

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2223 OF 2024
IN
CRIMINAL APPEAL NO.941 OF 2023

Chintaman Raghu Baraf
Age: 44 years, Occ: Labour
R/at: Dhamani, Gauthanpada,
Tal. Vikramgad, Dist. Palghar .. Applicant

Versus

The State of Maharashtra
(at the instance of the Vikramgad
Police Station, Thane) .. Respondent

...

Mr. Subir U. Sarkar, for the Applicant.

Mr. D. J. Haldankar, APP, for the State.

...

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 15th JULY, 2024

P.C:-

1. The applicant has been convicted under Section 302 of the Indian Penal Code by the Additional Sessions Judge, Thane, vide the impugned Judgment and Order dated 21.06.2023. The applicant has filed Appeal against the said Judgment and Order of conviction passed against him in Sessions Case No. 169 of 2017.

The applicant has filed the present Application for suspension of sentence and grant of bail, during the pendency of the Appeal. The applicant has been charged for committing

murder of his wife Bhimi Parab. PW 1 Chintaman Manvaji Gimbal is the informant, who reported to the police authorities that, on 05.09.2016, his sister Devali Bhogade informed him that, the accused i.e. the present applicant had picked up quarrel with Bhimi, i.e. his deceased wife, suspecting her character, and assaulted her. On the next day i.e. on 06.09.2016, at about 4:30 p.m., Sudhakar Bhogade informed him on phone that, the accused has committed murder of Bhimi by assaulting her by means of axe. He came to know that, in the field there was a quarrel between the accused and Bhimi, the accused assaulted Bhimi with axe on her neck, which was in the hut and killed her. Bhimi was lying dead in the hut. Therefore, report was lodged against the accused in the police station.

The concerned P.I. visited the spot and conducted inquest panchanama in presence of two panchas. He prepared spot panchanama and seized one axe stained with blood. The accused was arrested and clothes of the accused were seized, vide seizure panchanama, as per the disclosure statement of the accused. On completion of investigation, charge-sheet was submitted in the court. The charges were framed. The accused abjured guilt and he denied all the allegations and prayed for trial.

2. The prosecution has examined 12 witnesses. The learned Sessions Judge has framed the charges and after appreciating the evidence on record, has made observation in paragraph 38 of the Judgment that, the circumstances which appeared against the accused are as under:

- (i) Death of the deceased.
- (ii) Body of the deceased is lying in the hut, in the field.
- (iii) Extra judicial confession by the accused.
- (iv) No explanation by the accused.
- (v) Finding of axe near the body of the deceased.
- (vi) Motive of the accused.

3. The learned Judge has observed in paragraph 40 of the Judgment that, it is proved that the accused and the deceased quarreled in the night of 05.09.2016, therefore, the accused assaulted the deceased by picking quarrel with her and taking suspicion on her character. The injuries inflicted on the person of the deceased, and death of the deceased are also admitted by the accused. In the statement recorded under Section 313 of the Code of Criminal Procedure, the accused had taken defence that, the present case is false and he had been falsely implicated on suspicion by relatives of the deceased Bhimi.

In fact, going through the statement of PW 1 Chintaman Gimbal, in his examination-in-chief he has categorically stated that, he was informed by his nephew Mahadu Bhogade that, the accused demanded money from the deceased Bhimi, and since she refused to part with the money, he threatened to kill her. It was hearsay information, on the basis of which PW 1 has given his statement. Therefore the reliance placed on the deposition of P.W.1 is unfounded and misplaced.

4. The learned Judge has heavily relied on the testimony of

PW 11 Sunanda Shankar Wartha. The said witness in her deposition admits that, she knew the accused. The accused came to her house in the evening, and left next day in the morning. While going back, he told her that he has killed his wife. She merely states that, she knew the accused, since he resided in their village, but in her cross-examination she has given an admission that, she did not know to which village the accused belonged. She did not know, as to which village his in-laws belong. She also did not know his wife. She admits that the accused has come to her house only once i.e. on that day. She also admits that she did not inform the police about the confession given by the accused to her. In fact, she gives an admission that, her statement has been recorded by the police after passage of one year after the accused visited her house.

It is implicit from the testimony of PW 11 that, the extra judicial confession allegedly given by the accused was not at all reliable. It is just unbelievable that, a person who is an accused had visited the witness on solitary occasion would confess to the said witness that he has committed murder of his wife. The testimony of such witness has been relied on while passing the order of conviction by the learned Judge.

5. The other incriminating evidence which according to the learned Judge produced by the prosecution was the axe, which was seized from the place of incident, and the clothes of the accused stained with blood seized through memorandum panchanama at the instance of the accused.

6. According to PW 7 Kamlesh Ramchandra Mhatre, who is panch witness to the recovery of clothes of the accused, the

clothes were recovered from a hut having tin sheet overhead, without windows, doors and walls. According to him, anybody could come and go in the hut. The said place was used for drying fish and it was accessible to anybody who would pass by. Therefore, considering that the said recovery is made from the place which is accessible to all, it does not inspire confidence. The said piece of evidence cannot be relied on, as it is not trustworthy and reliable. PW 7 has also given an admission in his cross-examination that, he has not verified whether the accused has given the disclosure statement voluntarily, this itself speaks in volumes.

7. PW 4 Devli Deu Bhogade, who is the mother of the deceased, in her examination-in-chief, she stated that, one Ramji Bhogade met her and informed her that, the accused had done something in the forest plot. Therefore, she proceeded towards forest and saw that, the accused assaulted her daughter with axe, on her neck and he ran away from the spot. She found her daughter in the hut and the axe was lying near the neck of the deceased.

Her statement that, she saw the accused assaulting her daughter and thereafter running away is not at all believable, as she has not given any details about the incident. Neither has she given any details, nor has she raised any hue and cry about the incident. Hence, the deposition of the said witness is also not reliable. She cannot be said to be an eye witness.

8. The heavy reliance placed by the learned Judge on the extra Judicial confession of PW-11 for convicting the accused is

totally misplaced and misguided, as the same is not corroborated. The other incriminating piece of evidence relied on by the prosecution was the deposition of the Doctor PW 10-Sunil Bhadange. In his deposition, the doctor has given opinion that, blood stains were visible on the said axe and said blood stains were of human being. The injury on the neck of the deceased was possible by the said axe. However, in his cross-examination he has admitted that, the blood on the axe was not fresh and it was dry. He further admits that, if the blood gets degenerated, then it is difficult to find out whether the blood is of human being or of animal.

According to him, the length of the axe was approximately 12 cm., and incised wound which was allegedly caused by the said axe was 8.5 cm. in length. Considering the said admission, even the blood could not be proved to be that of a human being. Hence, even in the testimony of the Doctor there were infirmities.

9. On going through the Judgment and after hearing the learned counsel for the applicant as well as the learned APP for the State, we find that, the evidence produced by the prosecution and relied by the learned Judge is not sufficient in order to convict the accused. The learned Judge has heavily relied on extra judicial confession which is not at all corroborated by other evidence. The statement of PW 11 has been recorded by the police authorities after one year of the said incident which has been admitted by the witness herself.

Since the extrajudicial confession as well as the recovery of the clothes of the accused become doubtful, so also the

contradictions in the statement of PW 4, who is the mother of the deceased, the whole case of the prosecution becomes shaky, and doubtful. Therefore, the guilt of the accused is not proved beyond preponderance of probabilities. The chain of circumstantial evidence which is to be proved beyond reasonable doubt, does not appear to have been proved. Therefore, we find that, the applicant has made out a case for suspension of sentence and for his enlargement on bail.

We find that, there are fair chances of acquittal in the present case in favour of the accused, therefore, it would be desirable to release him on bail by suspending the sentence. In view of the aforementioned circumstances, we pass the following order:

:ORDER:

- i) The sentence imposed upon the applicant vide the impugned Judgment and Order dated 23.06.2023 in Sessions Case No.169 of 2017 is hereby suspended during the pendency of the Appeal;
- ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- iii) The applicant shall report to the trial Court, once in four months on the day/date specified by the trial Court, till his Appeal is finally disposed off;

(iv) The applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;

v) If there are two consecutive defaults in appearing before the trial Court, the Learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

10. The Interim Application is allowed in the aforesaid terms and is accordingly disposed off.

11. All concerned to act on the authenticated copy of this order.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)