

Versus

Mr. Sachin K. Hande, for the Intervener.

RESERVED ON : 30th November, 2021.
PRONOUNCED ON : 14th December, 2021.

2 The prosecution case in nutshell is that on 26/07/2019 at about 2-00 p.m. while the applicant had taken his tractor in the bajari crop of the informant, the informant's brother Sagar Balaso Dange (deceased) tried to prevent him from ploughing bajari crop. It is alleged that the applicant assaulted by means of an axe on his head and another

accused,namely, Santosh Dange also beat him by means of iron pipe. The deceased was taken to the Government Hospital at Kavathe Mahankal, where after examination, the doctor declared him dead. The informant accordingly lodged the report.

3 Mr. Joshi, learned Counsel for the applicant, submits that bare perusal of the FIR and as also the statements of witnesses would show that there was no intention on the part of applicant and co-accused to cause the death of the deceased. In such circumstances, there is no question of charging the applicant under Section 302 of the Indian Penal Code. Moreover, the investigation is completed and the charge-sheet has been filed. In such circumstances, custody of the applicant is no more required and deserves to be enlarged on bail, argued learned Counsel.

4 Ms. Dabholkar, learned APP, on the other hand, opposed the submissions by contending that there is direct evidence of prosecution witnesses who had seen the incident. The applicant assaulted the deceased by means of an axe and co-accused also by means of iron pipe. Learned APP also invited my attention to the statements of prosecution witnesses to substantiate her submissions. Lastly, learned APP took me through the Postmortem Report and submitted that the cause of death was head injury. Thus, there is no merit in the application and same is

liable to be rejected, argued learned APP

5 Perused the investigation papers and the statements of prosecution witnesses.

6 From the FIR itself it is clear that the informant had seen the incident in question. According to him, the applicant while was ploughing the crop of bajari with the help of his tractor the deceased tried to prevent from doing so. The applicant assaulted by means of an axe on the head of the deceased. Similarly, co-accused Santosh Dange also assaulted by means of iron pipe.

7 I have also gone through the statements of other witnesses recorded under Section 164 of the Code of Criminal Procedure by Judicial Magistrate First Class, Jath, namely, Balasaheb Suryaba Dange, father of the deceased, Mangal Balasaheb Dange, mother of the deceased, Meenakshi Sagar Dange, wife of the deceased, Sarika Anil Dange, wife of the informant, Mahadev Namdev Waghmare, Sanjay Rangrao Dange, Tukaram Rangrao Dange and the informant. All these witnesses have unisonly stated that the applicant had assaulted on the head of deceased by means of an axe and further that co-accused Santosh Dange by means of iron pipe.

8 The Postmortem Report at Column No. 17 shows the various injuries of which injury No.1 is a prime injury. The cause of death was head injury.

9 In addition to above, at the instance of applicant, there is recovery of an axe having blood stains.

10 As far as the submission of learned Counsel for the applicant that case would not fall under Section 302 of IPC is concerned, the same will have to be looked into and decided by the learned trial Court. For now, there is enough and overwhelming evidence pointing out culpability of the applicant.

11 In view of above, I do not find merit in the application. Hence, the following order.

ORDER

Bail Application No. 2286 of 2021 is rejected.

(V. G. BISHT, J.)