

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1624 OF 2019

Aniket Ganesh Panire

Age : 23 years, Occu.: Agriculturist

Residing at – Karve, Tal. Walva, Dist.

Sangli, (At present languishing in the

custody of Sangli District Prison, Sangli)

...Appellant

Versus

1. The State of Maharashtra

Through Islampur Police Station, Sangli

2. Snehal Saket Kamble

R/at Guruprasad Colony,

Rajaramnagar, Kanchan Bunglow,

Islampur, Ta. Walva, Dist. Sangli.

...Respondents

Mr. Satyavrat Joshi, i/b Mr. Nitesh J. Mohite, for the
Appellant.

Mr. Umesh Pawar, for Respondent no.2.

Mrs. S. D. Shinde, APP for the State/Respondent no.1.

**CORAM: S. S. SHINDE &
N. J. JAMADAR, JJ.**

RESERVED ON: 28th SEPTEMBER, 2021.

PRONOUNCED ON: 6th OCTOBER, 2021.

JUDGMENT:- [PER : N. J. JAMADAR, J.]

1. This appeal under Section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (“the SC and ST Act, 1989”) is directed against an order dated 4th October, 2019, on an application (Exhibit-7) in Special (Atrocity) Case No.4 of 2019, passed by the learned Special

Judge, Islampur, whereby the prayer of the appellant – accused no.2 to release him on bail during the pendency of the trial in the said special case, came to be rejected.

2. The background facts leading to this appeal can be summarised as under:

(a) Saket Kamble (the deceased) was the husband of the first informant – respondent no.2. He was a member of the Scheduled Caste. On 17th November, 2018, at about 2.00 pm. the deceased left home. He did not return home. As he could not be traced at the places where he was expected to be found, till the afternoon on 18th November, 2018, respondent no.2 lodged a missing report.

(b) Till 24th November, 2018, despite diligent search, the deceased could not be traced. The first informant suspected foul play at the hands of Santosh Pawar-Parit (A1) and Aniket Panire (A2), the appellant, who was working for Santosh (A1). The suspicion was stoked by the fact that the deceased and accused were seen at the construction site behind Dutta Hill at about 7.30 pm. on 17th November, 2018. Nobody had thereafter met or seen the deceased. There were financial transactions between the deceased and Santosh (A1). The deceased had borrowed money from Santosh (A1) on multiple occasions. A

dispute had arisen over the said financial transactions. The deceased had apprised the first informant that on 5th November, 2018, there was a quarrel between the deceased and Santosh (A1) and the latter had threatened to kill the deceased. Since the transaction between the deceased and Santosh (A1) continued, even after the said quarrel, no complaint was lodged against Santosh (A1). However, since the whereabouts of the deceased could not be ascertained for over six days, the first informant lodged report against the Santosh (A1) and Aniket (A2) to the effect that they might have abducted the deceased. Initially, crime was registered at CR No.553/2018 for the offence punishable under Section 364 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") and Section 3(2)(v) of the SC and ST Act, 1989. The accused were arrested. Santosh (A1) made a disclosure statement.

(c) The discovery made by Santosh (A1) revealed that on 17th November, 2018, at the hostel construction site, the deceased was assaulted by means of an iron rod, on head, and, thereafter, the head and right hand of the deceased were severed by means of scythe (*parali*) and headless body, the head and right hand and the incriminating articles, including weapons, were thrown into Warana river at various places.

Pursuant to the discovery made by Santosh (A1), the headless body of the deceased, the head and right arm, weapons of assault including the iron rod and scythe (*parali*) and the mobile phone handsets of the deceased were recovered. Aniket (A2) also made discovery leading to recovery of the bloodstained clothes, which he wore at the time of the occurrence, and the place where the TATA Sumo vehicle, in which the body of the deceased was carried, was washed. During the course of investigation, the said vehicle was seized and bloodstains were found on the mats and rexine covers laid in the said vehicle. Statements of witnesses were recorded under Section 164 of the Code of Criminal Procedure, 1973 ("the Code") as well.

(d) Post completion of investigation, charge-sheet came to be lodged for the offences punishable under Sections 302, 364, 120B and 201 of the Penal Code and Section 3(2)(v) and 3(2)(va) of the SC and ST Act, 1989.

(e) The appellant filed an application for bail. By the impugned order, the learned Special Judge was persuaded to reject the application holding *inter alia* that it was a case of brutal murder. The head and right hand of the deceased were severed from the body. Pursuant to the disclosure statement made by Aniket (A2) bloodstained clothes and the motorcycle

were recovered. There was material to show that Aniket (A2) had purchased a scythe (*parali*) prior to the occurrence. Thus, there was sufficient material to show complicity of Aniket (A2) in the said offence, *prima facie*. Moreover, there was apprehension of tampering with the evidence and threatening the first informant and prosecution witnesses. Thus, the application came to be rejected.

3. Being aggrieved, accused no.2 is in appeal.

4. Admit. Taken up for final disposal.

5. We have heard Mr. Joshi, the learned Counsel for the appellant, Mrs. Shinde, the learned APP for the State and Mr. Pawar, the learned Counsel for respondent no.2 – first informant. With the assistance of the learned Counsels for the parties, we have perused the material on record including the report under Section 173 of the Code and its accompaniments.

6. Mr. Joshi, the learned Counsel for the appellant, submitted that the learned Special Judge was swayed by the brutal nature of the offences. In the process, the learned Special Judge lost sight of the fact that there was no cogent material to connect Aniket (A2) with the crime. Mr. Joshi submitted that the circumstances which were arrayed against the appellant, even if taken at their face value, do not make out

a case against the appellant. Mr. Joshi submitted that the discovery leading to the recovery of the bloodstained clothes is of no assistance to the prosecution. It is unlikely that the bloodstains would have been found on the clothes, recovered after an interval of 7 to 8 days of the occurrence. Moreover, chemical analyst has yet not reported that the bloodstains found on the clothes of Aniket (A2) were of the same blood group as that of the deceased. Nor the statement of Mr. Imran Shikalgar, recorded under Section 164 of the Code, is of assistance to the prosecution as there was no test identification parade and thus the claim of the said witness that the appellant had purchased scythe (*parali*) from him cannot be pressed into service to incriminate the appellant. A strong criticism was advanced against the utility of the statement of Mr. Onkar Undale, a co-worker of the appellant, before whom the appellant allegedly made extrajudicial confession. It was urged that if the claim of the said witness that Santosh (A1) had offered Rs.50,000/- to him and Aniket (A2) to kill the deceased, was to be believed, then the said witness should also have been arraigned as an accused. Apart from the aforesaid circumstances, which are inherently of weak nature, there is no other material to connect Aniket (A2) with the crime, submitted Mr. Joshi.

7. As against this, Mrs. Shinde, the learned APP, stoutly submitted that there are strong circumstances which squarely incriminate the appellant. He was named in the first information report. The extrajudicial confession which was immediately made by the appellant, to his friend Onkar Undale, appears voluntary and true and gives a vivid account of the circumstances in which the deceased was done to death. It was a case of contract killing. In the backdrop of the brutal nature of the offence, according to Mrs. Shinde, the appellant does not deserve to be enlarged on bail.

8. Mr. Pawar, the learned Counsel for respondent no.2 supplemented the submissions of Mrs. Shinde. Laying emphasis on the fact that the deceased was killed in pursuance of criminal conspiracy, Mr. Pawar would urge that the circumstances pressed into service against the appellant squarely establish the criminal conspiracy. Therefore, according to Mr. Pawar, the learned Special Judge committed no error in declining to exercise the discretion in favour of the appellant.

9. We have given anxious consideration to the aforesaid rival submissions.

10. Indubitably, on 18th November, 2018, the first informant had lodged a missing report. The non-inclusion of the names of

the suspect, or for that matter, the fractious relations between the deceased and Santosh (A1), at that point of time, does not detract materially from the prosecution case. The missing report was lodged on the very next day of the deceased not returning home. However, in the first information report dated 24th November, 2018, the first informant divulged the details including the financial transactions between the deceased and Santosh (A1), the dispute over the money borrowed by the deceased and the alleged intimidation by Santosh (A1).

11. At this stage, there is *prima facie* material to indicate that the headless body of the deceased, the head and the right hand were found at different places in the river. Weapons were also found in the riverbed at different places. There is material to indicate that the deceased was found in the company of Santosh (A1) at the hostel construction site. Apparently, more than one witnesses have stated that they had seen the deceased and Santosh (A1) together on the evening of 17th November, 2018.

12. Indubitably, the case rests on circumstantial evidence. The statement of Mr. Onkar Undale recorded under Section 164 of the Code sheds light on the alleged role of the appellant. On the one hand, it indicates that the appellant had informed him that Santosh (A1) offered to pay Rs.50,000/-, each, to kill the

deceased. On the other hand, on the morning of 18th November, 2018, at about 8.00 am. the appellant had came to the house of the said witness in a TATA Sumo vehicle, and informed him that the said vehicle was to be washed. Upon opening the rear door of the said vehicle, bloodstains were found in the rear section and on the door. Upon being inquired, appellant informed him that he and Santosh (A1) killed the deceased on the previous night. The entire incident was allegedly narrated by the appellant.

13. The aforesaid statement of Mr. Onkar Undale, at this juncture, cannot be brushed aside on the premise that, being an extrajudicial confession, it constitutes a weak piece of evidence. Apart from being an extrajudicial confession, the said statement may be admissible under Section 10 of the Evidence Act as a statement made by the appellant when the conspiracy to kill the deceased was afoot. Mr. Onkar Undale was, in a sense, a privy to the transaction. Being a co-worker, there was an element of proximity between the appellant and Onkar Undale. Element of spontaneity is also evident. From this stand point, at this stage, the extrajudicial confession allegedly made by the appellant cannot be thrown overboard.

14. In addition, there is evidence of discovery leading to the recovery of the bloodstained clothes of the appellant. Indeed, there is no material to indicate that Imran Shikalgar had known the appellant from before. Nor it is the claim of the prosecution that test identification parade was held. However, at this stage, only for want of test identification parade the claim of Imran Shikalgar that the appellant had purchased the scythe (*parali*) from him cannot be discarded.

15. In the totality of the circumstances, in our view, there is adequate material to demonstrate *prima facie* complicity of the appellant in the crime. Having regard to the nature of the offence, in our view, the learned Special Judge was justified in declining to exercise the discretion in favour of the appellant. Thus, we do not find any infirmity in the impugned order. Resultantly, the appeal deserves to be dismissed.

16. Hence, the following order.

: O r d e r :

- (i) The appeal stands dismissed.
- (ii) It is, however, made clear that the consideration is confined to the determination of entitlement of the appellant for bail and the learned Special Judge shall not be influenced

by the observations made hereinabove while
deciding Special (Atrocity) Case No.4 of 2019.

[N. J. JAMADAR, J.]

[S. S. SHINDE, J.]