

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

CRIMINAL APPEAL NO. 253 OF 2021

Chetan Prakash Rathod,
Aged 23 years, Occu. : Labour,
R/o. Behind Government Godown, Khadan,
Tq. & Dist. : Akola.APPELLANT

... **VERSUS** ...

1. The State of Maharashtra
Through Police Station Officer,
Police Station Khadan,
Tq. & Dist. Akola.
2. Shankar Kishan Ghode,
Aged 53 years, Occu.: Labour,
R/o. Behind Akhre Shop, Sindhi Camp,
Khadan, Akola, Tq. and Dist. : Akola.RESPONDENTS.

Shri V. R. Deshpande, Advocate for Appellant.
Shri V. A. Thakare, A.P.P. for Respondent No.1/State.

CORAM : V. M. DESHPANDE AND
AMIT B. BORKAR, JJ.

DATE : 04.08.2021.

ORAL JUDGMENT : (PER V. M. DESHPANDE, J.)

1. ADMIT.
2. Taken up for final hearing forthwith.
3. Heard Shri V. R. Deshpande, learned counsel for the
appellant and Shri V. A. Thakare, learned Additional Public
Prosecutor for the respondent No.1/State.

4. The respondent No.2 is duly served, but chose not to appear before this Court.

5. The cause for filing the present appeal under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is the rejection of the application filed on behalf of the appellant under Section 439 of the Code of Criminal Procedure below Exh.4 in the Special SCST Case No.61/2021.

6. The investigation is already over and the charge-sheet is filed. The appellant is the accused No.2. According to the prosecution case, Police Head Constable – Arun Laxman Metkar, while discharging duty as a Night Officer, received an information about lying of one person near Nehru Park Square. When he reached the said spot, he noticed that one person lying on the spot in a dead condition. His face was defaced. However, there was a tattoo on his hand depicting his name as Shyam Ghode. Similarly, on search of that person, a cell phone was found and therefore, the said Police Officer gave a phone call which was picked up by the sister of the deceased.

7. The father of the deceased identified the dead body as of his son.

8. The deceased father – Shankar Ghode lodged the report on 07.03.2021 against unknown person.

9. According to the prosecution case, during investigation, the Investigating Officer called dog squad and dog reached the co-accused Sumit Sharma. He was arrested. According to the prosecution case, during interrogation of the said Sumit, he disclosed the name of the present appellant as the culprit. Accordingly, the appellant was arrested.

10. According to the prosecution case, the weapon is the stone, which was found lying on the spot itself. The clothes of the appellant were seized and, according to the prosecution case, those were having blood stains.

11. The learned Additional Public Prosecutor submitted that the appellant was lastly seen in the company of the deceased and that has been stated by the father of the deceased and also the aunt of the deceased. Except these two close relatives of the deceased, nobody has pointed out to the Investigating Officer about the presence of the appellant lastly in the company of the deceased.

12. The learned Additional Public Prosecutor invited our attention to the statement recorded during the course of the investigation of one Ganesh Shankar Lahane, recorded on

10.03.2021. As per his statement, the appellant was his employee. As per the statement, on 06.03.2021 in the morning, the appellant attended the duty and left the working place at 3.00 p.m. by taking Rs.300/- which was per day wage of the appellant. His statement shows that in between 1.30 to 2.00 a.m., there was a knock on his door and the said prosecution witness states that, the present appellant demanded Rs.1000/- as a loan from him. It is also stated in the statement that at that time, he noticed that the clothes of the appellant, were having blood stains.

13. Though this prosecution witness noticed the presence of the appellant in his house having blood stained clothes on his person, still he did not disclose the said fact till his statement was recorded on 10.03.2021. Further, it is not the claim of this prosecution witness Ganesh Lahane that the appellant had made any extra judicial confession to him.

14. The learned Additional Public Prosecutor on query submitted that the past record of the appellant is clean.

15. In the present matter, investigation is already over. There are no eye witnesses. The entire case of the prosecution is based on the circumstantial evidence. In that view of the matter, we are of the view that the discretion can be exercised in favour of

the appellant, since near future there is a little possibility of taking the case for trial. Hence, we pass the following order :

ORDER

i. Order passed by the learned Additional Sessions Judge, Akola dated 22.06.2021 below Exh.4 in Special SCST Case No.61/2021 is hereby quashed and set aside.

ii. Appellant - Chetan Prakash Rathod be released on bail on his executing P. R. Bond of Rs.10,000/- with one solvent surety in the like amount.

iii. The applicant is directed to attend the Police Station, Khadan twice in a month i.e. on every second and fourth Friday, in between 10.00 a.m. and 2.00 p.m.

iv. The appellant shall not influence any of the prosecution witnesses in any manner.

16. The Criminal Appeal is allowed and disposed of.

17. In view of disposal of the Criminal Appeal, pending Criminal Application (APPA) No. 366/2021 does not survive and the same stands disposed of accordingly.

JUDGE

JUDGE