
(1996) 04 BOM CK 0021

Bombay High Court (Goa Bench)

Case No: Criminal Miscellaneous Appn. No. 44 of 1996

Anand Fondu Solyekar

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: April 12, 1996

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 304, 307

Citation: (1997) CriLJ 1311

Hon'ble Judges: R.K. Batta, J

Bench: Single Bench

Advocate: Menino Teles, for the Appellant; G.U. Bhole, Public Prosecutor, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The applicant has been put up for trial for murder of Kashinath Solyekar, aged 25 years, along with co-accused Pramod Solyekar and Ramesh Solyekar. The other co-accused have been granted bail by this Court on the ground that except for their presence at the place of incident, no specific role has been ascribed to them.

2. Advocate Shri Menino Teles argued before me that the deceased was drunk; he abused the applicant and assaulted him as a result of which the applicant sustained three injuries; the applicant had also filed N.C. complaint in respect of incident against the said Kashinath Solyekar and that the statements of witnesses upon which prosecution relies do not disclose as to how the incident in question had started. It was further contended by him that witness Surya Solyekar, who is brother of the deceased Kashinath Solyekar, had been introduced later on by the Police. It is next urged by Advocate Shri Teles that there is no intention to kill and the offence may, at the most, fall u/s 304-Part II and that there are no compelling circumstances to deny bail to the applicant. In support of his submissions, he placed reliance on the ruling of the Apex Court in [Bhagirathsinh Judeja Vs. State of Gujarat](#), which was a case u/s 307, I.P.C.

3. The bail was objected by the Government Advocate on the ground that there is sufficient material on record to come to the conclusion that the applicant is involved in a case of murder u/s 302, I.P.C. and that even the mother of the applicant also states that the applicant had taken a wooden dandda from the house and he assaulted Kashinath Solyekar with the wooden dandda.

4. I have gone through the statements of various witnesses on record. There are five eye witnesses of the incident. Witnesses Kamal, Sita and Kashi have specifically stated that the applicant Anand was armed with a dandda. Witness Kamal has categorically stated that the applicant was beating Kashinath Solyekar with dandda. The post-mortem report shows that there are as many as 35 injuries on the person of the deceased, out of which, injuries Nos. 1 to 3 and 8 to 10 are on the head. According to Dr. Sapeco, who conducted the post-mortem, death was due to concussion of brain as a result of injuries on the head. Under these circumstances, I cannot accept the contention of Advocate Shri Menino Teles that there is no intention to kill and the offence would fall only u/s 304, Part II, I.P.C. Even though there are three injuries on the person of the applicant, the right of private defence, if any, shall have to be prima facie established when evidence is lead and it will also be required to be seen that if the right of private defence was available to the applicant, he had not exceeded the right of private defence. At this stage, I do not find any merit in any of the submissions advanced by Advocate for the applicant. Even as per the statement of mother of the applicant, the applicant had taken a dandda and had gone along with the co-accused to the house of the deceased, which prima facie gives an indication that the applicant had gone prepared for the assault and for that purpose dandda was taken. The number of injuries on the person of the deceased shows that he was mercilessly beaten and there were as many as six injuries on the vital organ, namely, head and the injuries on the head resulted in brain concussion resulting in death.

5. The Apex Court while dealing with case of murder u/s 302, I.P.C. has laid down in [Pokar Ram Vs. State of Rajasthan and Others](#), that some very compelling circumstances must be made out for granting bail to a person accused of committing and, that too, when the investigation is in progress. In [Ram Sahodar Vs. State of Madhya Pradesh](#), the Court has laid down that release on bail may be refused in cases where the offence is punishable with death or imprisonment for life and that too where there appear reasonable grounds for believing that he has been guilty of such an offence. In *Shaym Chand v. State of Himachal Pradesh* (1988) 2 Crimes 19, the Himachal Pradesh High Court, while taking into account the general principle that bail is rule and refusal an exception, has observed that when accused is charged u/s 302, I.P.C. the Court has to be highly circumspect while considering bail application since ordinarily no bail is granted in serious cases like murder.

6. A Division Bench of this Court, way back in 1977, had observed in *State of Maharashtra v. Tukaram Shiva Patil* 1977 Cri LJ 394 that it is well established practice in Indian Courts that in murder cases, the accused is not to be granted bail and this practice cannot be departed from except in very special circumstances. In para 9 of the said

judgment, this Court referred to argument advanced on behalf of the State that the bail had been granted contrary to well established practice of refusing bail to persons accused of offences in murder or attempt to murder. In support of that contention, reliance was placed on Halsbury's Laws of England, Third Edition, Vol. 10, Para 677 dealing with "Bail pending trial" wherein at page 374, the law stated is "It is not usual to grant bail in cases of murder, or in cases of attempted murder, unless the prosecution consents". Reliance was also placed on Archbold's Criminal Evidence and Practice, 38th Edition, 1973, which states the law in para 292 at page 87 as "It is not usual to grant bail on charges of murder". In para 16 of the judgment, Division Bench of this Court pointed out that there was no special reason whatsoever for the learned Sessions Judge to depart from the usual practice of refusing bail in murder cases. In para 28 it was again reiterated by this Court that Sessions Court, while granting bail, ignored all the principles referred to above with regard to grant of bail in murder cases and the well established practice in Indian Courts for two centuries and in English Courts for more than seven centuries.

7. The Apex Court in [Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan and Another](#), has observed that no doubt liberty of a citizen must be zealously safeguarded by the Court, but the liberty is to be secured through process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that the parties do not lose faith in the institution and indulge in private retribution.

8. In view of the above, neither on merits of the case nor on the settled position of law, the applicant is entitled to be released on bail. The bail application is accordingly rejected.

9. Application dismissed.