

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.531 OF 2021

Ganesh Dattatray Mankar Appellant
Versus
State of Maharashtra & Another Respondent

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Mr. Pratik R. Kalantri, Advocate for the Appellant.
Mr. J.P. Yagnik, APP, for Respondent No.1 -State.
Ms. Vrushali Maindad, Advocate for Respondent No.2.

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**CORAM : NITIN JAMDAR AND
SARANG V. KOTWAL, JJ.**

DATE : 05 OCTOBER 2021

P.C.

This is an Appeal under Section 14-A of the the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'Atrocities Act').

2. The Appellant is seeking his release on bail in connection with C.R. No.30/2020 registered at Harsul Police Station, District Nashik under Sections 302, 323, 420, 188, 269, 270 read with 34 of the Indian Penal Code. Subsequently, Section 3(2)(v) and 3(2)(va) of the Atrocities Act were also applied.

3. The Appellant had preferred Criminal Bail Application

No.1188/2020 before the Additional Sessions Judge, Nashik, which was rejected vide order dated 19 September 2020. He had again preferred another application before the Additional Sessions Judge, Nashik vide Criminal Bail Application No.357/2021, which was also rejected vide order dated 30 March 2021.

4. The Appellant is in custody since 20 May 2020. The charge-sheet is already filed. The investigation is over. The FIR was lodged by one Devram Khade on 12 May 2020 at Harsul Police Station. He has stated that his cousin Lahanubai was married to Motiram Bendkoli (the deceased in this case). He was cultivating a land at Dhondegaon. On 11 May 2020 at about 5:30 p.m., the informant had gone to that agricultural field to help Motiram. The first informant was accompanied by his elder brother Chander. Upto 7:45 p.m., the informant, his brother and the deceased were watering the crop. After that, they were returning to Motiram's house from the field. At about 8:00 p.m. they saw a white car on the road. There were four unknown persons near that car. The head-lights of the car were switched on. Motiram told those persons to switch off those head-lights. One of them asked Motiram about the house of one Mhaisdhune. Motiram told him that he was not aware of that address. Those persons got angry. They started scuffling with Motiram. The informant and his brother Chander raised shouts. At that time, one of those four persons, who was wearing half pant and T-shirt brought out a big knife from the car and gave a blow on the right thigh of

Motiram. Chander ran towards the house to call Motiram's wife Lahanubai. The informant tried to save Motiram, but, the assailants did not allow him to intervene. After that, those four accused sat in the car and went away. Motiram had suffered incised wound on his thigh. He was taken to Civil Hospital, Nashik, but, he was declared dead. On this basis, the FIR was lodged.

5. The Appellant was arrested along with co-accused Hiranman, Vikas and Ramnath Shinde. The investigation was carried out and the charge-sheet was filed.

6. Heard Shri Pratik Kalantri, learned Counsel for the Appellant, Shri J.P. Yagnik, learned APP for the State and Ms. Vrushali Maindad, learned counsel for Respondent No.2.

7. Learned Counsel for the Appellant submitted that there is no sufficient evidence against the present Appellant. There was no motive to commit murder of the deceased. There was no preparation and no premeditation in assaulting the deceased, who came near their car. It was the deceased who had picked up quarrel by asking those unknown persons to switch off the head-lights of their car. The accused were unknown to the first informant. The evidence of recovery of *gupti* at the instance of the Appellant is not reliable. The application of the Atrocities Act is wrong.

8. Learned A.P.P. as well as learned Counsel for Respondent No.2 opposed this Appeal. They submitted that the Appellant's name

had transpired during the investigation. There is recovery at his instance. They submitted that looking at the nature of injury and the weapon used, it cannot be said that the accused had no intention to commit murder of the deceased.

9. We have considered these submissions. With the assistance of all learned Counsel for the parties, we have also perused the charge-sheet.

10. The deceased had suffered one stab wound over right thigh of size 1.7 cm X 0.7 cm X 11 cm. deep, with underlying right femoral vein cut. There was abrasion on the left shoulder of size 4 cm X 3 cm. The cause of death was mentioned as “death due to hemorrhagic shock due to stab injury to right thigh”.

11. Though, there is some force in the contention of learned Counsel for the Appellant that the injury was not on vital part, there was no preparation, no premeditation and hence no intention to commit murder of the deceased, that aspect will have to be decided during the trial. But, even otherwise we are satisfied that there is no sufficient material in the entire charge-sheet connecting the Appellant with the alleged offence.

12. Apart from the first informant, the other eye witness Chandar Khade, the elder brother of the first informant, has narrated the incident in the same manner as narrated by the first informant. The prosecution case appears to be that there was some money

transaction between Balasaheb Mhaisdhune and the Appellant, who had come there to question Balasaheb and in the meantime this incident had taken place. Balasahab Mhaisdhune, in his statement, has stated about his dispute with the informant. However, his statement makes no reference to the incident in question where the deceased was attacked.

13. In this background, the question of identity of the assailants assumes great importance. In this respect the charge-sheet does not reveal any incriminating material against the present Appellant. His test identification parade was not held on the pretext that because of spread of pandemic it was not possible to hold test identification parade. The assailants were unknown to the first informant and his brother and, therefore, in the absence of clear identification by these two witnesses of the Appellant as an assailant, there is no material connecting the Appellant with the crime.

14. The recovery of *gupti* at the instance of the present Appellant cannot be used against the Appellant. The recovery was effected on 28 May 2020 purportedly at the instance of the Appellant from an open space. The weapon was allegedly thrown by the Appellant in grass. That spot was open and accessible to all. The vehicle in which the assailants had travelled is also not connected with the Appellant.

15. Apart from these circumstances, there is no other material

against the Appellant. As discussed, the available material is not sufficient to connect the present Appellant with the crime.

16. In this view of the matter, the Appellant deserves to be released on bail during pendency of the trial. Hence, the following order:

ORDER

- (i) In connection with C.R. No.30/2020 registered with Harsul Police Station, District Nashik, the Appellant is directed to be released on bail on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) Criminal Appeal stands disposed of accordingly.

PRADIPKUMAR
PRAKASHRAO
DESHMANE

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PRADIPKUMAR
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DESHMANE
Date: 2021.10.08 10:39:39
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(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)

Deshmane (PS)