



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPP) NO.786 OF 2024
IN
CRIMINAL APPLICATION (BA) NO.360 OF 2024

Raju s/o Ramkrushna Mayghane

Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Mangrulpir, District Washim

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R. M. Daga, Advocate for applicant.
Ms. R. V. Sharma, APP for respondent/State.
Mr. Sumit Muley, Advocate for assist to prosecution.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 02/05/2024

CRIMINAL APPLICATION (APPP) NO.786 OF 2024

1. By this application, the informant is seeking permission to engage the Counsel to assist the prosecution.
2. In view of the reasons mentioned in the application, the informant is permitted to engage the Counsel to assist the prosecution.
3. Criminal Application (APPP) No.786/2024 is disposed of.

CRIMINAL APPLICATION (BA) NO.360 OF 2024

1. The applicant came to be arrested on 12.05.2023 in connection with Crime No.304/2023

registered with Police Station, Mangrulpir, District Washim for the offences punishable under Sections 302, 201, 363, 506 of the Indian Penal Code (hereinafter referred to as 'the IPC') and under Sections 135 and 138 of the Indian Electricity Act.

2. As per the case of the prosecution, on 08.05.2023 one Ramhari Sawake has lodged report in Police Station alleging therein that his nephew Krushna, aged about 13 years and 6 months went missing on 07.05.2023 after 2.00 p.m. and thereafter, his whereabouts were not known. Therefore on 08.05.2023, police have registered the offence under Section 363 of the Indian Penal Code against the unknown persons. During investigation, it was noticed that the dead body of the Krushna was found in the field of one Pundlik Chopde. Therefore, the Accidental Death vide A.D. No.16/2023 was registered. The investigation further revealed that death of Krushna was of due to electric shock and the applicant is responsible for causing death of Krushna and therefore, offence under Section 302 of the IPC was registered. It is further alleged that after the incident, the applicant to screen himself from punishment caused the disappearance of the evidence by concealing the dead body of the deceased. On the basis of same, the crime is also registered under Section 201 and 506 of the IPC.

3. Learned Counsel Mr. Daga for the applicant submitted that even taking the case of the prosecution as it is, no offence under Section 302 of the IPC is made out, at the most the offence will come under the culpable homicide not amounting to murder under Section 304 part I or II of the IPC. He invited my attention towards the statement of the two witnesses, who were playing along with the deceased at the relevant time namely Chetan @ Vendant Santosh Thombare and Satish Subhash Thombare from which it discloses that while playing near the agriculture field of the present applicant, deceased received electric current and he told his friends to inform his family members and therefore, he informed the family members, at that time present applicant met them and told them not to disclose this incident to anybody. This statement according to the learned Counsel are recorded after one month of the incident. He stated that the said agricultural land originally owned by one Arun Mahadeo Sawake who has given the said land to the present applicant for cultivation and to protect the crop from the wild animals, he has installed the fencing with electric current and the deceased has sustained the same when he was playing. Thus, there was no intention to commit the murder of deceased. There was no previous enmity between them, but it is mere an accident as deceased has sustained the electric current while playing near the agricultural field. He further submitted the

investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required and therefore, he be released on bail.

4. Learned APP strongly opposed the said application on the ground that the applicant has installed the electric current on the fencing and no precaution was taken to indicate the same. She further submitted that there are criminal antecedents against the present applicant. The present applicant has also committed an offence under Section 201 of IPC by hiding of the dead body after the said incident which shown his intention and therefore, application deserves to be rejected.

5. Learned Counsel for the informant also strongly objected the application and submitted that considering the criminal antecedents against the present applicant, there is every apprehension that if he is released on bail, he would tamper with the prosecution evidence.

6. After hearing the learned Counsel for the applicant and learned APP for the State and learned Counsel for the informant, perused the investigation papers. There is no dispute as to the fact that deceased died due to the electric current. The postmortem report also shows that probable cause of death is due to electric shock. However, viscera was preserved by the Medical Officer. The report of the

viscera is yet to be received. I have also gone through the statement of the various witnesses including the witnesses who were playing along with the deceased at the relevant time, which discloses that while playing, the deceased has sustained the electric shock and after receiving the electric shock he was conscious and requested his friends to intimate his parents. After the said incident, the dead body was found in the heap of fodder. As far as finding of dead body in heap of fodder who has kept the said dead body there, there is no material evidence. The statement of the witnesses further shows that agricultural field wherein the said incident has taken place was cultivated by the present applicant and he has installed the said electric current on the fencing. The other statement of the witnesses also shows that due to the electric current in the fencing, some cattle also received the same and died. Thus, it is apparent that the electric current was installed in the fencing only to protect the crop. Even assuming the prosecution case as it is, the offence under Section 302 of IPC would not made out, at the most it is the case of culpable homicide not amounting to murder for which punishment up to ten years is provided. Considering the sufficient incarceration is already there and mere there are criminal antecedents is not sufficient to curtail the liberty of the present applicant. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order.

ORDER

- (i) The application is allowed.
- (ii) The applicant **Raju Ramkrushna Mayghane** shall be released on bail on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount, in connection with Crime No.304/2023 registered with Police Station, Mangrulpir, District Washim for the offences punishable under Sections 302, 201, 363, 506 of the Indian Penal Code and under Sections 135 and 138 of the Indian Electricity Act.
- (iii) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case in any manner by communicating with them.
- (iv) The applicant shall attend the proceeding before the learned trial Court without seeking any exemption unless there are exceptional circumstances.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)