

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.4865 OF 2024
IN
CRIMINAL APPEAL NO.1102 OF 2023

Balvindersingh Balvirsingh Rathod] .. Applicant

V.S

State of Maharashtra & Anr.] .. Respondents

Mr.Hrishikesh Mundargi a/w Shlok Saraogi i/b Shradha Sawant for the Applicant.

Mr.J.P. Yagnik, APP for the State.

Mr.R.D. Suryawanshi, for the Intervener.

**CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ**

DATE : 12th DECEMBER, 2024.

P.C.

1. The present Interim Application is taken out by the Appellant in Criminal Appeal No.1102/2023, filed by the Appellant raising challenge to the Judgment convicting him for offence under Section 302, 364, 201 read with 34 of the Indian Penal Code and for having been sentenced to suffer life imprisonment on two counts i.e. on being found guilty of committing offence under Section 302 and 364 of the IPC.

The Appeal came to be admitted on 17/10/2023.

2. The Interim Application is filed under Section 389 of the Code of Criminal Procedure seeking suspension of sentence imposed upon him under the impugned Judgment and for securing his release, during the pendency of the Appeal.

3. Mr.Hrishikesh Mundargi, representing the Applicant has invoked the claim of parity with two co-accused in the same CR, who were released on bail by this Court and in addition he would also urge that the long incarceration, with no likelihood of the Appeal being heard in the nearest future, should also be taken into consideration, while the Application is considered.

We have also heard Mr.J.P. Yagnik, the learned APP for the State, who has vehemently opposed the Application by submitting that the role attributed to the two accused who have been released on bail by this Court i.e. Bhalchandra Haridas Mahale and Raina Asaraf Khan, is distinct from the role attributed to the present Applicant and, therefore, looking to the seriousness of the accusations, with a clear finding rendered against him by the learned Additional Sessions Judge, Kalyan, has prayed for dismissal of the Application.

4. The Applicant alongwith four others faced the charge that on the intervening night of 30/12/2012 and 31/12/2012 in between 0.05 a.m. and 4.05 a.m. in the Gala of Balvindersingh (Applicant) at Ganesh Nagar, Ulhasnagar-5, they committed murder of deceased Rakesh Bholanath Vishwakarma by intentionally or knowingly causing his death by giving blow of knife on his neck and thus committed an offence punishable under Section 302 of the IPC.

All the four accused persons, were charged for causing death of Rakesh by giving blow of stick, iron rod and by fists and kick blows.

In addition, the accused persons also faced charge of causing death of Amitchand Puranchand Dhirmalani, by assaulting him by means of stick, iron rod and fist and blows and thus of committing offence punishable under Section 302 of the IPC.

In addition, they also faced charge of abducting the two deceased persons, with an intention to murder them and for causing disappearance of the evidence, with an intention to screen themselves from legal punishment, they faced charge under Section 364, 201 read with 34 of the IPC.

5. The prosecution case, primarily has surfaced on record through PW 24, when he deposed that he was running a shop by name Mahadev Accessories and was also running an embroidery factory , at

Ulhasnagar. He had purchased a shop block of Gaddasingh Rathod, the father of the Applicant, however, he could not start the factory on the shop block, but used to meet his friends there.

On 28/12/2012, when he was partying with his friends in the shop block, the Applicant entered with one Deepak and on being questioned about the purpose of his visit, it was noticed that his other companions Diljit, Raina and Bhalchandra were standing outside the shop. Some quarrel ensued between them and PW 24 pacified them and thereafter all the accused persons left the spot.

As per PW 24, on the next day, Blavindersingh met him and warned him that his friend Naresh Chawla should not be seen in the area and he should convey the message to him, but no further untoward incident occurred as PW 24 asked Balvindersingh to forget the incident.

During the night hours on the very same day, when he was present in the embroidery shop, his two friends Naresh and Sagar arrived and they asked him to hand over the keys of the shop block at Ganesh Nagar, so that they could meet there. After handing over the keys, on finishing his work, he reached the shop block and joined his friends who had gathered inside and they were having drinks. Accused Nos.1 to 3 accompanied by 2 to 3 persons also entered the shop and jointed them in drinking. Thereafter, a quarrel ensued

between Balvindersingh, Accused No.2 Diljeetsingh and their companions in which Diljeetsingh sustained an injury on head.

On 30/12/2012, PW 24 received a phone call from Rajesh Vishwakarma informing that Rakesh Vishwakarma had not reached home.

The bodies of Rakesh and Amitchand were traced in a Nalha at Ambernath, Vadolgaon and the four accused were charged for causing their death by assaulting them by knives and disposing their bodies, with an intention to hide the crime.

6. In this background, when we appreciated the evidence of star witness of the prosecution, PW 24, we found the role attributed to Raina i.e. the accused No.3 in the whole case of the prosecution to be doubtful though there was some recovery of blood stained clothes from him, in absence of any analysis to establish that the blood was of the deceased person, recovery was found to be not incriminating.

In addition, the two witnesses relating to Panchanama for recovery of clothes, PW 4 and PW 5, turned hostile and did not support the prosecution.

Recording that Accused No.4 Bhalchandra is already released on bail by this Court earlier i.e. on 12/03/2024, since the only circumstance propounded against him was a Honda Active Scooter,

which was allegedly used for transportation of injured/deceased to the Nalha, was recovered at the instance of the Applicant.

However, while releasing Bhalchandra Mahale on bail, this Court (A.S. Gadkari and Shyam C. Chandak, JJ), categorically recorded thus :-

“As the present case is based on circumstantial evidence, admittedly the motive revolves around Balvindersingh Rathod (accused No.1)”.

7. The Applicant definitely is not entitled for claiming parity with the other co accused as the role attributed to him is completely different.

On 28/12/2012 when the informant and his friends were sitting in the shop block of Dinesh (PW 24) to consume liquor and they were making noise, Accused No.1 came out of the shop block and raised serious objection to the conduct of Dinesh and his friends. He was accompanied by Accused No.2 Diljit and Accused No.3 Raina. Dinesh raised an objection as to why the Applicant (Bamya) had entered his shop and Bamya questioned him as to how he had entered into the shop block and the Applicant is alleged to have said that, whether he was being considered as a thief and he possessed more property. He asked the persons accompanying him to bring weapons by saying that he would eliminate them. The quarrel was, however, pacified with a request to the Applicant not to take it ahead and he left the shop.

However, on the next day i.e. 29/12/2012, one Noni Labhana

was called at the shop block of Dinesh for party by his relative Sunny Labhana and when he was proceeding towards the shop block of Dinesh by his auto rickshaw, Accused Nos.2 and 3 met him at Ganesh Nagar and Noni asked them to join the party. He took them to the shop block of Dinesh to notice that Dinesh and his friends were consuming liquor near Innova Car belonging to Dinesh which was standing in front of the shop block. He noticed people consuming liquor inside the shop block of Dinesh and liquor was also served to Noni, but at that moment, Diljit became abusive and he was also invited inside and served liquor. Diljit continued to hurl abuses and at that time, the Applicant Balvindersingh @ Bamya came there and joined the party and also consumed liquor.

Under the influence of liquor a scuffle occurred between the Applicant and Accused No.2 Diljit and Noni Labhana when they started pushing each other. When one of the friend of the informant scolded them, accused No.2 Diljit got enraged and he also abused friends of Dinesh by referring to their caste as Sindhi.

This resulted into a tiff when someone pushed Diljeet when he sustained grievous injury on his head and he collapsed and started bleeding. The Applicant abused and was in a mood to assault Dinesh, but his friend Naresh slapped him and as a result Bamya became furious and threatened Dinesh by saying that he shall revenge.

This incident resulted in Accused No.1 as well as friend of Dinesh lodging cross complaints with Hill Line Police Station, but since the offence were non cognizable, police did not take any action against either of them.

8. In the night of 30/12/2012 on account of the quarrel on the previous night, friend of the informant Naresh Bohra asked Dinesh and his other friends Naresh Chawla to come to Jaki Plaza Hotel for consuming liquor instead of going to shop block where the incident had occurred. At 11.00 p.m. Dinesh reached the hotel and they consumed liquor. At around 00.05 hours, Dinesh received a phone call from deceased No.1 Rakesh who informed him that he has completed his work of factory and returning home alongwith deceased No.2 Amitchand.

Since Dinesh was aware that the Applicant is under rage, he asked deceased Rakesh to take a look at the new shop block while returning home. However, though the deceased persons left the factory of Dinesh at 00.05 hours, they never returned home and brother of the deceased Rakesh called Dinesh at around 1.00 a.m. enquiring whether he was still in the factory and he was provided necessary information. A search was carried out and Dinesh expressed a strong apprehension that something must have happened to him and,

therefore, assistance was sought from police as message was transmitted from the Police Control Room.

9. PSI Thakur was informed that two persons were missing, but the Activa scooter was seen parked in front of the shop block, but when accompanied his friends and police reached the shop block, the Activa scooter was not there. Thereafter when they reached to the shop block belonging to the Applicant, they saw something burning and on close scrutiny, they found some clothes and chappels being burnt.

Applicant and Diljit ran inside the shop block and closed the shutter and they were asked to open it. Upon opening of the shutter, blood stains were found on the clothes of both the accused. The bodies of two deceased persons were found adjacent to an agricultural field, with their throats found slit with sharp edged weapon.

10. As far as the Applicant is concerned, under Section 27 of the Indian Evidence Act, he showed readiness to discover the knife, the weapon used which was recovered from one roof of tin shed which was found stained with blood, which came to be seized. The clothes of the accused persons were also seized and on completion of investigation by including the necessary material, the charge-sheet came to be filed.

While in arrest, the Applicant led to the shop block with the help

of the key which he had kept in a secret place i.e. in a hole in the trunk of a tree, situated in front of his shop block.

11. With this evidence being collected in the charge-sheet, the prosecution established its case through various witnesses and what was urged before us while hearing the Application of the other two co accused was that the deceased were totally stranger to the accused persons and there was no enmity and hence there could no motive, cannot be made applicable to him. However, as per the prosecution case, the dispute had occurred between the Applicant and Dinesh and the prosecution was successful in establishing the guilt of the Applicant through numerous witnesses.

The learned Judge recorded that it is not the case that there was no motive for the accused to commit the murder, as the accused persons were not happy with the conduct of Dinesh throwing parties in the shop block alongwith his friends, and when the quarrel had ensued, when he raised objection, he was slapped by the friend of Dinesh, on account of which he had become furious and decided to revenge.

12. As far as the present Applicant is concerned, the clinching evidence brought on record by the prosecution has established the charge under Section 302, 201 read with 34 and 364 of the IPC.

The case of the Applicant stand on a different footing than the two co-accused who are released on bail and, therefore, in the wake of finding of guilt recorded by the learned trial Judge, based on the convincing and reliable evidence, led by the prosecution, we are not inclined to secure his release on bail or suspend the sentence.

In the wake of above Interim Application is dismissed.

(MANJUSHA DESHPANDE, J)

(BHARATI DANGRE, J.)