

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.789 OF 2021

Sandeep Parshuram Koli, Age 44 years,
Occ.Fisherman, R/o.Middle Lane,
Manori Koliwada, Manori Gaon,
Malad (W) (Presently in Taloja Jail) Appellant
versus
1. The State of Maharashtra
2. Sachin Jayram Dhangde Respondents

Mr.Nilesh Pawaskar i/by Ms.Sudha Dwivedi with Irfan Khan and
Khusbu Jain, Advocate for appellant.
Mr.S.R.Nargolkar with Mr.Arjun Kadam, Advocate for respondent
no.2.
Ms.S.D.Shinde, APP, for State.

CORAM : A.S.GADKARI AND
PRAKASH D.NAIK, JJ.

DATE : 6th December 2022

PC :

1. By present appeal under Section 14 of Scheduled Castes and
Scheduled Tribes (Prevention of Atrocities) Act, 1989, Appellant has
impugned Order dated 2nd September 2020 passed below Exhibit-4 in
Special Case No.241 of 2020, rejecting his application for bail in the
said case.

2. Heard Mr.Pawaskar, learned counsel for Appellant,
Smt.Shinde, learned APP for State and Mr.Nargolkar, learned counsel
appointed to represent Respondent o.2. Perused record.

3. The appellant is original accused no.2 in C.R No.16 of 2020 registered with Gorai Police Station, Mumbai dated 12th April 2020 for offences punishable under Sections 302, 201 r/w 34 of Indian Penal Code and under Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on the basis of complaint lodged by Vishal Jagtap, Police Sub Inspector attached to said Police Station.

4. The name of the deceased is Bhikar Jayram Dhangade. The date of finding of his dead body is 23rd April 2019 at about 9.30 am and the place was in the marshy land of Gorai Creek.

It is the prosecution case that, accused no.1 namely Sanio Pasco Kini @ Shano was having illicit relations with Smt.Malti Dhangade i.e. wife of the deceased. That, with a view to eliminate the obstruction of deceased in their illicit relations, the accused no.1 Sanio Pasco Kini @ Shano sharing common intention with accused no.2/Appellant, on 22nd April 2019 between 7.30 pm till late in the night moved with the deceased to consume liquor and subsequently assaulted him and took him behind the bungalow of James Lobo at Manthanpada, Manori Village, Malad (West). The accused again forced the deceased to drink beer. Subsequently the accused covered/rolled the body of deceased in a mat and killed him by running over a vehicle on the said mat roll. It is alleged that the

appellant has helped accused no.1 in the entire act.

5. Initially Accidental Death Report No.6 of 2019, dated 23rd April 2019 was registered by Police and during the course of said inquiry it was revealed that death of the deceased was not accident but murder. Therefore present FIR was registered. During the course of investigation Appellant has been arrested on 12th April 2020.

6. Perusal of charge sheet indicates that accused no.1 was last seen together with the deceased on 22nd April 2019 till late in the night. The witness Mr.Raini Tairipasco in his statement has stated that the accused no.1 along with co-accused and the deceased consumed liquor at his residence. He identified the Appellant and the co-accused when Police showed the photographs of them. Then Police showed him one photograph, which he identified as the person with whom deceased had consumed drinks with co-accused on 22nd April 2019. Thereafter Police informed him that appellant is one of the accused in the present crime.

The witness namely Joy Lakari in his statement has stated that accused no.1 Sanio Kini gave him extra judicial confession that he killed Bhikar is inculpatory statement and excludes Appellant from it.

7. It is important to note here that, the Medical Officer attached to Post Mortem Centre, Borivali (West), Mumbai while answering the questionnaire submitted by Investigating Officer, to question no.2,

has answered that, no traces of liquor or toddy was found in the blood of deceased. It prima facie appears that the case of prosecution is that the principal accused Sanio Kini along with the appellant made the deceased to drink the liquor on the fateful day and subsequently committed his murder, is not fully corroborated at this stage. Even otherwise, the allegation of having illicit relation with Malti is ascribed to accused no.1 Sanio Kini. Prima facie, it appears to us that there is insufficient material against the appellant to indict him in the present case.

8. In view of the above, the appellant can be released on bail. Hence, following order :

(i) The appellant/accused be released on bail in C.R No.16 of 2020 registered with Gorai Police Station, Mumbai, on executing PR. Bond in the sum of Rs.25,000/- with one or two separate solvent local sureties in the like amount;

(ii) After release of appellant from jail, the Appellant is directed to attend Gorai Police Station on every first Monday of the month between 10.00 am and 12.00 noon initially for a period of one year and thereafter on every first Monday of every 3rd month, i.e. 4 times in a year between 10.00 am and 12.00 noon till conclusion of trial;

(iii) The Appellant shall attend Trial Court regularly, unless

prevented for medical reasons;

(iv) Appellant shall not tamper with the evidence and/or influence the prosecution witnesses.

9. Impugned order dated 2nd September 2020 passed below Exhibit-4 by the Trial Court is accordingly set aside.

Appeal is allowed in the aforesaid terms.

(PRAKASH D. NAIK, J.)

(A.S.GADKARI, J.)

MST