

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 159 OF 2022

Prabhakar Shivanna Chougule

.. Appellant

Versus

State of Maharashtra & Anr.

.. Respondents

WITH

CRIMINAL APPEAL NO. 172 OF 2022

Ajit @ Ajju Hafiz Shaikh

.. Appellant

Versus

State of Maharashtra & Anr.

.. Respondents

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- Mr. Priyal G. Sarda for the Appellants
 - Mr. Kartik Garg, Appointed Advocate for Respondent No. 2 – Complainant
 - Ms. P.P. Shinde, APP for the State
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**CORAM : SMT SADHANA S. JADHAV &
MILIND N. JADHAV, JJ.**

DATE : APRIL 29, 2022

P.C.:

1. Both these appeals have been preferred by the Appellants - original accused for granting bail to the Appellants. The Appellants herein are arrested on 22.02.2020 in Crime No. 113 of 2020 registered at MIDC Police Station, Solapur on 20.02.2020.

2. It is the case of the prosecution that on 20.02.2020, the complainant - Vikas Babruwan Jethithor was admitted in Civil Hospital, Solapur in an injured condition. Upon inquiry by the police,

the complainant informed them that on 19.02.2020 at about 08.30 p.m., he had earned his daily wages of Rs. 1000/- and had been to Laxmi Nagar Talkies, Solapur. There he met the Appellant – Prabhakar Chougule, Dhammpal Surwase and Appellant – Ajit @ Ajju. They were celebrating birthday of the Appellant – Ajit @ Ajju. They told the complainant that since it is a birthday of Ajju, they should had a party. Thereafter the complainant, Dhammpal Surwase, Appellants – Prabhakar Chougule and Ajit @ Ajju proceeded to Kumtha Naka on the motor cycle of Dhammpal and consumed alcohol. Then they went to the open ground at Akkalkot road, MIDC. Appellants – Prabhakar and Ajit @ Ajju demanded money from the complainant for consuming alcohol but the complainant told them that he was not having money. His denial to oblige, annoyed them and hence Prabhakar flinged a stone at the complainant which hit on his head. Soon thereafter, Ajit @ Ajju, Dhammpal also threw stones at the complainant which hit on his tibia and fibula. The complainant tried to rescue himself but to no avail. Then the Appellant – Prabhakar had taken the amount of Rs. 950/- from the pocket of the complainant. After assaulting with stones, the friends of the complainant abandoned him and fled from the spot. The complainant tried to call for help but his cried were unheard. He managed to proceed upto Telgu School and slept in a vacant room in the said school.

3. On 20.02.2020, teacher of the said school made inquiries

with the complainant. The complainant had called upon his friends namely Sanjay Gorlewale and Akash Balubewale who admitted him in Civil Hospital, Solapur.

4. Initially, the crime was registered for the offences punishable under Sections 327, 325, 324, 323 and 504 r/w 34 of IPC. The complainant succumbed to the injuries on 21.02.2020. During the course of investigation, it had transpired that the deceased belonged to the schedule caste and hence, offence was also registered under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act ,1989 (**SC & ST Act**).

5. Learned counsel appearing for the Appellants has submitted that the co-accused Dhammapal Surwase has been enlarged on bail by a single bench of this Court (Revati Mohite Dere, J.) vide order dated 30.09.2021. Since the Accused Dhammapal belongs to scheduled caste, the provisions of SC & ST Act cannot be attracted to his case.

6. Perused the chargesheet and more particularly the postmortem notes which show that there was injury on the scalp where he had also sustained fracture of the tibia and fabula of the left leg.

7. Learned counsel appearing for the Appellants has vehemently submitted that the very fact that the accused and the complainant were friends, it cannot be said that the Appellants had any intention to humiliate the deceased by referring to his caste nor

the complainant was killed because he belonged to scheduled caste. In fact, there was no intention to kill the deceased. The incident had occurred on the spur of the moment. The accused as well as the complainant were under the influence of alcohol which fact is also proved from the postmortem note. The incident had occurred in a fit of rage without understanding the consequences of the said act. The Appellants accused were not carrying any weapons. They had flunged stones which were lying on the spot, on the spur of the moment without any premeditation. There was neither any intention nor knowledge that the said injuries would cause the death of the deceased.

8. Per contra, Mr. Garg, learned appointed Advocate for Respondent No. 2 has vehemently submitted that the very fact that the Appellants / accused and the deceased were friends, the appellants could not have abandoned the deceased when he was seriously injured. If the Appellants had no intention to cause the death of the deceased, they should have made efforts to provide medical aid to the deceased urgently and in such circumstances, the Appellants do not deserve bail.

9. Learned APP has also supported the submissions advanced by the learned appointed Advocate for Respondent No. 2.

10. Upon perusal of the material collected in the course of the investigation, *prima facie*, it appears that the Appellants had no

intention to cause the death of the deceased. There was no enmity between the accused and the deceased. They were having a good time, celebrating the birthday of accused Ajju. The Appellants are in custody since 22.02.2020. Their further custody is unwarranted and hence, they deserved to be enlarged on bail.

11. In view of the above discussion, we proceed to pass the following order:-

- (i) Both the Appellants i.e. Prabhakar Shivanna Chougule and Ajit @ Ajju Hafiz Shaikh be enlarged on bail on furnishing P.R. bond in the sum of Rs. 15,000/- each with one or more solvent sureties in the like amount;
- (ii) The Appellants shall report to MIDC Police Station, Solapur on the first and last day of the month till framing of the charge.
- (iii) Both the Appeals are accordingly allowed and disposed of.

12. Learned appointed Advocate Mr. Kartik Garg is entitled to the professional fees in accordance with law.

[MILIND N. JADHAV, J.]

[SMT. SADHANA S. JADHAV, J.]

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