

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1027 OF 2022**

Lakshman Eknath Dhanawade ...Appellant
Versus
The State of Maharashtra And Anr. ...Respondents

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Mr. H.S. Venegavkar i/by Mr. Ninad More, Advocate for Appellant.

Mrs. M.H. Mhatre, APP for Respondent No.1 – State.

Mr. Machindra A. Patil, Advocate for Respondent No.2.

**CORAM : A.S. GADKARI AND
PRAKASH D. NAIK, JJ.
DATE : 7th DECEMBER, 2022.**

P.C.

1. Appellant has challenged the Order dated 13th September, 2022 passed by Special Judge Mangaon in Criminal M.A. No.149 of 2022 rejecting the application for bail by invoking Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as SC/ST Act).

2. Appellant was arrested on 9th July, 2022 in C.R. No.81 of 2022 registered with Kolad Police Station for offence under Section 302 of Indian Penal Code (for short 'IPC') and Sections 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. The case of the prosecution is as follows :

The first informant Vanita Vishram Pawar is the wife of

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deceased. In the First Information Report (for short 'FIR') it is alleged that on 8th July, 2022 at around 11:00 a.m., Visharm Rajaram Pawar (deceased) left the house without informing anything to the informant. At about 8:00 p.m. Rakesh Gaikwad and Sandip Gaikwad came near the house of Ananta Pawar (brother of deceased). They called the first informant and she was informed by Rakesh Gaikwad that her husband has been assaulted by Bindhas Dhanawade with wooden log on his head and he was unconscious. He was taken in the car by the accused. Thereafter, the first informant alongwith her brother-in-law Ananta, son Swapnil and sons of brother-in-law Bharat and Ankush proceeded to Belwadi village. They saw blood on the road near the house of Rakesh Gaikwad. It was informed by Rakesh Gaikwad that informant's husband was assaulted at the said spot. Thereafter, they went to Kolad Police Station. The first informant learnt that her husband Vishram is taken for treatment to the hospital at Roha by Bindhas Dhanawade (Appellant) and his uncle Sakharam Gaikwad. They proceeded to hospital at Roha. Informant's husband was declared dead. FIR was registered. Statements of witnesses were recorded. Charge-sheet is filed on 26th August, 2022.

4. The appellant preferred an application for bail before the Court of Additional Sessions Judge, Mangaon, District Raigad. The said application was rejected by Order dated 29th July, 2022. Subsequently, the appellant preferred another application for bail before the same Court which has also been rejected by Order dated 13th September, 2022.

5. Learned counsel for the appellant submitted that case of the prosecution is full of discrepancies. The statements of witnesses are contradictory. Assuming the allegations to be true, the offence would not fall under Section 302 of IPC. Single blow is attributed to accused. The pre-conduct and post-conduct of the accused itself indicated that he had no intention to commit murder of Vishram Pawar. The alleged incident had occurred on spur of moment. The offence, if any, could be culpable homicide not amounting to murder. As chargesheet has been filed, further detention of the appellant is not necessary. There are no abuses on caste. The offences under the Atrocities Act are not made out.

6. Learned APP submitted that, the statement of the eye witnesses and the medical evidence would indicate that the appellant had assaulted the deceased with wooden log by giving blow on the head. There are eye witnesses to the incident. The

offence under Section 302 of IPC is made out.

7. Learned Advocate for Respondent No.2 submitted that the offence is of serious nature. Role of assault has been attributed to the appellant. That a blow was given on the head of the deceased. Postmortem report supports the prosecution case. There were injuries in the nature of CLW on Scalp – 8 x 2 cm along longitude line of skull from frontal to parietal region. There is linear skull fracture from frontal to parietal region. Postmortem report indicates that, there was diffused subdural hemorrhage. The accused had given blow on the head with intention to kill the deceased.

8. The first informant is not the eye witness to the incident. She was informed about the assault upon her husband by others. During the course of investigation statements of witnesses were recorded. Ganpat Shankar Gaikwad in his statement dated 9th July, 2022 has stated that on 8th July, 2022 at about 7:00 p.m., he saw Vishram Pawar and Bindhas Dhanawade quarreling with each other. Vishram Pawar was under influence of liquor. Bindhas Dhanawade pushed Vishram and told him to leave the place and sat in his car. At that time Vishram picked up a wooden log and abused Bindhas Dhanawade in filthy language. At that point of

time Bindhas Dhanawade (accused) got down from his vehicle and picked up the wooden log lying at the place of incident and gave a blow on the head of Vishram Pawar. Thereafter, the accused took water from Mukund Gaikwad and attempted to give it to the injured. Vishram Pawar was unconscious. The Accused then called Mangesh Gaikwad for help and both of them took the injured in the car alongwith other persons. Statements of Sakharam Bapu Gaikwad and Rakesh Ganpat Gaikwad are similar. Statement of Mahesh Bapuji Waghmare was recorded on 11th July, 2022. He stated that Vishram Pawar was under influence of liquor. He came near the car of the accused and enquired about the accused. He was using abusive words and waited near the car. While the accused approached the car, Vishram Pawar started abusing him. He came in front of the car. He was told by the accused that he should allow them to leave. However, Vishram Pawar kept on abusing him. Vishram Pawar was told by the accused not to abuse him. The accused slapped Vishram Pawar. Vishram Pawar picked up a wooden log from the compound. At the same time the accused took a wooden log from the same compound and gave a blow on the head of Vishram Pawar. As a result of the blow, Vishram Pawar fell on the road and he was bleeding. The accused offered water to Vishram Pawar. He was unconscious. The accused

and others took Vishram Pawar in the car for treatment at Government Hospital where the doctors declared him dead.

9. On perusal of statements and medical case papers on record it is *prima facie* apparent that, the incident had occurred at the spur of moment. The deceased Vishram Pawar was abusing the accused. Being provoked the accused picked up a wooden log and gave one blow on head of Vishram. Statement of Mahesh Waghmare referred to the fact that even the deceased had also picked up the wooden log. The accused tried to give water to the victim. He was taken to hospital by him. *Prima facie* it appears that there was no intention of appellant to commit murder of deceased. The case may not fall under Section 302 of IPC. It may perhaps be a case of culpable homicide not amounting to murder punishable under Section 304(II) of IPC. The appellant is in custody from the date of his arrest. Investigation is completed and charge-sheet is filed. Further detention of appellant is not necessary. Hence, case for grant of bail is made out. Hence the following order.

ORDER

- i. Order dated 13th September, 2022 passed by Additional Sessions Judge, Mangaon, District Raigad in Cri. M.A. No.149 of 2022 rejecting the said application is set aside.

ii. Appellant is directed to be released on bail in connection with C.R. No.81 of 2022 registered with Kolad Police Station on executing P.R. Bond in the sum of Rs.50,000/- with one or more solvent sureties in the like amount.

iii. Appellant shall report to the concerned police station once in a month on first Saturday of the month between 11:00 a.m. to 1:00 p.m. for a period of one year and thereafter once in three months on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further orders.

iv. Appellant shall not tamper with the evidence.

v. Appellant shall attend the trial Court on the date of hearing of the case unless exempted by the Court.

vi. Appeal is allowed in the aforesaid terms.

[PRAKASH D. NAIK, J.]

[A.S. GADKARI, J.]