

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO. 207 OF 2023**

1. Dnyaneshwar s/o Baban @ Uttam Girhe, ... **Appellants**  
Age 26 Years, Occu: Agri.  
R/o Lohagaon, Tq. & Dist. Hingoli
2. Santosh s/o Namdeo Panbude  
Age 45 Years, Occu: Agri.  
R/o As above.

**VERSUS**

1. The State of Maharashtra,  
Through Police Inspector,  
Police Station, Sengaon,  
Tq & Dist. Hingoli
2. Arvind s/o Haridas Tapare, ... **Respondents**  
Age 22 years, Occu: Agri. R/o Pangari (B)  
Tq. & Dist. Hingoli

Mr. A. R. Gaikwad h/for Mr. S.B. Solanke, Advocate for the appellants,  
Mr. R. D. Sanap, APP for respondent no.1/State  
Mrs. Vaishali A. Shinde, Advocate for respondent No.2 (Appointed)

**CORAM : SMT. VIBHA KANKANWADI AND  
Y. G. KHOBRAGADE, JJ.**

**DATE : 13.04.2023**

**ORDER:**

1. Present appeal has 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") to challenge the order below Exh. 5 in Special Case No.90 of 2022 passed by learned

Special Judge under the Atrocities Act/Additional Sessions Judge, Hingoli dated 23.12.2022, thereby the said application filed by the present appellants under section 439 of the Code of Criminal Procedure came to be rejected.

2. The appellants have been arrayed as accused in Crime No.243 of 2022 which came to be registered on the basis of FIR lodged by the present respondent No.2 for the offences punishable under Sections 302, 201 read with 34 of the Indian Penal Code and under section 3(2)(v) of the Atrocities Act with Shengaoon Police Station, District Hingoli.

3. Heard Mr. Shrikrishna B. Solanke, learned Advocate for the appellants, Mr. R. D. Sanap, learned APP for respondent no.1/State and Mrs. Vaishali A. Shide, learned Advocate for respondent No.2.

4. It has been vehemently submitted on behalf of the appellants that the learned trial judge has not considered the facts of the case properly. Though lengthy order has been passed, yet, the basic fact has not been considered. The present appellants are the members of scheduled tribe and, therefore, offence under section 3(2)(v) of the Atrocities Act cannot be said to be attracted against the appellants. The case of the prosecution is based on circumstantial evidence. Even as regards charge sheet is concerned, it should show the chain of events as well as motive. As per the FIR, the deceased was having illicit relation with the mother of present appellant No.1, who is the sister of

appellant No. 2. Informant himself states that he was objecting to the said illicit relation between his father-deceased Haridas with the lady. Even just prior to the incident, his father had brought the lady in their house and, therefore, the informant had got annoyed with him and then says that the lady was left at her house at Lohagaon by the deceased. There were quarrels not only between the informant and his father but then he wants to say that there were quarrels between the deceased as well as the present appellants. It is then the story that has been put by the informant is that his father has told him two months prior to the incident that he had caught the said lady having illicit relation with the original accused No.1 and therefore, there were disputes between the accused No.1 and the deceased. Thereafter, the story has been developed that original accused no.1 is getting assistance from the present appellants. These allegations will not be sufficient to array the appellants as accused nor it can be the circumstance pin pointing towards the accused as the author of the crime.

5. It has been submitted on behalf of the appellants that the investigation is over and charge sheet is filed. , It would take long time to stand the trial and it will not be appropriate to keep the appellants behind bars. All these things ought to have been considered by the learned trial Judge and, therefore, impugned order deserves to be set aside.

6. Per contra, the learned APP as well as learned Advocate representing respondent no.2 who came to be appointed by this Court have objected the appeal and they supported the order passed by the learned trial judge. They submitted that detailed order has been passed considering the material on record. It has been pointed out that there is discovery of murder weapon at the hands of appellant No.1 under section 27 of the Indian Evidence Act. So also, appellant No.2 has discovered the clothes which were on his person on the day of incident. Though there were no blood stains on the weapon, yet, the forensic report is awaited. The postmortem report gives probable cause of death " cut throat injury". It shows that the death was homicidal in nature and the statement of the witnesses under section 161 of Cr.P.C. proves the motive. If the accused persons are released on bail, then possibility of tampering the evidence cannot be ruled out.

7. At the outset, we would like to say that though the offence under the Atrocities Act has been registered, there was no question of bar under section 18 or 18A of the Atrocities Act as the bail application was under section 439 of Cr.P.C. So also, in the charge sheet there are caste certificates of accused Nos. 1 and 2 stating that they are the members of scheduled tribe. Under such circumstance, the offence under the Atrocities Act cannot be said to have been made out against them.

8. The contents of the FIR would show that the informant is making allegations about illicit relation between his father and accused Ashabai which was objected by him also. It appears that many people from the village were knowing about the said illicit relation. The contents of the FIR further disclose that time and again, the informant, his mother and other family members were objecting to the said relationship, yet, the deceased had not severed those relations. Under such circumstance, the dead body of the deceased came to be found near the bank of the river which was in a position that half of the body was in the water.

9. Perusal of the entire charge sheet would show that the case of the prosecution is based upon circumstantial evidence and, therefore, the learned APP has pointed out the statement of witness Vijay Gadade whose pick-up van is said to have been used in the commission of the crime. He says that when he found present appellants along-with accused No.1 drinking liquor in a tin shed around 10.00 to 10.30 p.m. on 06.08.2022, those persons asked him to lend the pick-up van. It was told to him that the deceased has taken Ashabai to his house and therefore, they want to bring her back. He gave key of the vehicle to appellant No.1 and appellant No.1 told him that he would drive the said vehicle. On the next day, when he went to take his vehicle from the possession of those persons around 7.00 to 7.30 a.m., he found that

the trolley was wet and it was told by appellant No.1 that as it had rained in Pangri, the trolley has become wet. Though the detail scrutiny is not expected at this stage, yet, when the prosecution intends to point out the said evidence as one of the circumstance in the chain of events, then that has to be tested.

10. If we consider the contents of the FIR, there is specific statement by the informant that when deceased had brought Ashabai to their house, he got annoyed and therefore, his father had left her to Lohagaon. Then the questions arises why the appellants could have used the van on 06.08.2022. It is not his statement that after living her, when deceased was coming, he was murdered, rather the sequence that has been told in the FIR shows that the incident of taking Ashabai to the informant's house by the deceased had happened two months prior to the incident.

11. The prosecution has also relied on the discovery panchanama, however, the said weapon is yet to be connected to the crime and also another fact that there were no blood stains on the clothes those were seized in this case. Under the circumstance, all these aspects ought to have been considered by the learned trial judge. With this kind of evidence, the appellants need not be asked to remain in jail. The impugned order deserves to be set aside. The appeal is required to be allowed. Hence, following order:

**O R D E R**

- (i) Criminal Appeal No.207 of 2023 stands allowed.
  - (ii) The order passed below application Exhibit-5 in Special Case No.90 of 2022 dated 23.12.2022 by learned Special Judge, under the Atrocities Act/ Additional Sessions Judge-2, Hingoli stands set aside. The said application below Exhibit-05 in Special Case No.90 of 2022 stands allowed.
  - iii) The Appellants i.e. Dnyaneshwar s/o Baban @ Uttam Girhe and Santosh s/o Namdeo Panbude who have been arrested in connection with Crime No.243 of 2022 registered with Sengaon Police Station, Dist. Hingoli for the offences punishable under Sections 302, 201 read with Section 34 of Indian Penal Code and under Section 3(2)(v) of the Atrocities Act, be released on P. R. Bond of Rs.30,000/- each with two solvent sureties of Rs.15,000/- each.
  - (iv) The appellants shall not tamper with the evidence of the prosecution in any manner.
  - (v) They shall not indulge in any criminal activity.
  - (vi) Bail before the Trial Court.
12. Fess of the appointed Advocate is quantified at Rs.5000/- (Rupees five thousand only) to be paid by the High Court Legal Services Sub Committee, Aurangabad.

**(Y. G. KHOBRAGADE, J.)**

**(SMT. VIBHA KANKANWADI, J. )**

JPChavan