

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

CRIMINAL APPEAL NO.406 OF 2023

The State of Maharashtra,
Through – Pahur Police Station,
Dist-Jalgaon.

...APPELLANT

VERSUS

- 1) Mahendra Shyamlal Rajpoot,
Age-28 years, Occu:
R/o-Shelgaon, Tq-Jamner,
Dist-Jalgaon,
- 2) Pradeep @ Pintya Santosh Pardeshi,
Age-26 years Occu:Driver,
R/o-Dambhurni, Tq-Pachora,
Dist-Jalgaon,
- 3) Yogesh Shravan Sonar,
Age-20 years, Occu:Labour,
R/o-Nagarkhana, Jamner,
Tq-Jamner, Dist-Jalgaon,
- 4) Summit Kishor Shastri (Joshi),
Age-28 years, Occu:Business,
R/o-Wakadi Jamner,
At present-Shikshak Colony,
Pachora Road, Jamner,
Tq-Jamner, Dist-Jalgaon.

...RESPONDENTS

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Ms. V.S. Choudhari, A.P.P. for Appellant.
Mr. P.P. More Advocate for Respondent Nos.1 and 3 (Absent).
Mr. Govind A. Kulkarni Advocate h/f. Mr. D.R. Deshmukh
Advocate for Respondent Nos. 2 and 4.

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WITH

CRIMINAL APPEAL NO.471 OF 2022

Rajendra @ Raju S/o Laxman Chandane,
Age-35 years, Occu:Agri.,
R/o-At Post-Wakadi, Tq-Jamner,
Dist-Jalgaon.

...APPELLANT

VERSUS

- 1) The State of Maharashtra,
Through Police Inspector,
Police Station, Pahur,
Tq-Jamner, Dist-Jalgaon,
- 2) Mahendra S/o Shyamlal Rajpoot,
Age-31 years, Occu:Agri.,
R/o-Shelgaon, Tq-Jamner,
Dist-Jalgaon,
- 3) Pradeep @ Pintya S/o Santosh Pardeshi,
Age-29 years, Occu:Driver,
R/o-Dambhurni, Tq-Pachora,
Dist-Jalgaon,
- 4) Yogesh S/o Shravan Sonar,
Age-23 years, Occu:Labour,
R/o-Nagarkhana, Jamner,
Tq-Jamner, Dist-Jalgaon,
- 5) Summit S/o Kishor Shastri (Joshi),
Age-31 years, Occu:Business,
R/o-Wakadi Jamner,
At Present-Shikshak Colony,
Pachora Road, Jamner,
Tq-Jamner, Dist-Jalgaon.

...RESPONDENTS

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Mr. D.B. Bhange Advocate for Appellant.
Ms. V.S. Choudhari, A.P.P. for Respondent No.1.
Mr. P.P. More Advocate for Respondent Nos.2 and 4 (Absent).
Mr. Govind A. Kulkarni Advocate h/f. Mr. D.R. Deshmukh
Advocate for Respondent Nos. 3 and 5.

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

DATE : 23rd AUGUST, 2023

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Both the Appeals are filed under Section 14-A(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (for short "the Atrocities Act") to challenge the acquittal of the respondents – original accused Nos. 1 to 4 by the learned Special Judge under the Atrocities Act / Additional Sessions Judge, Jalgaon on 28th March 2022 in Special (Atrocity) Case No. 6 of 2019 for the offences punishable under Sections 302, 201, 363, 364, 341, 120-B of the Indian Penal Code and Section 3(2)(v) of the Atrocities Act.

2. The prosecution has come with the case that deceased Vinod Laxman Chandane was the brother of informant Rajendra @ Raju Laxman Chandane. They have one more brother by name Vijay. All the three brothers were residing separately but in the same village and their parents were residing with the informant. Rajendra lodged the First Information Report (for short "the FIR") on 23rd March 2019 stating that his brother Vinod went missing since 9.00 a.m. of 19th March 2019, however

later on his motorcycle and the documents which he was carrying were found near the dam, so also his sleepers having blood stains were found near the motorcycle. Deceased Vinod had filed complaint applications against earlier Sarpanch Chandrashekhar Wani in respect of illegal activities going on in the Gram Panchayat Wakadi and therefore, said Chandrashekhar was annoyed with Vinod. Vinod had told his family members that Chandrashekhar has arranged some people to kill him and Chandrashekhar along with one Vinod Deshmukh were threatening Vinod to commit his murder if he goes on filing complaints against them. Informant, his brother and father had gone to the house of said Vinod Deshmukh for giving understanding to him. Few months prior to the incident, around 7.00 to 7.30 p.m. on one day, informant and one Ghanshyam Patil – husband of police patil of the village were sitting near *Idgah and* at that time when he heard some shouts, he proceeded towards there and after proceeding to the spot, informant found that one Dhanraj Joshi, Pravin Oti, Firoj Tadv, Mohasin Tadv, Amjad Navab Tadv were beating Vinod. The informant says that the said quarrel was also at the instance of Chandrashekhar. A month prior to the incident, one Namdar Tadv, Noorkha Tadv, Sambhaji Tadv had assaulted Vinod at

Shahapur Khardi and Vinod was of the opinion that the said assault was also as per the say of Chandrashekhar.

3. It is the further case of the prosecution that when informant had left around 8.00 to 8.30 a.m. on the day of incident i.e. 19th March 2019, he had seen Vinod leaving the house on his motorcycle. When informant was going towards bus stand from *Idgah*, he had seen Vinod standing with Vijaysingh Rajput and Dagdu Kale. Then informant went to Jamner around 1.30 p.m. and then he received phone call from his another brother Vijay that motorcycle of Vinod was lying near the wall of dam in their village but they could not find Vinod. Informant went to that spot and found the motorcycle of his brother Vinod and the blood stains on the ground. After making inquiry in the village, informant came to know that Chandrashekhar had hired some persons to kill Vinod for Rs.20,000/-. He has also expressed suspicion that accused No.1 was wandering on his motorcycle near *Idgah* from three days prior to the incident and said motorcycle was not having number plate and therefore, the informant lodged report against the accused persons.

4. After registration of the offence vide Crime No.34 of 2019, investigation was taken over by Dy.S.P. Ishwar Mohan Katkhede.

Various panchnamas have been executed and it is alleged that the accused persons had given voluntary statements and discovered the weapons used in the commission of the offence. In the meantime, it appears that the dead body of Vinod was found. Hands and legs of Vinod were tied and there were severe injuries. After executing the inquest panchnama, the dead body was sent for postmortem. The seized muddemal i.e. weapons, clothes of the accused as well as deceased and other articles were sent for chemical analysis. The call records of the accused persons were collected. The caste certificates were collected and after completion of the investigation, charge-sheet was filed.

5. The charge was framed by the learned Special Judge and as the accused persons pleaded not guilty, evidence has been led by the prosecution. The prosecution has examined in all 25 witnesses to bring home the guilt of the accused and after considering the evidence on record and hearing both sides, the learned trial Judge has acquitted all the accused persons from all the charges. Hence the prosecution / State as well as the original informant have filed these Appeals.

6. Heard learned APP Ms. V.S. Choudhari, appearing for the appellant – State in Criminal Appeal No.406 of 2023, learned

Advocate Mr. D.B. Bhange appearing for the appellant – informant in Criminal Appeal No.471 of 2022 and learned Advocate Mr. Govind A. Kulkarni holding for Advocate Mr. D.R. Deshmukh appearing for original accused Nos. 2 and 4.

7. In order to cut short, we would like to say that the learned APP and learned Advocate for the appellant have made submissions to support their contention that the learned trial Judge has not appreciated the evidence properly.

8. Herein this case, it appears that the prosecution has examined 25 witnesses but failed to adduce quality evidence. Most of the witnesses are the panchas and police officers and PW-16 Rajendra and PW-17 Vijay are the brothers of the deceased. Before we proceed to assess their evidence, we would like to say that the testimony of PW-23 Dr. Nilesh Devraj, the medical officer who conducted the autopsy at Jalgaon, would show that he had noticed various injuries on the dead body. There were external injuries as well as corresponding internal injuries to the vital organs of the deceased. The probable cause of death that has been given is, 'head injury' and it is said that the probable age of the injuries was 3 to 5 days old from starting of the postmortem. Here, it is to be noted that Dr. Nilesh

conducted the postmortem on 28th March 2019 and as per the FIR and the testimony of PW-16 informant Rajendra and PW-17 Vijay, the brothers of Vinod, deceased Vinod went missing from 19th March 2019. Therefore, though we may arrive at a conclusion that death of Vinod was homicidal in nature, yet whether it connects to the guilt of the accused, is a question. The testimony of PW-25 Dy.S.P. - Ishwar Mohan Katkhede is not clear as to what investigation he has carried out from the point Vinod alleged to have went missing i.e. from 19th March 2019, where Vinod was taken, where he was kept and how he was brought near the spot. At the cost of repetition, it is to be noted that age of the injuries stated by PW-23 Dr. Nilesh is 3 to 5 days prior to the postmortem, which would come around 25th to 23rd March 2019 and therefore, there should be account of the whereabouts of Vinod from 19th March 2019 till 23rd to 25th March 2019.

9. The testimony of PW-16 – informant Rajendra and PW-17 Vijay is nothing but the suspicion that they had in their mind against one Chandrashekhar Wani. Even in the FIR they have expressed their suspicion over Chandrashekhar Wani and one Vinod Deshmukh. Surprisingly said Chandrashekhar and Vinod Deshmukh are not the accused persons at the time of trial. If the

present respondents – original accused Nos. 1 to 4 were allegedly hired by Chandrashekhar Wani, then without making said Chandrashekhar Wani as accused, the trial could not have proceeded and the prosecution could not have insisted upon proceeding with the trial. The testimony of both the brothers of the deceased is totally silent on the point, as to what was the motive for the present accused persons to commit murder of Vinod. Cross-examination of PW-16 Rajendra would rather show that Vinod was having enmity against many persons as it appears that Vinod was in the habit of making complaints against many persons. Rather, informant Rajendra has admitted that he had approached this Court seeking directions for further investigation and to the said Petition, Chandrashekhar Wani and Vinod Deshmukh were party, still they were not made as an accused and at no point of time it appears that the informant had made any application before the trial Court that those persons should be added as accused or directions be given for further investigation against them under Section 173(8) of the Code of Criminal Procedure. The Special Court under the Atrocities Act, by virtue of the provisions under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, has power to take cognizance of the matter and in such a way

the Special Judge is practically a Magistrate for all purposes and therefore, was competent to give such directions. When no such attempt has been made and the alleged real accused persons have been kept out of the investigation as well as trial, may be purposefully, then in that case the acquittal of the accused persons is perfectly legal.

10. As aforesaid, many witnesses are the panch witnesses, some of them have turned hostile. Even if for the sake of arguments it is accepted that the panchnamas to the extent of discovery of the alleged weapons are proved, yet there is no cogent evidence against the accused persons and only on the basis of those discovery panchnamas, conviction cannot be awarded and therefore the matter does not deserve even admission and both the appeals deserve to be rejected.

11. Both the Appeals stand rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE