

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1398 OF 2018

AKSHAY @ KISHOR ARJUN BAGAL)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Mr.Ghansham S. Jadhav, Advocate for the Appellant.

Mr.Rupesh Zade, Advocate for Respondent No.2.

Mrs.M.M.Deshmukh, APP for the Respondent - State.

**CORAM : INDRAJIT MAHANTY &
A. M. BADAR, JJ.**

DATE : 6th AUGUST 2019

JUDGMENT : (PER A.M.BADAR, J.)

1 By this appeal under Section 14A of the Scheduled
Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989,
appellant Akshay @ Kishor Arjun Bagal – accused no.3 is
challenging the order dated 20th August 2018 passed by the
learned Special Judge, Baramati, in Sessions Case No.23 of 2016

thereby rejecting the application Exhibit 60 filed by the appellant/accused no.3 seeking discharge from the said case.

2 Facts, in brief, leading to the prosecution of accused persons including the appellant, are thus :

Rashmikant Rajnikant Torane (since deceased) was resident of Bawada in Indapur Taluka of Pune District. He used to reside with his grandfather. On 15th March 2015, Rashmikant Torane went missing. His grandfather Ramakant Torane lodged a missing complaint which was ultimately registered on 22nd March 2015. During the course of enquiry of that missing complaint, on 2nd July 2015, Assistant Police Inspector Vilas Kisan Nale lodged the First Information Report (FIR), as enquiry of the missing complaint revealed that Rashmikant Torane has been abducted. Accordingly, the crime in question came to be registered. During the course of investigation, some of the accused persons including the present appellant/accused no.3 came to be arrested. Father of the appellant/accused

no.3 produced the cell phone of Rashmikant Torane which came to be seized vide Seizure memo dated 4th August 2015. During investigation it was revealed that accused persons assaulted and killed Rashmikant Torane by giving stab blows to him as well as by strangulating him. On the basis of voluntary disclosure statement of accused Bharat, recovery was effected. Similarly, it was found that dead body was buried by accused persons after killing Rashmikant Torane. On exhuming the same, the skeletonized body was identified to be that of missing person Rashmikant Torane, on the basis of clothes. Bones of the dead body came to be sent for conducting DNA test. On completion of investigation, accused persons were charge-sheeted for offences punishable under Sections 302, 201, 120B, 363, 364, 365, 143, 147, 148, 149 of the Indian Penal Code as well as under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, under Section 7(1)(d) of the Protection of Civil Rights Act and under Section 135 of the Maharashtra Police Act.

3 Heard the learned counsel appearing for the appellant/accused no.3. He vehemently argued that statement of Akshay Kamble, which is sought to be relied by the prosecution, is not reflecting anything incriminating against the appellant/accused no.3. Similarly, it is argued that there is no evidence on record to show that the cell phone allegedly recovered from the appellant/accused no.3 and seized on being produced by his father, was belonging to deceased Rashmikanth Torane. Therefore, according to the learned counsel for the appellant/accused no.3, the learned trial court committed error in rejecting the application for discharge.

4 The learned APP argued that sufficiency of evidence for securing conviction is not the test for deciding whether the accused needs to be discharged or not. In the case in hand, there is enough evidence to frame Charge against the accused.

5 We have considered the submissions so advanced and also perused the charge-sheet. If there is some material against

the accused creating strong suspicion against him then that certainly amounts to sufficient ground for proceeding against the accused and therefore, he cannot be discharged. It is not required to be examined whether material collected by the prosecution is sufficient to secure conviction of the accused in respect of the offence alleged against him. What is required to be seen is whether there is sufficient ground for proceeding against the accused. Following reference can be had to this proposition from the judgment of the Honourable Apex Court in the matter of **State of Tamil Nadu vs. N. Suresh Rajan & Ors. (2014) 11 Supreme Court Cases 709** wherein it is held as follows :

“We have bestowed our consideration to the rival submissions and the submissions made by Mr.Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouth piece of the prosecution or act as a post-office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true

and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage. Reference in this connection can be made to a recent decision of this Court in the case of Sheoraj Singh Ahlawat and Ors. v. State of Uttar Pradesh and Anr., AIR 2013 SC 52 : (2012 AIR SCW 6171), in which, after analyzing various decisions on the point, this Court endorsed the following view taken in Onkar Nath Mishra v. State (NCT of Delhi) (2008) 2 SCC 561 : (AIR 2008 SC (Supp) 204 : 2008 AIR SCW 96):

“11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.” ” .

6 In the case in hand, after deceased Rashmikanth Torane went missing on 15th March 2015, the cell phone which was in his possession and which was being used by him was traced and it was found to be having used by appellant/accused no.3 Akshay @ Kishor Bagal. The material collected by the Investigating Officer points out that the cell phone which was found in

possession of appellant/accused no.3 Akshay @ Kishor Bagal was being used by the deceased prior to the incident in question. Accordingly, on 27th July 2015, the appellant/accused no.3 came to be arrested and subsequently on 4th August 2015, his father produced the cell phone of the deceased, which came to be seized under Seizure Memo dated 4th August 2015 in presence of panch witnesses. This material was allegedly considered to be the material sufficient to raise strong suspicion against the appellant/accused no.3 and enough for framing Charge against him. We find no infirmity in the said conclusion arrived at by the learned Special Judge, Baramati.

7 In this view of the matter, the appeal is devoid of substance, and therefore the order :

ORDER

The appeal is dismissed.

(A. M. BADAR, J.)

(INDRAJIT MAHANTY, J.)