

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1952 Of 2024
IN
CRIMINAL APPEAL NO. 1426 of 2023

Guriyya Maruti Dasari @ Guru .. Applicant
Versus
The State of Maharashtra .. Respondent
...

Mr. Siddhesh Bhole with Arjun Singh Thakur for the applicant.
Mr.S.V. Gavand, APP for the State.

CORAM:BHARATI DANGRE &
MANJUSHA DESHPANDE,JJ.
DATED : 29th JULY, 2024

P.C:-

1 The present application is taken out by the appellant – original accused, who is sentenced to undergo Life Imprisonment for committing the murder of one Durga Swami Shirke on 22/5/2014 by giving the blows of sword.

He, having faced the trial before the Addl. Sessions Judge, Borivali Division, Dindoshi, Mumbai, based on the evidence laid by the prosecution, was found to be guilty of committing the offence, and it is this judgment which is assailed by him in the Appeal, which is admitted by this Court on 12/12/2023, and directed to be heard expeditiously.

Since it is not possible to hear the Appeal, we have heard Mr. Siddhesh Bhole along with Advocate Arjun Singh Thakur for the applicant in support of Application No. 1952/2024, taken out for suspension of sentence and for his enlargement on bail.

We have also heard learned APP Mr. Gavand, who has strongly opposed the application, in the wake of the finding rendered by the Sessions Judge in the impugned judgment, recording that the prosecution has proved its case against the accused beyond reasonable doubt and therefore, since the presumption in favour of the accused of innocence, is no more available, and since there are no chances of the Appellant succeeding in Appeal, he must undergo the sentence of Life Imprisonment imposed upon him.

2 The case of the prosecution was unfolded before the trial Judge through the complainant, being examined as PW 1, Shanta Durga Varganti, the elder sister of deceased who deposed that her brother Durgesh was married, but since two months, his wife was residing at Solapur and he used to sleep on the roadside in front of scrap shop. Accused Guriyya was also residing in Mishra Chawl and was quarrelsome in nature.

Deceased was working as watchman and was attached to the chawl and there was an old enmity between him and the accused and they were not on talking terms, but accused used to

often intimidate, as he had asked deceased as well as brother Parshuram to provide three rooms under the SRA scheme in lieu of one room, but his proposal was rejected.

It is in this background, according to PW 1, on 22/5/2014, when Durga went to sleep as usual, in the night at around 3.30 a.m, Shanta heard his shrieks, “आई मला वाचव, आई मला वाचव” and when she came outside her house, she saw the accused inflicting sword blows on Durga who was asleep.

3 One Raju Bhosale, Katappa Durgappa Varganti were also standing nearby in frightened condition. When she went to his rescue, the accused rushed towards her and therefore, she alarmed loudly and the persons in the neighborhood, Ramesh Basari, Nagesh Dasari came there running.

Her brother Manoj and Parshuram also rushed to the spot, but in the mean time, the accused fled away towards Kurupwadi Rickshaw stop.

The persons gathered, noted injuries on face, neck, thigh, and ankle of Durga and found him to be unconscious. Her brothers carried him to Dr. Babasaheb Ambedkar Hospital, where he was declared dead.

4 On the next day of the incident, the accused came to be arrested. The spot panchnama was prepared and the belongings of the deceased lying there were recovered.

5 The accused gave memorandum statement under Section 27 in presence of two panchas (Exhibit 49) which led to the sword, the weapon with which the assault was mounted with the deceased along with his clothes which had blood stains. After investigation, charge-sheet was filed and the accused was committed for trial.

6 The prosecution examined 12 witnesses, which included the eye witnesses. The complainant Shanta corroborated her complaint, by stating that when she heard the cry of her brother, she came out of the house to find Durga lying on the floor and witnessed the assault on him by the accused. She specifically mentioned presence of Vargatti and one Bhosale when the assault was going on, as she found them standing quietly in a corner.

7 Katappa Varagatti is examined as PW 2, who also make reference to Bhosale who was sleeping on the otta (portion of pavement) along with the deceased.

PW 2 categorically state that there was electric pole near the ota which had an electric lamp mounted on it.

He corroborate PW 1 as he heard the voice of Durga and Shantabai also reached the spot. He also mentioned about the other persons who came out, on the spot and had witnessed the accused mounting assault on Durga who sustained bleeding injuries and was taken to the hospital, but was declared dead.

PW 6 has also supported the prosecution case when hearing the cries of Shantabai, he came out of his house and found presence of Shantabai, Parshuram, Sumitra and Manoj. Shantabai told the persons present there that Durga was assaulted by sword by the accused and he ran away. Durga was unconscious and had sustained injuries on his face, neck and ankle.

8 PW 10 is the panch witness to the recovery of sword at the instance of the accused from the stack behind Omkareshwar bus stop. Though this witness admit that the label on the sword was not fixed in his presence, but, in any case, it do not affect the veracity of his statement.

The Investigating Officers PW 11 and PW 12 are examined by the prosecution to establish its case.

The post mortem report opine the cause of death of Durga due to hemorrhage and shock due to multiple injuries.

9 The prosecution has established its case through the 12 witnesses and the Sessions Judge, by appreciating the evidence recorded a finding of guilt of the accused and sentenced him to undergo Life Imprisonment.

Though Mr.Bhole made a serious attempt to point out the inconsistencies in the prosecution case, and specifically asserted before us that non-examination of Mr. Bhosale who was

at the side of Durga, at the relevant time, is fatal to the prosecution, in our considered opinion, it is not the number of witnesses which strengthen the case of the prosecution, but it is the quality of the evidence which would be sufficient to record guilt and here we have found that apart from the complainant, the other witness i.e. PW 2 has spoken in sync with Durga.

PW 6 is not a person who has witnessed the incident, but his testimony is important since he rushed to the spot when the accused had already fled away, but Shantabai disclosed that the assault on Durga who was found having sustained injuries and lying on the spot being assaulted by accused.

Corroborating the version of these witnesses with the medical evidence in form of PW 5 and PW 7, a finding of guilt has been recorded which prima facie according to us, do not warrant any interference. Though the motive, according to Mr.Bhole, of a previous enmity of 10 years, may not carry as weightage as the prosecution intended to attach, in light of the version of the witness, clearly attributing the assault on deceased by the accused, the motive would lose its significance.

Another argument of Mr.Bhole that the witnesses are interested witnesses also deserve to be turned down, as though they may be interested, but they are the most natural witnesses who were present and came out to the rescue of the injured, and in specific, PW 1 and PW 2.

In the wake of the above, we are not inclined to grant the relief as prayed in the Interim Application. Necessarily, IA No. 1952/2024 is dismissed.

(MANJUSHA DESHPANDE,J)

(BHARATI DANGRE, J.)