

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

CRIMINAL APPEAL NO. 600 OF 2022

1. Shyam Manohar Kundwani, age : 20 years, Occ. R/o Shivaji Nagar, Tumsar, Tah. - Tumsar and District – Bhandara.

... APPELLANT

VERSUS

1. The State of Maharashtra, through the Police Station Officer, Police Station, Tumsar, Dist. Bhandara.
2. Sangita Venu Gedam, Aged about 47 years, Occupation : Housewife, R/o Ambedkar Ward, Tq. Tumsar, District Bhandara.

... RESPONDENTS

WITH

CRIMINAL APPEAL NO. 610 OF 2022

Ghanshyam @ Roshan s/o Ramesh Bhajne, aged about 20 years, Occupation Labour, R/o Makde Nagar, Tumsar, Distt. Bhandara.

... APPELLANTS

VERSUS

1. The State of Maharashtra, through the Police Station Officer, Police

Station, Tumsar, Dist. Bhandara.

2. Sangita Venu Gedam, Aged about 47 years, Occupation : Housewife, R/o Ambedkar Ward, Tq. Tumsar, District Bhandara.

Criminal Appeal No. 600 of 2022

Shri S.V. Sirpurkar, Advocate for the appellant.

Smt. Mayuri Deshmukh, A.P.P. for the respondent no.1/State.

Smt. N.G. Choubey, (appointed) advocate for respondent no. 2.

Criminal Appeal No. 610 of 2022

Shri K.S. Motwani, Advocate for the appellant.

Smt. Mayuri Deshmukh, A.P.P. for the respondent no.1/State.

CORAM:VINAY JOSHI AND MRS. VRUSHALI V. JOSHI, JJ.

RESERVED ON : 19/10/2022.

PRONOUNCED ON : 21/10/2022

ORAL JUDGMENT :

Heard. **ADMIT.**

2. The matter is taken up for final hearing by consent of learned Counsel appearing for the respective parties.

3. Both appeals are under Section 14-A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989 (for short 'the SC and ST Act'), raising a challenge to the rejection of the regular bail

by the Trial Court. Since both appellants (accused) are arrested in the same crime, for the sake of convenience both appeals are taken together for disposal. Both accused namely Shyam Kundwani and Ghanshyam @ Roshan Bhanje were arrested in the Crime No. 138 of 2022 registered with Police Station Tumsar, District Bhandara for the offence punishable under Sections 302, 143, 147, 148, 149, 135 and Section 3(2)(5) of the SC and ST Act. Both have applied for regular bail, however the Trial Court has rejected both applications vide order dated 08.08.2022 and 19.07.2022.

4. Both learned Counsel appearing for the accused have made exhaustive submissions to contend that the Trial Court erred in declining to exercise discretion in releasing accused on bail. It is argued that there are no eye-witnesses to the incident except one, who was not knowing the assailants. The Investigating Agency has not taken prior T.I. parade and therefore, evidence of sole eye-witness is of no use. It is submitted that the prosecution case is solely resting upon extra judicial confessions, which is a weak type of evidence. It is argued that there are several discrepancies and therefore, it is a fit case for grant of bail.

5. *Per contra*, learned A.P.P has resisted both appeals by contending that the accused along with two others (juvenile in conflict

with law) have committed brutal murder at public place by using sharp edged weapons. The informant has lodged report within few hours from the occurrence with specific names of appellants/accused. It is submitted that there are two consistent extra judicial confessions which are sufficient to disclose the complicity of the accused. Further, it is submitted that the alleged incident took place out of a group rivalry, therefore, there is every possibility of tampering and pressurizing the witnesses, if the accused are release on bail.

6. The informant is the mother of the deceased namely Monu Gedam. She has stated that on 12.04.2022 deceased Mone left the house at 10.30 am for his shop. In the evening, around 5.00 pm she learnt that Mone has been murdered on the road in the area known as Makde Ward. She rushed to the place and found Monue lying dead in the pool of blood. She stated that few days earlier there was a quarrel between Monu and accused Roshan at the instance of one girl. The informant stated that both accused Roshan and Shyam along with two to three others named boys (JCL) have killed Monu by means of sharp edged weapons and therefore she filed report in the late hourse i.e. on 13.04.2022 around 00.45 am. The Police have carried investigation and on completion filed the charge-sheet. The provisions under the SC and ST Act have also been invoked since the deceased belongs to the

member of Scheduled Caste or Scheduled Tribe community.

7. The prosecution has mainly relied on the statement of witness Kishor Gupta who is the eye-witness to the incident. He stated that, at the relevant time, 4 to 5 boys started to assault deceased Monu by means of sharp edged weapon. Monu tried to run away, however the assailants followed him. After some time, he saw that Monu was killed by cutting his neck. The learned Counsel for the appellants would submit that since the prosecution has not conducted prior T.I. parade, his evidence carries no value. As a matter of fact, the identification in Court is substantial evidence, therefore, merely on the basis of non-holding of T.I. parade, the statement of eye-witness cannot be rejected. It depends upon the facts and circumstanced of the case, which is a matter of trial.

8. The prosecution further relied on two extra judicial confessions. In this regard, the Police have recorded the statement of Sanket Vaidya on 15.04.2022. He stated that on the date of incident, around 5.30 to 6.00 pm both accused Shyam, Roshan and one Gaurav Jibhkate came to his Dhaba by riding on Motorcycle. T-shirt of accused Shyam was having blood stains hence he has changed T-shirt by keeping blood stained T-shirt at said place. He further stated that

accused Shyam had sustained some sort of injury at his right hand. On inquiry, both Shyam and Roshan stated that they have “done the work of Monu” and left the place. Precisely, soon-after the occurrence both accused hurriedly came to the Dhaba, Shyam changed his blood stained T-shirt and both have confessed that they have eliminated Monu. Learned Counsel appearing for the appellants would submit that the statement of witness Sanket Vaidya is not reliable since he has stated differently in his statement recorded by the Magistrate in terms of Section 164 of the Code of Criminal Procedure. We have gone through the said statement wherein the witness has stated similarly that Shyam has changed T-shirt and confessed that he had done the work of someone, whose name he did not remember. *Prima facie* by and large, we do not find any inconsistency on core issue.

9. Learned Counsel appearing for the accused Shyam would submit that though this witness has stated that Shyam had sustained injury at his hand, however as per medical certificate, there was no injury on his person. We may refer the statement of witness namely Aryan Motghare who has stated that soon-after the occurrence, he saw Shyam and Roshan proceeding on motorcycle and saw that there were blood stains at the hands of Shyam. Probably, blood stains might have been construed by witness Sanket Vaidya as an injury and therefore, on

prima facie basis the said submission deserves no consideration.

10. The prosecution further relied on the extra judicial confession made by accused to witness Gaurav Jibhkate. He stated that soon-after the occurrence around 6.00 pm, both Shyam and Roshan came to his place and hurriedly took him on their motorcycle. He saw that there were blood stains on the cloths of Roshan. On inquiry, Roshan discloses that he has eliminated Monu by means of knife. We have also gone through his statement recorded under Section 164 of the Code of Criminal Procedure, wherein he equally stated that both came to him on motorcycle and Roshan confessed about killing Monu.

11. *Prima facie*, it reveals that the alleged incident took place around 5.00 pm and immediately around 6.00 pm, both Shyam and Roshan by riding on motorcycle went to the place of witness Gaurav Jibhkate. They took witness Gaurav Jibhkate on their motorcycle and confessed about the crime. Pertinent to note that witness Sanket Vaidya stated that Shyam and Roshan came to his Dhaba along with Gaurav Jibhkate which is consistent in sequence of events.

12. The Police have recorded the statement of Aryan Motghare, who has seen both Shyam and Roshan proceeding together around 5.30 pm on the date of occurrence. He has seen that there were blood stains

at the hands of Shyam to which Shyam explained differently. However, the fact remains that soon-after the occurrence, both accused were proceeding on motorcycle and particularly, there were blood stains at the hands of Shyam. We have also gone through the statement of one Ankit Jibhkate, who stated that after the incident, around 6.30 pm, Shyam came to his video parlour in frighten condition and kept his mobile phone.

13. It is the prosecution case that both accused along with 2 to 3 boys (JCL) have brutally murdered Monu by means of sharp edged weapon. It reveals from the Postmortem report that there were total 22 deep incised wounds at the person of the deceased. Most of the incised wounds are on vital parts of the body. The cause of death was as 'Hemorrhagic shock due to injuries to vital vessels of Neck'. Apparently, it was a brutal murder committed on the road in broad day-light. The number of multiple injuries itself indicates that it was an act of more than one person. There is one eye-witness to the occurrence. During investigation, the Police have seized blood stained small size swords from appellant Roshan. It reveals that on flimsy ground of talking with a girl, Monu was eliminated by a group of people. There are statements to indicate that there was earlier quarrel between deceased Monu and Roshan.

14. The prosecution is resting on various circumstances apart from the sole eye-witness. Since the case is largely based on circumstantial evidence, the prosecution has to prove all circumstances firmly to exclude the hypothesis of innocence of accused. A group of young boys in broad day-light eliminated Monu on open public place itself indicates a strong possibility of pressurizing the prosecution witnesses. If the accused are released on bail, there is strong possibility that they may tamper the prosecution evidence. If they succeed to break either of the link of circumstantial evidence, then it would be fatal for prosecution. The offence is of serious nature, which attracts punishment of death or life imprisonment. The manner of committing crime is barbaric, as 22 incised wounds were found on the dead body. Having regard to the seriousness of the crime, both appellants (accused) does not deserve for enlargement of bail.

15. In view of that, we are not inclined to grant bail, hence both appeals are hereby rejected. No order as to costs.

16. Fees of appointed learned Counsel be paid as per Rules.