

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.758 OF 2014
IN
CRIMINAL APPEAL NO.466 OF 2014

Gahininath Goverdhan Dhavane] Applicant
Orig. accused No.5

Versus

The State of Maharashtra,] Respondent

ALONGWITH
CRIMINAL APPLICATION NO.979 OF 2014
IN
CRIMINAL APPEAL NO.750 OF 2014

Pandharinath Dattatray Pawar] Applicant
Orig. accused No.4

Versus

The State of Maharashtra,] Respondent

ALONGWITH
CRIMINAL APPLICATION NO.981 OF 2014
IN
CRIMINAL APPEAL NO.751 OF 2014

Prashant Pandurang Sawant] Applicant
Orig. accused No.6

Versus

The State of Maharashtra,] Respondent

ALONGWITH
CRIMINAL APPLICATION NO.983 OF 2014
IN
CRIMINAL APPEAL NO.752 OF 2014

Sonya @ Umeshnandkumar Metkari] Applicant
Orig. accused No.2

Versus

The State of Maharashtra,] Respondent

**ALONGWITH
CRIMINAL APPLICATION NO.985 OF 2014
IN
CRIMINAL APPEAL NO.753 OF 2014**

Prakash @ Budha Ramchandra Shinde] Applicant
Orig. accused No.1

Versus

The State of Maharashtra,] Respondent

Mr. Viresh V. Purwant for applicant in Application No.758 of 2014
Mr. Jaydeep D. mane, for applicant in Application No.979 of 2014, 981 of 2014, 983 of 2014 and 985 of 2014.

Smt. V.R. Bhosale, A.P.P., for the Respondent-State.

**CORAM : P.V.HARDAS &
DR. SHALINI PHANSALKAR-JOSHI, JJ.**

RESERVED FOR ORDER ON : 27th April, 2015

PRONOUNCED ON : 30th April, 2015.

P.C. [Per Dr. Shalini Phansalkar-Joshi, J.] :

1. These applications are preferred by original accused Nos 1, 2, 4, 5 and 6 for suspension of their substantive sentence and for their enlargement on bail during the pendency of the appeals, preferred by them challenging their conviction and sentence under Section 302 r/w 34 and Section 120B of the Indian Penal Code.

2. Facts, as are necessary, for the decision of these applications may briefly be stated thus :-

As per prosecution case, deceased Bajarang Dhawane was the Secretary of the Solapur Zilla Madhyamik Shikshak Sevak Pat Sanstha. Accused Nos 4 to 6 were also working in the said society. The relations between the deceased and accused Nos 4 to 6 were strained as the accused were under impression that the deceased was committing misappropriation of the funds of Credit Society. Moreover, accused Nos 4 and 5 wanted to become the Secretary of Credit Society. In the month of November, 2010, accused Nos 4 and 5 had submitted complaint application to the Chairman of Credit Society raising various grievances against the deceased. As a result of it, the relations between the deceased and accused Nos 4 to 6 had become strained and bitter.

3. In this backdrop, on 16.2.2011, at about 12.00'O clock in the noon when the deceased was proceeding alongwith his son P.W.2 Swapnil on a bike, accused Nos 1 and 2 came there on motorcycle and accosted the deceased and P.W.2 Swapnil. Accused No.1 then inflicted several blows of knife on the deceased, on account of which deceased sustained injuries and was taken to the hospital. There the deceased

made oral dying declaration before P.W. 4 Shivraj Barkul and P.W.6 Mukund Dhawane that on account of internal dispute in the credit society, he was attacked by accused Nos 4 to 6 through two unknown persons. The deceased succumbed to injuries on the next day in the morning. During the course of investigation, accused were arrested, chargesheeted and tried. Prosecution has led the evidence of in all 12 witnesses.

4. As regards, accused Nos 1 and 2, they are the actual assailants whom P.W.2 Swapnil, an eye witness to the incident, has identified not only in the test identification parade but also in substantive evidence before the Court. Though evidence relating to test identification parade is challenged by learned counsel for accused on the ground that it was conducted at belated stage and there are some infirmities in the procedure followed in conduct of test identification parade, these challenges cannot be considered at this stage as they are in the nature of appreciation of evidence.

5. There is also evidence relating to recovery of knife, at the instance of accused No.1, in addition to the Call Details Record disclosing that they were in constant touch with accused Nos 4 to 6 before, during and after the incident. Hence as regards accused Nos 1 and 2, there

being an overwhelming evidence on record and in the light of the fact that during the trial also they were not on bail, their applications for bail cannot be allowed. Hence deserve to be dismissed.

6. As regards accused Nos 4 to 6 also, sufficient evidence is brought on record by prosecution, by examining P.W.4 Shivraj Barkul who was also employed in the said credit society and by producing documentary evidence like complaint applications Exh.103 and 104, proving that the relations between the deceased and accused Nos 4 to 6 were strained since November 2010. Therefore, accused Nos 4 to 6 had motive to eliminate the deceased. The prosecution has also brought on record evidence Exh.131 to show that just before the incident, accused Nos 4 and 5 had withdrawn substantive amount from their accounts in District Central Co-operative Bank, which as per prosecution case, was used for engaging accused Nos 1 and 2 to eliminate the deceased.

7. The most clinching piece of evidence against accused Nos 4 to 6 is the Call Details Records produced and proved by the prosecution by leading evidence of P.W.7 Chetan Patil from Bharti Airtel and P.W.8 Dattaram Hangre from Idea Cellular. These Call Details Records at Exh.116 and 122 show accused Nos 1 and 2 being constantly in touch

with the accused Nos 4 to 6 before, during and after the incident. They further reflect that the accused No.2 had conversation with accused No.4 for about 18 minutes on more than one occasion on the day of incident. Similarly accused No.1 was also in contact with accused No.2 and accused No.4 on the date of incident and they had conversation on nine occasions during the period from 7:49:22 to 12:54:41. The Call Details Records further reveal that the accused Nos 1 & 2 had conversation with accused Nos 4 and 5 before and at the time of incident. Accused Nos 1 and 2 had not offered any explanation about the reason for this conversation particularly on the date of incident that too with accused Nos 1 and 2.

8. In our considered opinion, these Call Details Records of the mobile phones seized from the possession of accused Nos 1, 2, 4, 5 and 6, the SIM cards of which are standing in their names, except mobile phone of accused No.2 SIM card of which was standing in the name of his friend Gopinath Narayankar, go to prove, as observed by the trial court, the conspiracy amongst the accused; the evidence of conspiracy being rarely of a direct nature.

9. There is also evidence relating to oral dying declaration

made by the deceased before P.W.4 Shivraj Barkul and P.W.6 Mukund Dhawane, when they met the deceased at 2.30 p.m. in the hospital, attributing the cause for assault to accused Nos 4 to 6.

10. In the light of this overwhelming evidence of conspiracy against accused Nos 4 to 6, their applications for bail also have to be rejected, though they were on bail during the trial.

11. Consequently, Criminal Application Nos.758 of 2014, 979 of 2014, 981 of 2014, 983 of 2014 and 985 of 2014 stand dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[P.V.HARDAS, J.]