule and applicant no.2 Santosh Jaggnath Madane shall be released on bail in C.R.No. 18/2013 registered at the instance Malshiras police station (Sessions Case No. 36/2013) on furnishing P.R. Bond to the extent of Rs.25,000/- each with one or two sureties in the like amount.
- (iii) The applicants shall report to concerned police station on 1st Monday of every trimester between 11.00 am to 2.00 p.m.
- (iv) The applicants shall keep the concerned police station in-charge informed of their current address and mobile contact number and/or change of residence or mobile details, if any, from time to time.

(MANJUSHA DESHPANDE,J)

(BHARATI DANGRE, J.)