

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1118 OF 2018

Vikas Bhairavshankar Pandey.	]	
Age - 23 years, Occ. : Service.	]	
R/o. At Kotva, Gulabray, Post - Madhavpur,	]	
Tal. - Tamlohiraj, Dist. - Kosinagar.	]	
(Presently lodged at Satara District Jail)	]	... Appellant

Versus

1. State of Maharashtra,	]	
(Through Patan Police Station).	]	
2. Amravati Sakharam Chavan,	]	
Age - 65 years, Occupation - Agriculture,	]	
R/o. Adhulpeth, Tal. - Patan, Dist. - Satara.	]	
3. Bapu Sakharam Chavan.	]	
Age - 49 years, Occupation - S. T. Driver,	]	
R/o. Near S. T. Colony, Chaphali Road,	]	
Patan, Tal. - Patan, Dist. - Satara.	]	... Respondents

Mr. Kedar J. Patil for Appellant.

Mr. V. B. Konde-Deshmukh, Addl.P.P. for State – Respondent No.1.

Mr. Ganesh M. Mohite for Respondent No.3.

**CORAM :- INDRAJIT MAHANTY &
SARANG V. KOTWAL, JJ.**

RESERVED ON :- FEBRUARY 04, 2019

PRONOUNCED ON :- FEBRUARY 08, 2019

P. C. :-

1. The present Appeal is preferred by the Appellant under the provisions of Section 14A (1) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Atrocities Act'). The Appellant is challenging the order dated 10/08/2018 passed by the learned Special Judge, Karad, below Exh.14 in Special Case No.41 of 2018 on his file. By challenging the impugned order, the Appellant is seeking his enlargement on bail during pendency of the trial.

2. The Appellant is facing the prosecution for commission of offences punishable under Sections 302 and 504 of the IPC and under Sections 3(2)(v) and 3(2)(va) and 6 of the Atrocities Act. The said case arises out of investigation into the offence registered at Patan Police Station, District Satara, vide C.R.No.61 of 2018. The investigation in the offence is complete and the trial is pending before the learned Special Judge as mentioned earlier. The Appellant was arrested on 01/04/2018 and since then he is in custody.

3. The prosecution case pertains to the murder of one Amravati Chavan. Her statement was recorded by the officers of Satara City Police Station and was treated as FIR which is lodged at Patan Police Station. Subsequently, since the victim Amravati Chavan succumbed to her burn injuries, the said statement also became her dying declaration. As per the FIR / dying declaration of the victim, she was residing at Adulpeth, Taluka Patan, District Satara. She was staying at her house in her agricultural field alone. Her sons and daughters were residing elsewhere. In her FIR, she has stated that since 6 to 7 months prior to the incident, Larsen & Toubro company was constructing highway between Karad and Chiplun. They had occupied a few agricultural fields to keep their equipments and machines. They had installed such machines near the field of the victim. She was constantly harassed because of the noise created by those machines and other activities. She also had a grievance that those workers had spread crushed stones in front of her house. In short, there was bitterness between the victim and the workers of the company. On 29/03/2018 at about 10.30 p.m., again some quarrel took place and one of the truck drivers tried to give her dash. The victim went away. Two or three persons from the truck got down.

One of them poured some inflammable substance like diesel or petrol on the victim and set her ablaze. She fell on the floor. Some workers took her to a dispensary at Patan and thereafter she was taken to Civil Hospital at Satara, where her FIR was recorded.

4. The victim was, thereafter, removed to Sassoon Hospital, Pune, at around noon time on 30/03/2018. Again her statement was recorded in the Burns Ward no.25 of Sassoon Hospital where she gave a similar statement. However, on this occasion, she attributed role of pouring the substance to one worker and setting her ablaze to another. This statement was recorded on 30/03/2018 at around 7.45 p.m.

5. The investigation papers show that on 31/03/2018 at 1.00 p.m., 10 workers were made to stand before her and, she identified the present Appellant as the person who had poured kerosene on her and had set her ablaze. This statement was recorded in front of PI of Patan Police Station. In this statement, she had stated that she would identify the culprits if shown to her.

6. Victim Amravati Chavan succumbed to her injuries on 02/04/2018. She had suffered 61% burn injuries and the cause of death was given as 'complications following burns'. After her death, Section 302 was added to the offence which was earlier registered under Section 307 of the IPC. Since the deceased belonged to the caste which was covered under the Atrocities Act, the provisions of the said sections were also applied to the offence. As mentioned earlier, the Appellant was arrested on 01/04/2018.

7. We have heard Mr. Kedar J. Patil, learned Counsel for Appellant, Mr. V. B. Konde-Deshmukh, learned APP for State – Respondent No.1 and Mr. Ganesh M. Mohite, learned Counsel for Respondent No.3.

8. Mr. Patil, learned Counsel for the Appellant, submitted that the Appellant is falsely implicated in the case. He submitted that in the entire charge-sheet, the evidence against him is very weak. The dying declaration and the FIR mention unknown persons as the offenders. He submitted that, there were inconsistencies in the versions given in the dying declarations. He further invited our

attention to the statement of co-workers Manish Ojha and Sharadkumar Beham. In particular, Manish Ojha has stated before the police that he and the Appellant had rushed to the spot where the victim was seen engulfed by fire. This witness has further stated that he himself, the Appellant and others extinguished the fire and helped her. Thereafter, she was taken to the hospital. Mr. Patil further submitted that the identification of the Appellant in the hospital was not proper and based only on that circumstance, bail should not be denied to him.

9. As against this submission, Mr. Konde-Deshmukh, learned APP for the State and Mr. Mohite, learned Counsel for the Respondent No.3, submitted that there was history behind the crime. The FIR and the dying declarations state that there were constant quarrels between the victim and the workers of the company. The Appellant being one of the workers of the company, had got enraged on one such occasion and had committed the crime. Mr. Mohite submitted that the statement of co-worker Shekhar Bhosale shows that the Appellant had complained to him regarding the victim having thrown stones on their vehicle. This witness has stated that the Appellant had informed him

that the glass of his vehicle was broken as the victim had thrown a stone at his vehicle. Learned APP placed reliance on the statement of Dr.Ajaykumar Patil in whose presence the victim had identified the Appellant in the Burns Ward in Sassoon Hospital.

10. We have perused the material collected by the investigating agency and filed in the form of charge-sheet. We have also perused the impugned order rejecting the bail application of the Appellant.

11. As mentioned earlier, there are at least 3 statements of the deceased on record. None of these statement was recorded in presence of a Special Executive Magistrate. The only circumstance against the Appellant is that he was identified by the deceased in the hospital.

12. During the identification itself, 10 workers were made to stand before the victim. She was under treatment for 61% burns. The deceased identified the Appellant in presence of PI of Patan Police Station. The statements of the relatives of the victim show that even

they were present at that time. Yet, the police did not arrange for either a Special Executive Magistrate or panchas before whom the victim could have been made to identify the suspects. These persons made to stand before the victim, were all workers of the company and were not dummies. Hence, even at this stage, it is difficult to take such identification into consideration against the Appellant to deny bail to him. Of course, the evidenciary value of such identification can be determined during trial.

14. Mr. Mohite submitted that the Appellant is from Uttar Pradesh and may not be available for trial. This aspect can be taken care of by imposing suitable conditions. Besides the afore-mentioned material, there is no incriminating material against the Appellant. The statement of his co-workers Manish Ojha and Sharadkumar Beham show that the Appellant himself had extinguished the fire. These statements also form part of the charge-sheet. Hence, taking overall view of the matter, we are of the considered view that the Appellant can be released on bail by imposing suitable conditions. Hence, the following order :

ORDER

- (i) During pendency of Special Case No.41 of 2018 on the file of learned Special Judge, Karad, the Appellant be released on bail on his executing a P.R. bond in the sum of Rs.25,000/- with two local sureties in the like amount.
- (ii) The Appellant shall not leave the jurisdiction of the trial Court i.e. Special Judge at Karad, without leave of that Court.
- (iii) The Appellant shall report to Patan Police Station on first Sunday of every month between 9.00 a.m. to 11.00 a.m.
- (iv) The Appeal is disposed of in the aforesaid terms.

(SARANG V. KOTWAL, J.)**(INDRAJIT MAHANTY, J.)**