

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

CRIMINAL APPEAL NO. 606 OF 2022

1] Devidas s/o Parshuram Chavan,
Age : 45 years, Occu. Labour.

2] Dilip s/o Harilal Rathod,
Age : 33 years, Occu. Labour.

Both R/o. Devari, Tq. Soygaon,
Dist. Aurangabad.

...Appellants

Versus

1] The State of Maharashtra

2] Manoj s/o Mango Jadhav,
Age : 33 years, Occu. Labour,
R/o. Ahirwadi, Tq. Raver, Dist. Jalgaon,
At present R/o. Belur, Tq. Ahmedpur,
Dist. Latur.

....Respondents

....

Mr. S. S. Panale, Advocate for the appellants
Mr. M. M. Nerlikar, APP for respondent no.1/State
Mr. C. D. Biradar, Advocate for respondent no. 2

....

CORAM : SMT. VIBHA KANKANWADI
AND
RAJESH S. PATIL, JJ.

DATE : SEPTEMBER 23, 2022

ORAL JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] : -

1. Admit.

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2. Present appeal has been filed under Section 14(A) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "Atrocities Act", for the sake of brevity) to challenge the order passed in Criminal M. A. (Bail) Application No. 61/2022 by Id. Special Judge and Additional Sessions Judge, Ahmedpur, Dist. Latur, on 14.07.2022 thereby rejecting the application filed by the appellants under Section 439 of the Code of Criminal Procedure.

3. Heard learned counsel Mr. Sachin S. Panale for the appellants, learned APP Mr. M. M. Nerlikar for respondent no.1/State and learned advocate Mr. C. D. Biradar for respondent no. 2.

4. It has been vehemently submitted on behalf of the appellants that the offence vide Crime No. 154/2022 came to be registered with Ahmedpur Police Station, Dist. Latur, on the basis of FIR lodged by respondent no. 2. Now the investigation is over and the charge-sheet is filed before the learned Special Judge. Since the investigation is over, the further custody of the appellants is not required.

5. He pointed out that column no. 17 of the *post mortem* report of deceased Nanarao Sitaram Jadhav shows that there was no visible injury on the surface/body, however, some injuries have been noted internally and probable cause of death is said to be 'due to intrachanal haemorrhage, however, viscera and blood was kept for chemical analysis'. As per the story that has been put in the FIR, the present appellant no. 1 was the Contractor/Mukadam with whom the informant, deceased and others were working as Sugarcane cutting labour. Some dispute arose around 08:00 p.m. on 28.03.2022 in respect

of the payment when the appellant no. 1 had gone to the place where the labours were staying. In the said dispute, it is then stated that the brother-in-law of the appellant no. 1 i.e. appellant no. 2 and son Sandesh had assaulted the informant with stone, which is locally said as 'Shingade', which is said to be the wooden log/stick used in bullock cart. The informant was assaulted and then it is stated that his wife and niece had also sustained injuries because of the stick. The informant says that his uncle Nanarao who was sitting by the side of the informant was assaulted on his chest and stomach by the appellant no. 1 with stone, appellant no. 2 with stick and by accused Sandesh with said wooden log/stick (shingade) and in the FIR itself it is stated that it was the covert injury. Informant says that he along with his wife and niece had gone to the hospital and they got themselves examined. On the next day, he says that he came to know about the fact that when Sunil Shirsath had taken Nanarao to hospital when he was declared dead. The statements of the witnesses are almost on the same line including that of Sunil Kshirsagar who appears to have been referred to as Shirsath by the informant. In fact, nobody else had noted that deceased Nanarao was lying on the spot in injured condition after the incident. The evidence that has been collected would not attract the ingredients of either Section 302 or Section 307 of the IPC, and the ingredients of the offence under Atrocities Act also cannot be attracted as the present appellant no. 1 had in fact engaged the informant and others and there could not have been any act on their part to cause injuries or commit offence merely on the count that the informant and others were members of the Scheduled Caste. The appellants are ready to abide by the terms of the bail and when all these facts have not been considered by the Special Judge, the said order deserves to be set aside.

6. Per contra, the learned APP as well as learned advocate
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representing respondent no. 2 (appointed through Legal Aid) strongly opposed the appeal and they have supported the reasons given by the learned Special Judge for rejecting the bail application. They submitted that though there was no visible injury on the body of the deceased, yet the internal injuries were sufficient to cause death of a person and the said death has been caused because of the assault by weapon like wooden log, stick, stone etc. The medical certificate of the informant would also show that he had sustained one grievance injury and two simple injuries. One Rekha Rathod had also sustained simple injury. It was the outcome of the dispute on account of distribution of amount and, therefore, there was motive for the appellants to commit the offence. Statement of the informant under Section 164 of the Cr.P.C. is also supporting the prosecution story. The weapon has been recovered and the prosecution story is also supported by the statements of the independent witnesses. Therefore, when there is sufficient evidence against the appellants, the appellants were not entitled to be released on bail. The rejection of their application is perfectly legal.

7. The first and foremost fact that is required to be noted is that as per FIR, the appellant no. 1 is the person who had sought the services of informant and others and they were brought from Ahirwadi, Tq. Raver, Dist. Jalgaon to Ahmedpur, for the work of cutting sugarcane. As per FIR, the informant and others came to Ahmedpur on 24.10.2021, worked there for about 2 months and thereafter they proceeded to Belur, Tq. Ahmedpur, on 27.01.2021. The date of incident is 28.03.2022. That means almost for four months there was no dispute. The dispute, as per the FIR as well as statements of witnesses under Section 161 of Cr.P.C. would show that, arose around 08:00 p.m. on 28.03.2022 when the appellant no. 1 started asking who want to go back and then the labour charges were being disputed. There was altercation and appellant no. 1

after getting annoyed with the informant, had slapped him. The heat exchanges of words are stated to have called the appellant no. 2 and accused Sandesh at the said place and it is then stated that appellant no. 2 had brought stick and accused Sandesh had brought Shingade. They had assaulted the informant first and it appears that for injuries the prosecution has invoked Section 307 IPC. If we consider at this stage itself the injury certificate of the informant, he has sustained three injuries. There was contusion to temporal region which was simple in nature and the weapon is stated to be hard and blunt. Every injury to temporal region will not allow us to infer that there was intention to commit murder. Second injury is contusion to right forearm which is stated to be grievous and it was fracture to ulna might have been caused by hard and blunt object. Definitely this injury cannot attract, in isolation, the ingredients of Section 307 IPC. The third injury was abrasion to the back, which was simple in nature and certainly it will not amount to any such injury which would be dangerous to the life of a person. Therefore, there is a doubt at this stage as to whether the ingredients of the offence under Section 307 of IPC are attracted or not. Another fact is, the fight had started suddenly. If we consider the FIR, it does not say that the appellant no.1 had not used any weapon to cause any injury to the informant. Therefore, question arises when appellant no. 2 and accused Sandesh had come at a later point of time and as to whether they had intention to commit murder of the informant.

8. Turning towards the charges under Section 302 of IPC, the first and the foremost fact is that the FIR states that initially there was dialogue between appellant no. 1 and Nanarao. Nanarao was given his amount by the appellant no. 1 and, thereafter, the appellant no. 1 asked as to who would go indicating thereby who want to go back to the village. Then Nanarao told appellant no. 1 that he would go after
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Padwa. Thereafter, the informant intervened and raised doubt about the money that was paid by the appellant no. 1 and then the altercation was between the informant and the appellant no. 1. Nanarao had not made any intervention and even further the FIR says that Nanarao who was sitting by the side of the informant and others was assaulted by the three accused persons, that means, apparently it can be said that there was no intention to commit murder of Nanarao. If we consider the injuries noted in the *post mortem* report, which have been already narrated then it can be seen that there was no visible injury over the body but there was internal injury and especially taking into consideration the probable cause of death, it appears that the injury was to the head. FIR is silent as regards the assault on the head. In the FIR it is stated that Nanarao was assaulted on his chest and stomach. If we consider the statements of the witnesses under Section 161 of Cr.P.C., none of them have stated who had assaulted Nanarao on head. Further, surprising fact is that the informant is not explaining as to why Nanarao was not taken along with him to the hospital and why treatment was not given to him. He also does not explain nor the other persons are explaining as to why informant, his wife, niece and others returned from the hospital and even had a dialogue with Nanarao. Their statements including the statement of the alleged independent witness Sagar Mhaske would show that after the incident everybody went away and nobody paid attention to Nanarao and in fact he was lying on the ground at the same place till the next day. The statement of informant under Section 164 of Cr.P.C. is also on the same line. Under such circumstance, when the evidence raises doubt about the attracting of the ingredients of Section 302, 307 of the IPC as well as even under the Atrocities Act, all these facts ought to have been considered by the learned Special Judge while considering the said application under Section 439 of the Cr.P.C.

9. With this kind of evidence, the learned Special Judge ought to have granted bail to the appellants. The impugned order therefore deserves to be set aside. Hence, following order is passed.

ORDER

- [i] Appeal stands allowed.
- [ii] The order dated 14.07.2022 passed in Criminal M. A. (Bail) Application No. 61/2022 by ld. Special Judge and Additional Sessions Judge, Ahmedpur, Dist. Latur, stands set aside. Said application stands allowed and disposed off. The appellants be released on PR of Rs. 50,000/- (Rupees Fifty Thousand) with two sureties of Rs. 25,000/- (Rupees Twenty Five Thousand), each.
- [iii] They shall not tamper with the evidence of prosecution in any manner.
- [iv] They shall not visit Ahirwadi, Tq. Raver, Dist. Jalgaon and Belur, Tq. Ahmedpur, Dist. Latur, till the conclusion of the trial.
- [v] The appellants shall comply with the requirements under para nos. 12 (1) to (6) of Chapter-I of the Criminal Manual, whichever are applicable.
- [vi] Bail before the trial Court.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE