

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 262 OF 2021

1. BALAJI CHHAGAN WAKURE
 2. PANDURANG CHAGGAN WAKURE
- VERSUS
1. THE STATE OF MAHARASHTRA
 2. RUKHMIN ARUN KALE

Advocate for Appellants : Mr. S.J. Salunke.
APP for Respondent No. 1 : Mr. M.M. Nerlikar.
Advocate for Respondent No. 2 : Mr. S.S. Jadhavar.

**CORAM : V.K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.
DATE : 28.10.2021.**

Per Court :

1. The appellants are seeking regular bail in connection with Crime No. 220/2020, registered with Dhoki Police Station, Dhoki, District Osmanabad, for the offences punishable under Sections 302, 201, 143, 147, 149, 323 of the Indian Penal Code, under Section 135 of Maharashtra Police Act and under Section 3 (2) (v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
2. Their applications with similar prayer came to be rejected by the Special Judge, Osmanabad, vide order dated 22.01.2021, below Exhibit 8 in Special Case No. 99/2020. In terms of the

provisions of Section 14 A (2) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellants have preferred this appeal.

3. It is the prosecution case that deceased Pappu @ Suresh was belonging to Pardhi community and the villagers suspected his involvement in outraging the modesty of sister-in-law of co-accused – Samadhan. Consequently, the appellants herein and the co-accused persons have extended the beating to the deceased near the railway track and committed his murder.

4. The learned counsel for the appellants submits that the prosecution case entirely rests upon the circumstantial evidence and there is no direct evidence in this case. The learned counsel submits that so far as the present appellants are concerned there is no motive for them to commit the murder of the deceased. The learned counsel submits that the prosecution case entirely rests upon the evidence of last seen together. Witness Chatrabhuji allegedly seen deceased lastly alive in the company of the appellants and the co-accused on 19.08.2020 at about 01:00 p.m. near the railway track when they were extending beatings to him. The learned counsel submits that

the statement of the said Chatrabhuj is negated in view of the statement of witness Kavita Kale.

5. The learned counsel for the appellant submits that as per the postmortem report the probable cause of death of deceased is asphyxial death due to ligature constriction of neck. However the concerned Medical Officer, who has conducted the postmortem examination has not given specific opinion in the postmortem notes whether the death was homicidal or otherwise.

6. Consequently, learned APP through Investigating Officer sought clarification from the said Medical Officer. The concerned Medical Officer has given opinion that the findings recorded in postmortem report do not suggestive of homicide. Consequently, by order dated 24.09.2021, this Court has requested the APP to direct the Investigating Officer to request the Civil Surgeon of the district to constitute a committee of experts to give opinion as to whether the death in this case is homicidal or otherwise.

7. The learned counsel for the appellants submits that even the said committee constituted by the Civil Surgeon has given

the report and as per the opinion of the said committee, there is nothing to suggest about the homicidal manner of death of deceased Suresh Arun Kale, unless proved otherwise. The learned counsel for the appellant submits that in view of the same the appellants are entitled to be released on bail. There are no antecedents. They are hailing from village Bukanwadi and they born and brought up at village Bukanwadi, Taluka and District Osmanabad. They are easily available for trial. They are ready to furnish surety and also ready to abide by conditions, if imposed by this Court while releasing them on bail. The appellants are in jail since 25.08.2020.

8. Learned counsel Mr. Jadhavar submits that the witness Chatrabhuji has actually seen the incident of beating. He had witnessed that deceased Pappu @ Suresh was subjected extensive beatings by the appellants herein and the co-accused for the reason that he has done something in presence of one Asha who happened to be the sister-in-law of co-accused Samadhan which has been treated by the appellants and the co-accused as outraging her modesty.

9. The learned counsel submits that thereafter within 2 or 3

hours, the dead body of deceased was found under the suspicious circumstances. Learned counsel submits that as far as the opinion given by the concerned Medical Officer so also by the committee the same has to be appreciated by the trial Court during the course of the trial. It is premature at this stage to consider the said opinion.

10. Learned APP submits that there is a *prima facie* case against the appellants. There is a motive for the appellants and co-accused to commit the murder of deceased who was belonging to the Pardhi community. He was subjected to beating for the small reason that he has sat for releasing urine before the said Asha and the appellants and the co-accused had taken the same seriously and extended ruthless beatings to him.

11. We have carefully gone through the allegations made in the complaint so also the entire charge-sheet. It appears that the prosecution case is entirely rests upon the circumstantial evidence and there is no direct evidence in this case. Witness Chatrabhuj is on the last seen together point that on 19.08.2020 at about 01:00 p.m. near the railway track, he had seen the deceased alive lastly in the company of the accused persons.

As per his statement, the appellants and the co-accused were abusing deceased and also subjected him to beating with fist and kick blows for the reason that he has discharged urine in presence of one Asha Wakure. However, as per the statement of the witness Kavita Kale deceased was lastly seen alive in the company of witness Chatrabhuj. As per the statement of Kavita Kale on 19.08.2020 at about 12:00 noon deceased had come to the house and informed to witness Kavita that the appellants and the co-accused have extended him beatings and further given the threat that they would kill him. Witness Kavita has further stated in the statement that after some time witness Chatrabhuj had come there and he took deceased with him. Even though witness Kavita has resisted him for taking away the deceased at some different place for the reason that the appellants and the co-accused persons have given threat to him. However, witness Chatrabhuj had assured witness Kavita that he would take care of him. Witness Kavita has further stated in the statement that about 03:00 p.m. / 03.30 p.m. deceased had hanged himself in the field. The statement of Kavita kale is contrary to the statement of Chatrabhuj.

12. The Medical Officer who has conducted the postmortem

examination has given the opinion that the death of the deceased does not suggest of homicide. Even the committee constituted by the Civil surgeon has given the opinion that there is nothing to suggest about the manner of homicidal death of deceased Suresh, unless proved otherwise. It is for the trial Court to consider the possibility of homicidal hanging while appreciating the medical evidence subject to cross examination of the defence counsel. However, in the given set of facts coupled with the medical opinion as before us, the case is made out for grant of bail. There is no possibility of absconding. Thus, by imposing certain conditions, we are inclined to release the appellants on bail. Hence, the following order :

ORDER

- i. Appeal is hereby allowed.
- ii. Appellant No. 1 – Balaji Chhagan Wakure and appellant No. 2 – Pandurang Chhagan Wakure, in connection with Crime No. 220/2020, registered with Dhoki Police Station, Dhoki, District Osmanabad, for the offences punishable under Section 302, 201, 143, 147, 149, 323 of the Indian Penal Code, under Section 135 of Maharashtra Police Act and under Section 3 (2) (v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities)

Act, 1989, vide Special Case No. 99/2020, be released on bail on furnishing Personal Bond in the sum of Rs. 20,000/- (Rupees twenty thousand) each with one solvent surety each in the like amount.

iii. The appellants shall not tamper the evidence in any manner.

iv. The appellant No. 1 - Balaji Chhagan Wakure and appellant No. 2 - Pandurang Chhagan Wakure, shall not enter within the limits of village Bukanwadi till the trial is over.

v. Appeal is accordingly disposed of.

vi. The opinion (original) dated 02.07.2021 given by the Medical Officer who has conducted the postmortem and the opinion (original) given by the committee dated 04.10.2021, be returned to the prosecution with permission to substitute the same by the xerox copy.

(SANDIPKUMAR C. MORE, J.)

(V .K. JADHAV, J.)