

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.514 OF 2023

Aniket s/o Mahendra Dabhade
Age: 20 years, Occu.: Labour,
R/o. Siddharth Nagar, Galli No.3,
N-12, TV Centre, Hudco,
Aurangabad

.. Appellant

Versus

1. State of Maharashtra
Through P. P. Office,
High Court, Aurangabad.

2. Aruna Sheshrao Avhad
Age: 51 years, Occu.: Labour,
R/o. Champa Chowk, Piwali Colony,
Aurangabad.

.. Respondents

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CRIMINAL APPEAL NO.398 OF 2023

Ashtpal s/o Ramesh Gawai
Age: 27 years, Occu.: Tent Work,
R/o. H.No.8-26-23,
Near Babasaheb Ambedkar Statue,
Sidharth Nagar, N-12,
Hudco, Tq. and Dist. Aurangabad

.. Appellant

Versus

1. State of Maharashtra
Through Police Station CIDCO,
Tq. and Dist. Aurangabad.

2. Aruna w/o Sheshrao Avhad,
Age: 51 years, Occu.: Labour,
R/o. Champa Chowk, Piwali Colony,
Aurangabad.

.. Respondents

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Mr. Somnath G. Ladda, Advocate for appellant in Criminal Appeal No.514/2023.

Mr. K. R. Doke, Advocate h/f Mr. Rahul Ashok Shinde, Advocate for appellant in Criminal Appeal No.398/2023.

Mr. A. M. Phule, APP for respondent No.1 – State.

Mr. Moinpasha Shaikh Farid h/f Mr. A. L. Kanade, Advocate for respondent No.2 in both the appeals.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

RESERVED ON : 20th June, 2023

PRONOUNCED ON : 2nd August, 2023

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

. Both the appeals have been filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the “Atrocities Act”). The appellant in Criminal Appeal No.514 of 2023 is accused No.9, whereas the appellant in Criminal Appeal No.398 of 2023 is original accused No.7 in Crime No.195 of 2022 registered with CIDCO Police Station, District Aurangabad for the offence punishable under Sections 302, 143, 147, 148, 120(B), 201, 114 read with Section 149 of Indian Penal Code and under Section 3(2)(v) of the Atrocities Act. They both had filed applications under Section 439 of the Code of Criminal Procedure below Exhibit-11 and Exhibit-04 in Sessions Case No.317 of 2022. Both the applications came to be rejected on 06.10.2022. Hence, the present appeals.

2. Heard learned Advocate Mr. S. G. Ladda for the appellant in Criminal Appeal No.514 of 2023, learned Advocate Mr. K. R. Doke holding for learned Advocate Mr. Rahul Ashok Shinde for the appellant in Criminal Appeal No.398 of 2023, learned APP Mr. A. M. Phule for respondent No.1 – State in both the appeals and learned Advocate Mr. Moinpasha Shaikh Farid holding for learned Advocate Mr. A. L. Kanade for respondent No.2 in both the appeals.

3. It has been vehemently submitted on behalf of both the appellants that now the investigation is over and charge-sheet is filed before the learned Special Judge. Initially, when the charge-sheet was filed, it appears that it was only under Indian Penal Code Sections and later on the offence under Section 3(2)(v) of the Atrocities Act came to be added. Therefore, when the charge-sheet is filed, the further physical custody of the appellants is not necessary. The prosecution story is that deceased Manoj, who was employed with one Kharat was maintaining a cultural hall by name Meghawale Sabhagruha. He used to reside in one room in the said hall. When he had gone to meet his mother i.e. informant respondent No.2 on 20.04.2022, he informed that he has been removed from the work. According to the informant one Satish Khare along with 5-6 persons came to her house around 3.00 p.m. on 20.04.2022 and took Manoj with them. Thereafter, when informant and her another son Bharat were at Shendra,

they received a video in which it could be seen that Manoj was tied and he was being assaulted. Therefore, they took search for Manoj. They also came to know that the persons who were assaulting Manoj were one Satish Khare, Anand Solas, Anand Gaikwad, Sagar Kharat and Ashtpal Gawai and three persons working with Satish Khare. Ashtpal Gawai is said to have admitted Manoj in Ghati Hospital in unconscious state. Learned Advocate appearing for accused No.9 – Aniket vehemently submitted that his name is not appearing in the FIR. No role has been attributed to him and his identification has not been held. Learned Advocate for accused No.7 – Ashtpal Gawai submitted that the video transcript has been given and it shows that accused No.7 had not participated. According to the alleged eye witness Shubham Navture, one Shubham Tupe had videographed the incident and he himself says that he also took the video but by concealing the mobile and then he says that the said video was shared by him to one Bawaskar, but in the statement under Section 161 of the Code of Criminal Procedure, he is saying that he had deleted the said video. Then the question arises as to how the police had recovered the said video. If the transcript is seen, then the identification is not that of accused No.7. The learned Trial Judge has not considered the evidence on record and went on to consider that the widow of the deceased has received threats and, therefore, the application was rejected, which is illegal. The appellants are ready to abide by the terms of the bail.

4. Per contra, the learned APP as well as the learned Advocate for the original informant strongly opposed the appeals and they supported the reasons given by the learned Special Judge while rejecting both the applications under Section 439 of the Code of Criminal Procedure. It has been submitted that as regards accused No.7 Ashtpal is concerned, the evidence that has been gathered would show that he had admitted deceased Manoj to Ghati Hospital in unconscious state. Therefore, it becomes imperative on his part as to how he got the custody of Manoj and why he had not informed the said incident to police. He has participated in destruction of the bloodstained clothes of deceased Manoj. He had intentionally given wrong information to the hospital authorities. This shows active participation on the part of accused No.7 Ashtpal and, therefore, he does not deserve to be released on bail. As regards accused No.9 is concerned, he was present at the spot. He had helped accused No.7 in destruction of the shirt of deceased Manoj and accused No.2 Anand Gaikwad. This accused No.9 is the relative of accused Nos.3 and 5 and he is employed with accused No.1. All of them are giving threats to the informant and widow of the deceased. Learned Special Judge has taken note of the fact that widow of the deceased has lodged non cognizable complaint with police on 19.09.2022. When she had gone to leave her son to the school, at that time, some unknown person by giving reference to the case had given threat and asked her to withdraw the case and, therefore,

the learned Special Judge has stated that since the informant and her family members are very poor, possibility of pressurizing them cannot be ruled out. Therefore, this is not a fit case where the discretion should have been used by the learned Special Judge.

5. At the outset, we would like to say that the present petitions are the appeals and, therefore, its scope, ambit etc. would be different from an application under Section 439 of the Code of Criminal Procedure. In addition to the criteria which are required to be considered for dealing with application under Section 439 of the Code of Criminal Procedure, it is also required to be considered as to whether the learned Special Judge erred in rejecting the applications and whether the discretion has been judiciously used or not.

6. Most of the facts have been already stated; they are not repeated. The evidence in the form of electronic evidence is available in this case. So also, there is statement of eye witness Shubham Navture. He has stated that he had also videographed the incident by concealing it from the other accused and had shown it to his friend one Ajay Salve. Ajay Salve appears to have told it to one Manoj Bawaskar and then Shubham Navture shared the video with Manoj Bawaskar, but then deleted it from his own mobile. Note can be taken of the fact that even if a video or message is deleted from a mobile, then it can be retrieved. Definitely, it would be for the

prosecution to prove as to from whose mobile the said video clip has been taken. It is also to be noted that in his statement, he has stated that the videograph was also made by Shubham Tupe on the say of co-accused, but it appears that the said video was made viral and it was also available in the mobile of Bharat - brother of deceased.

7. If the transcript panchanama is considered, then it does not say about the presence of both the accused at the spot, but it would be necessary to consider that if the focus of the camera is with a particular angle or on one person or object, then the other persons surrounding or standing next to the person, who is videographing will not come. The evidence that has been collected as against accused No.7 is that he was the person, who had taken the deceased to Ghati Hospital and admitted there. He had also gone with accused No.4 Anand Solas and brought bandage for applying it on the injuries of deceased Manoj. It is also stated that he has destroyed the bloodstained clothes of the deceased and he has discovered his own clothes under panchanama. Therefore, there appears to be *prima facie* evidence against him. Further, as regards accused No.9 Aniket , the evidence that has been collected shows that he had slapped deceased Manoj. Then he had destroyed the bloodstained clothes of deceased Manoj. He had taken the shirt of accused No.4 having blood stains in order to screen accused No.2 and had given his own shirt to accused No.2. It has

been stated that he is the relative of accused Nos.3 and 5 and working with accused No.1.

8. The further consideration before the learned Special Judge was that when the informant was heard, it was brought to the notice of the learned Special Judge that on behalf of the accused persons, threats were given to the widow of the deceased. Therefore, taking into consideration the evidence, the learned Judge has said that possibility of pressurizing the witnesses cannot be ruled out. When there is possibility of tampering with the evidence and attempt was already made, then definitely discretion cannot be used in favour of such accused persons. We do not find that the learned Special Judge in any way erred in rejecting both the applications. There is no merit in the appeals. Both the appeals deserve to be dismissed. Accordingly, both the appeals stand dismissed.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm