

**IN THE HIGH COURT AT BOMBAY  
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 823 OF 2019

The State of Maharashtra,  
Through The Sub Divisional Police  
Officer, Pachora, Dist. Jalgaon.

**....Appellant.**

**Versus**

Sumit Kishor Shastri (Joshi),  
Age 27 years, Occu. Business,  
R/o. Wakdi, Jamner at present  
Shikshak Colony, Pachora Road,  
Jamner, Tq. Jamner, Dist. Jalgaon.

**....Respondent.**

Mr. D.R. Kale, Advocate for appellant.

Mr. Rajendra S. Deshmukh, Advocate for respondent.

**CORAM : T.V. NALAWADE AND  
S.M. GAVHANE, JJ.**

RESERVED ON : 18/11/2019

PRONOUNCED ON : 19/11/2019

**JUDGMENT : [PER T.V. NALAWADE, J.]**

1) The appeal is admitted. Notice after admission made returnable forthwith. By consent, heard both the sides for final disposal.

2) The appeal is filed against the order made by the learned Additional Sessions Judge, Jalgaon on Exh. 4 in Special Atrocity Case No. 6/2019. The said application was filed by present respondent accused for bail and bail is granted to him. Chargesheet is filed against the respondent and others for the offences punishable under

sections 302, 201, 363, 364, 341, 120-B of Indian Penal Code and section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Chargesheet is filed as against four persons like Mahendra Rajput, Pradeep Pardeshi, Yogesh Sonar and the present respondent. No bail is granted to Mahendra, Pradeep and Yogesh.

3) It is the case of prosecution that in the year 2018 when some boys of Matang community, scheduled caste boys had entered a well for swimming, those boys were stripped naked and they were taken in that condition in procession in village Wakdi, Tahsil Jamner and they were severely beaten only due to their act of entering the well. The respondent is of Brahmin caste. This well is situated in the land standing in the name of mother of respondent Sumit. On that occasion, Ishwar, cousin brother of Sumit had taken lead in aforesaid incident. As the incident of aforesaid nature had taken place, the deceased who was activist and who also belong to the same community had given publicity to that incident and had requested the authorities to take proper action against Ishwar. Ishwar was arrested due to that incident and he was kept in jail for few days. It is the case of prosecution that due to the arrest and detention of Ishwar in jail, the respondent had become angry. The arrest and detention was their insult and they decided to take revenge for such insult. This insult is said to be motive for the crime. When the first

incident took place due to use of well by boys of scheduled caste, the dead body of person responsible for insult was found in a well.

4) Accused Mahendra was known to the respondent. It is the case of prosecution that Mahendra, Pradeep and Yogesh were given job of finishing Vinod Chandne. Vinod was the Member of Village Panchayat of village Wakdi and he was elected as independent candidate. He used to help people by writing applications and complaints for them and due to that he had some enemies. The learned counsel for respondent argued on the basis of this circumstance and submitted that others had also motive to finish Vinod Chandne. Investigating agency was misled due to that circumstance for some time.

5) It is the case of prosecution that from 18.3.2019 Mahendra, Pradeep and Yogesh were on watch and they were searching for opportunity to finish the deceased. The incident took place on 19.3.2019 after 9.30 a.m. On that day witness Ajabsingh had seen deceased Vinod lastly. Vinod was on his motorcycle and as Ajabsingh requested him for lift, Vinod took him up to the destination of Ajabsingh, towards the side of the river. Ajabsingh alighted there and from there Vinod went towards the dam and Ajabsingh entered his field and there, he was present for some time. At about 2.00 p.m. son of Shankar Mahajan namely Atul informed Ajabsingh that he was

called towards dam. When he went toward the dam, he noticed that there was the motorcycle of Vinod, his chappals were there and there were his papers lying in scattered condition. He informed about his last meeting with Vinod to police, but his statement came to be recorded on 24.3.2019. The evidence of Ajabsing and P.M. report will help the prosecution to prove that the murder of Vinod was committed after 9.30 a.m. of 19.3.2019 and it will also help police to show that he was taken away from that spot.

6) Initially the brother of deceased gave missing report and he expressed suspicion against some persons who were in politics of Village Panchayat. He had taken the name of Chandrashekhar Wani and Vinod Deshmukh as suspects. Then brother of deceased approached police and expressed that probably Chandrashekhar Wani had hired some persons to finish his deceased brother Vinod Chandne and there was possibility of the hand of Chandrashekhar Wani as Mahendra Rajput, one of the accused against whom chargeheet was filed was seen in that village with his motorcycle and he was moving in the village when he belongs to other place. His name was taken as suspect on 23.3.2019.

7) The dead body of Vinod Chandne was found in well of one Ramesh in village Mohadi, Tahsil Pachora on 27.3.2019. This spot is situated at the distance of 35 k.m. away from the place where

articles of deceased were found. The dead body was identified and P.M. was conducted. Opinion was given that there were anti-mortem injuries on the dead body and death took place due to injuries caused to the head. The dead body was found to be tied by using rope and in that condition, dead body was thrown by the murders in the well. The crime then came to be registered for aforesaid offences.

8) On 24.3.2019 Dipak Kumawat came forward and he informed that accused Pradeep had confessed to him that they had finished one person by taking contract of killing of that person. Dipak Kumawat was not convinced and he thought that Pradeep was boasting. Then Pradeep took Kumawat to a place where he had kept blood stained clothes and the clothes and other articles like shoes were then destroyed by setting fire to them by Pradeep. Thus, the names of both Mahendra and Pradeep became available to police as suspects.

9) Mahendra came to be arrested on 23.3.2019. Pradeep and Yogesh came to be arrested on 31.3.2019. Present respondent came to be arrested on 2.4.2019. Though initially Chandrashekhar Wani, Vinod Deshmukh and Tadvii were also arrested, report came to be filed under section 169 of Cr.P.C. in respect of these persons.

10) During investigation Smt. Asha Pardeshi gave statement on 9.4.2019. According to her, accused Pradeep had contacted her on 30.3.2019 and he had admitted that he was involved in one murder. Prior to that she had information that Pradeep was involved in such offence. On inquiry he disclosed that at the instance of Sumit Joshi, present respondent, he got involved in the murder. He requested Smt. Asha to contact Sumit and see that some money is collected from him as he had no money and he was away from the residential place. This conversation between Asha and Pradeep was recorded and the said hand set is also taken over by the police. There is transcript of said conversation. Thus, there is material which can be used under section 30 of Evidence Act.

11) There is statement of witness like Jiri which shows that accused Mahendra was knowing present respondent. The marriage of respondent had taken place in December 2018 and that marriage was attended by witness Jiri as Jiri was taken by Mahendra for the marriage by saying that Sumit was friend of Mahendra. Jiri and Mahendra and other friends had purchased one four wheeler, Tata Esteem car for their common use and that is why also Jiri knew Mahendra. Jiri had feeling that Mahendra concealing something from him and he had noticed that the conduct of Mahendra had changed and that was noticed about four months prior to the date of incident.

12) During the course of investigation, the aforesaid car came to be recovered under section 27 of the Evidence Act on the basis of statement given by accused Mahendra. It is the case of prosecution that this car was used for shifting deceased to other place. Police found blood stains in the car. The blood stains and articles collected from the car were sent to C.A. Office for chemical analysis and D.N.A. matching. There is record showing that the blood samples matched and there was also D.N.A. matching. Thus, evidence is available to show that in the car which is recovered at the instance of Mahendra, the dead body was kept and probably shifted from the place of murder up to the well.

13) There is C.D.R. record to show that accused Mahendra, Pradeep and Yogesh were in contact with each other. There is record of C.D.R. to show that Mahendra was in contact with present respondent and at the relevant time also, he was in touch with the respondent. The C.D.R. record shows that Mahendra had contacted respondent after the murder after 10.00 a.m. on 19.3.2019 and then as per the mobile location present respondent and Mahendra were found at the same place at about 10.12 a.m. Respondent had called Mahendra on that day at 10.12.49 hours There were many calls of past between Mahendra and Pradeep and Pradeep and Sonar and there is C.D.R. record to show those contacts. At 10.12.49 hours of 19.3.2019 Mahendra and respondent were found at the same mobile

location at Madni Nagar, Jamner. There is mobile location record to show that from 18.3.2019 itself accused Mahendra, Yogesh and Pradeep were moving in village Wakdi, the place of deceased and from early hours of 19.3.2019 they were present in Wakdi, the place of deceased. They are from other places and not from Wakdi. They had reached Wakdi at about 6.00 a.m. on 19.3.2019 and from that time, they were in Wakdi, keeping watch. Thus, on 18.3.2019 for sufficient length of time, they had kept watch in Wakdi and then they had again returned to Wakdi on 19<sup>th</sup> and the murder took place on 19.3.2019. The articles of the deceased found near the dam on 19.3.2019 show that from that place the deceased was shifted. It is not necessary to ascertain as to whether the deceased was murdered near the dam or he was murdered in the car at this stage.

14) The material collected by police shows that the other three accused were together on 18<sup>th</sup> in village Wakdi and from 6.00 a.m. of 19.3.2019 they again came together in village Wakdi, when the incident took place. There is record of C.D.R. and there is also mobile location record of the three accused. There is record of contacts on mobile phone between present respondent Sumit and Mahendra. There is circumstantial evidence like presence of blood in the car recovered from Mahendra and there will be also evidence of D.N.A. matching in respect of blood found in this car. These pieces of circumstantial evidence are consistent with each other and the

D.N.A. matching removes possible doubts. The D.N.A. matching gives all the assurance to the case of prosecution atleast at this stage. Then there is the evidence on motive as against the present respondent which is already mentioned. The learned APP placed reliance on some observations made by the Apex Court in the case reported as **2019 (13) SCALE 280 [Union of India Vs. State of Maharashtra and Ors.]**. In this case, the Apex Court has discussed the social structure and hatred which a person of higher caste can have against person of lower caste. It cannot be disputed that even at present, there are few persons who have grudge and hatred against the persons of scheduled caste. Due to the deceased, the cousin brother of respondent was arrested and he was kept in jail for few days. At present, the aforesaid material on motive can be considered and that motive, material is as against the present respondent. On the contrary, to the other three accused who were actually involved in the incident of murder, there was no motive. There will be charge of conspiracy and conspiracy can be proved on the basis of material already mentioned.

15) The learned counsel for respondent submitted that other persons were also arrested and due to the activities of the deceased others had also motive. Though there is substance in that contention, the entire C.D.R. record in respect of the mobile phones of the three accused is on record and it does not show that they were

in touch with other persons who were arrested. There is record against the respondent to connect him with the crime. Other three accused, so called hired killers are in jail but the respondent is now on bail.

16) This Court has carefully seen the reasoning given by the Trial Court. The Trial Court has not touched the aforesaid circumstantial evidence. It appears that to the Trial Court only direct evidence matters. Circumstantial evidence matters more as the circumstances never lie. It can be said that releasing the main accused must have sent wrong signal to the society. The persons who were engaged by respondent are in jail, but the main accused got bail. There is one more circumstance against the respondent. The informant of the present matter gave no objection in Sessions Court for giving bail to the present respondent. The record shows that the respondent is rich person having more than 600 Acres of agricultural land. The circumstance that the informant, brother of deceased gave no objection is sufficient to infer that respondent is able to tamper the prosecution witnesses. The relevant material is not considered by the Trial Court, but the circumstance of no objection of informant is considered by the Trial Court, that too, in favour of accused. There are many witnesses like the brother of deceased to give evidence on motive. As important material is not considered and as there are aforesaid circumstances, this Court

holds that the proceeding needs to be allowed and the order of bail made in favour of respondent needs to be cancelled. In the result, the following order.

**ORDER**

(I) Appeal is allowed. The order made by the learned Additional Sessions Judge, Jalgaon by which bail is granted to respondent is hereby quashed and set aside and the bail is cancelled.

(II) The respondent to surrender to the bail bonds within 15 days. Thereafter, if he does not surrender, he is to be taken in custody and kept in jail as under trial prisoner.

**[ S.M. GAVHANE, J.]**

**[T.V. NALAWADE, J.]**

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