

Sessions Case No.169/2021
State vs Gangadhar & two ors.

ORDER BELOW Exh.4
(Passed on 17.11.2021)

Accused no.3 Rajkumar Kannake has filed the present application for releasing him on bail for the offence punishable under sections 201, 203, 302, 506, 109 r/w section 120-B of the Indian Penal Code (in short, '*IPC*').

2. In short, case of the prosecution is that, accused no.1 Gangadhar is the husband of deceased Kavita Gangadhar Kannake. On 01.07.2021 Gangadhar lodged report stating therein that, on 25.06.2021 he along with his wife Kavita had been to Chimur for selling utensils on his motorcycle bearing registration No.MH-34/B-5233. After selling utensils he was returning along with his wife to his village on 30.06.2021 via Mul-Umari road. At about 10.00 p.m., when they reached on the over-bridge situated near Umari Fata to Kawadjai, then a boar dashed to their vehicle and hence they fell down. The deceased had sustained injuries due to felling down of utensils on her person and also in the road accident. He by making phone call to his brother Shankar called there. Thereafter they had taken deceased to the house, where she succeeded to injuries. Accordingly accidental Marg No.08/2021 came to be registered.

3. Thereafter on 03.07.2021 Mutayya Yelamma Sidam lodged report with the Police Station, Kothari, stating therein that, deceased Kavita is his niece i.e. daughter of elder

brother. Her marriage was performed with accused no.1 Gangadhar prior to 8 years. Out of said wedlock she gave birth to daughter namely Shruti, aged about 2 years. At the time of incident the deceased was carrying pregnancy of 9 months. He further stated that, deceased frequently informed them that, accused no.1 quarreled with her. She also stated that, the accused no.1 having illicit relationship with one Gangubai and she was also pregnant from him. Said Gangubai was also kept in the said house. On 30.06.2021 at about 11.00 p.m., he received phone call from his nephew Pratap Sidam, thereby informed that Kavita died due to falling down from the vehicle on an over-bridge. Therefore, he along with his relatives had been to the house of accused no.1 on 01.07.2021 at about 3.00 a.m. The dead body of the deceased was kept in the house. He noticed injuries on her person. He also found marks over necks of the deceased. He then went to police station and informed this fact. Accordingly post mortem report was performed. After funeral when relatives and accused were sitting, then upon an inquiry the accused no.1 confessed that he along with accused nos.2 and 3 had committed murder of deceased for the amount of insurance. The accused no.1 hatched conspiracy with accused nos.2 and 3 and shown the murder as road accident. He promised accused nos.2 and 3 to give Rs.1 lac each, after receiving amount of insurance. Accordingly aforesaid crime came to be registered against accused persons under the aforesaid sections.

4. It is contention of accused no.3 that, he has committed no crime. He is falsely implicated in the aforesaid crime as he is the friend of accused no.1. The case of prosecution is based on circumstantial evidence. The extra judicial confession of accused no.1 is a weak piece of evidence. No role attributed to him. Nothing is to be recovered from him. He is already in jail since 03.07.2021. Hence he be released on bail.

5. The non-applicant/prosecution strongly opposed the application by filing reply (Exh.6). It is contention of the non-applicant that, the offence is of serious nature and punishable with death penalty. Accused no.1 hatched criminal conspiracy with accused nos.2 and 3 thereby committed murder of the deceased Kavita. Accused have shown the murder as road accident. At the time of incident the deceased was pregnant of 9 months. Accused committed murder of the deceased by attempting to press her neck and by assaulting with aluminum utensils (जर्मन गंज) on her head. There is eye-witness to the incident. There is recovery of incriminating articles at the instance of accused persons. If accused no.3 is released on bail then he may tamper with prosecution witnesses. Hence the application may kindly be rejected.

6. Heard the learned advocate Shri Mansaf Ali for accused no.3 and the learned APP Shri Nagpure for the prosecution. Perused the charge-sheet.

7. Upon perusal of charge-sheet, it reveals that, initially it was accused no.1 who had lodged report wherein stated that,

his wife met with road accident. She succumbed to injuries received in road accident. Accordingly accidental Marg came to be registered. It is stated by the informant Mutayya that, after completion of funeral when accused no.1 along with his relatives were sitting then accused no.1 confessed to Gangaram Kannake that he had committed murder of his wife with the aid of accused nos.2 and 3. He further confessed that he committed murder of deceased for the amount of insurance. He hatched conspiracy with accused nos.2 and 3 and called them near the over-bridge. There he intentionally slipped the motorcycle. Thereafter accused no.2 Shankar and accused no.3 Rajkumar came there. They caught-hold hands and legs of the deceased. Accused no.3 assaulted deceased with aluminum utensils (जर्मन गंज).

8. Raju Kadwanchiwar claimed to be eye-witness to the incident. He shown to be aged about 14 years. He in his statements under section 161 and 164 of *Cr.P.C.* stated that, on the day of incident he was present on the spot along with accused nos.2 and 3. At that time he does not know intention of accused. They had taken him for party. In his presence accused no.1 had come on the spot along with deceased. As soon as they reached on the over-bridge, the vehicle of accused no.1 fell down. Then accused no.1 and deceased Kavita also fell down. Thereafter accused Shankar sat on the person of Kavita. At that time accused Shankar was wearing rubber hand-gloves. He pressed the neck of deceased and

accused no.3 assaulted with aluminum utensils on the head of the deceased. Therefore, he shouted. Then accused threatened him of committing his murder. After the incident due to fear he felt ill. Hence he could not disclose this fact to anybody. Considering the age of this witness and the fact that he had seen horrifying incident had happened in his presence, therefore possibility of his felling ill and non disclosure of the incident immediately cannot be doubted at this juncture.

9. There are statements of witnesses under sections 161 and 164 of *Cr.P.C.* of giving extra judicial confession by accused no.1 immediately after funeral of the deceased Kavita in their presence. Upon perusal of post mortem report the deceased having abrasion over neck on both sides. She having injury over scalp. Aluminum utensils and rubber hand-gloves came to be recovered at the instance of accused nos.2 and 3 *vide* their memorandum statements. The Investigating Officer has filed copies of insurance policies along with charge-sheet. One of the insurance policy is in the name of the deceased. It is to be seen that, at the time of the incident the deceased was said to be carrying pregnancy of 9 months. It is also alleged that, the accused no.1 having illicit relationship with one woman and she was also residing with him. Therefore, *prima facie* it reveals that accused no.1 hatched criminal conspiracy with accused nos.2 and 3 to commit murder of his wife with an intention to grab her insurance money and also to get rid off from the deceased. Thus looking to the facts and

circumstances of the case, if accused is released on bail then possibility of tampering with prosecution witnesses cannot be ruled out. Therefore, looking to the role attributed to accused no.3, no case made out by him for releasing him on bail. Hence the following order:

Order

The application is hereby rejected.

Date : 17.11.2021.

(V.D. Kedar)
Addl. Sessions Judge-1,
Chandrapur.