

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL (APEAL) NO.814 OF 2019.

(Bandu s/o Motiram Khadekar, R/o Sangwa, Tq.Daryapur, District Amravati Vs. State of Maharashtra & Anr.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri P.V.Navlani, Advocate for the appellant.
Shri S.P.Deshpande, A.P.P. for respondent No.1.
Ms.D.V.Sapkal, Advocate (appointed) for respondent
No.2.

CORAM : P.N. DESHMUKH &
PUSHPA V. GANEDIWALA, JJ.
JANUARY 10, 2020.

Heard Shri P.V.Navlani, learned counsel
for the appellant, Shri S.P.Deshpande, learned A.P.P.
and Ms.D.V.Sapkal, learned counsel for respondent
No.2.

This appeal arises against the impugned
order of the Trial Court passed below Exhibit-1 dated
16/11/2019 by the learned Additional Sessions
Judge, Achalpur rejecting the bail application of the
appellant, who is involved in Crime No.140/2019
registered at Asegaon Purna Police Station for the
offence punishable under Section 302 read with
Section 34 of the Indian Penal Code, Section 3(ii)(v)
(a) of the Scheduled Castes and the Scheduled Tribes
(Prevention of Atrocities) Act, 1989 and Section 142
of the Bombay Police Act, 1951.

Learned counsel for the appellant

submitted that there is absolutely no evidence establishing appellant's involvement in the death of deceased Ramesh. However, based on the statement of one of the eye-witness, whose evidence is full of doubts, the appellant is arrested and is in custody since the date of his arrest i.e. from 21/07/2019. By referring to the medical evidence, it is pointed out that infact, according to the postmortem notes, deceased died of hanging and there is no evidence establishing appellant's involvement in causing death of the deceased Ramesh in any manner by hanging. It is thus contended that since the chargesheet is already filed, the appellant be released on bail by imposing suitable conditions.

Learned A.P.P. opposed the application of bail on the ground that there is direct involvement of the appellant established from the eye-witnesses' statements as well as from the contents of report and has thus contended that since there is prima-facie evidence collected against the appellant, the application for bail be dismissed.

Learned counsel for respondent No.2 supported the submissions of the learned A.P.P. and in addition to it, submitted that, under the Right to Information Act, 2005, respondent No.2 had obtained criminal antecedents of the appellant where he is found involved in some crime registered in the year 2011 and in support of this submission, has

tendered at bar information supplied by the concerned Police.

Considering the submissions advanced as aforesaid, record reveals that prior to lodging of report on 15/07/2019 by Umesh Dahe, son of deceased Ramesh, on 10/07/2019, he had lodged report to the Police informing that his father left the house in the night on 09/07/2019 and was seen by him at 'Sangwa Phata'. It is further stated that in the morning, one Sagar, who was residing as his neighbour, informed that the complainant's father was lying dead near the brewery. Admittedly, in the report, neither the name of the appellant nor any of the accused is mentioned. On the basis of said report, marg is registered and was investigated.

Record further reveals that the appellant came to be involved in the subsequent report dated 15/07/2019, wherein it is stated that in the evening of 09/07/2019, while the deceased alongwith the complainant was present in their house, original accused No.1 – Balya @ Baban came there and after abusing the deceased, threatened to kill him and left the spot. It is further alleged that in the night, at around 11.00 pm, when the complainant was returning home after answering nature's call, he had seen original accused No.1 – Balya @ Baban. The deceased did not returned home in the night and the complainant in the morning was informed that the

dead body of his father was lying near the brewery. In the fag end of this report, the complainant has named the appellant alongwith two other co-accused suspecting them to have killed his father. Prima-facie, the suspicion arose does not stand for any reason as, according to the contents of this report also, it is the original accused No.1 – Balya @ Baban, who on the previous evening is said to have abused the deceased and had given threats to kill him.

Perusal of the statement of Subhash, the eye-witness, would establish the fact of his witnessing the assault on deceased by the appellant and both the co-accused sometime in between 10.30 to 11.00 pm near the liquor shop of one Kishorilal Jaiswal. The said witness claims to have witnessed the incident of assault upon deceased Ramesh by the appellant and two other co-accused under the source of battery. However, his statement is silent if he had visited the spot and verified as to who was assaulted, though, as per the statement, the appellant and two co-accused are stated to be the assailants. This aspect is relevant in view of fact that in his statement, it has come on record that he had seen the deceased on 09/07/2019 at around 7.00 pm, who had consumed liquor and had also seen the appellant and other two co-accused at the same spot situated near one field at Asadpur.

Similarly, perusal of the statement of

Rupesh, who is working in the liquor shop, establishes visit of deceased – Ramesh in the shop on 09/07/2019 at around 9.30 am and thereafter, in the night at around 8.30 pm when he is stated to have purchased liquor and was thereafter found at around 9.45 pm in the open space adjoining to the liquor shop. He has said that he had slept there itself for sometime and thereafter went home. This witness also states that the deceased was in a habit of consuming liquor on many occasions and thereafter spending time and sleeping at any place.

In view of the above submissions and having considering the fact that except the statement of sole eye-witness Subhash alleging to have witnessed the appellant and two co-accused assaulting the deceased Ramesh and in view of the fact that his statement is silent as to whether he has verified who was the victim being assaulted, this statement by itself is not sufficient to even prima-facie establish involvement of the appellant, which aspect is substantiated in view of the medical evidence on record wherein the Medical Officer, who has performed the postmortem, in clear terms opined that the cause of death of deceased is due to hanging and injury to vital organs.

In the absence of any evidence on this aspect, we do not find it sufficient to rely upon the statement of sole eye-witness Subhash.

In this view of the matter, the appeal is liable to be allowed as per order below.

The appellant shall be released on bail on his executing P.R. bond in the sum of Rs.50,000/- (Rs.Fifty thousand only) with one surety in the like amount.

While on bail, the appellant shall not enter within the territorial jurisdiction of Police Station, Asegaon, District Amravati (Gramin).

While on bail, the appellant shall mark his presence with the Police Station within whose jurisdiction he prefers to reside on the first day of each month, initially for six months, and also inform his address to the Police Station, Asegaon, District Amravati (Gramin).

The appellant shall attend the Trial Court on the fixed dates without fail.

The appeal stands disposed of in the above terms.

The fees of the Advocate (appointed) for respondent No.2 is quantified at Rs.2,000/- (Rs.Two thousand only).

JUDGE

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