

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.54 OF 2023

Bharat @ Suresh Mahadu
@ Madhavrao Autade,
Age: 29 years, Occu.: Agri.,
R/o. Harsul, Aurangabad,
Tq. and Dist. Aurangabad

.. Appellant

Versus

1. The State of Maharashtra
Through Police Inspector,
Chikalthana Police Station,
Aurangabad, Dist. Aurangabad.

2. Kalabai Janardhan Kasare
Age: 53 years, Occu.: Household,
R/o. Sai Nagar, Pisadevi, Harsul,
Tq. and Dist. Aurangabad.

.. Respondents

...

WITH
CRIMINAL APPEAL NO.936 OF 2022

Girija w/o Balu Autade,
Age: 26 years, Occu.: Household,
R/o. Pisadevi, Harsul,
Tq. and Dist. Aurangabad.

.. Appellant

Versus

1. The State of Maharashtra
Through Chikalthana Police Station,
Aurangabad.

2. Kalabai w/o Janardan Kasare
Age: 53 years, Occu.: Household,
R/o. Sai Nagar Pisadevi, Harsul,
Tq. and Dist. Aurangabad.

.. Respondents

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Mr. A. D. Aghav, Advocate for appellant in Criminal Appeal No.54 of 2023.

Mr. Chaitanya C. Deshpande, Advocate for appellant in Criminal Appeal No.936 of 2022.

Mr. R. V. Dasalkar, APP for respondent No.1 - State in both the appeals.

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.**

DATE : February 16, 2023.

ORDER :-

. Both the appeals have been filed under Section 14-A(2) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Atrocities Act") by the accused Nos.3 and 4 as mentioned in the FIR challenging the rejection of their bail application Exhibit-4 and Exhibit-10 in Special Case No.323 of 2022 by learned Special Judge, under the Atrocities Act, Aurangabad on 15.11.2022 and 07.01.2023. They had filed the said application under Section 439 of the Code of Criminal Procedure. They have been arrested in connection with Crime No.341 of 2022 registered with Chikalthana Police Station, Dist. Aurangabad for the offences punishable under Sections 302, 120-B, 143, 147, 149 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(2)(v) of the Atrocities Act on the basis of the information given by present respondent No.2.

2. Heard learned Advocate Mr. A. D. Aghav for the appellant in Criminal Appeal No.54 of 2023, learned Advocate Mr. Chaitanya C. Deshpande for the appellant in Criminal Appeal No.936 of 2022, learned APP Mr. R. V. Dasalkar, APP for respondent No.1 - State in both the appeals and learned Advocate Mr. A. L. Kanade, Advocate for respondent No.2 in both the appeals.

3. It has been vehemently submitted on behalf of learned Advocates for both the appellants that the learned Trial Judge has failed to consider that the investigation is over and the charge-sheet has been filed on 12.10.2022. The learned Trial Judge has failed to consider the role attributed to the present appellants. The appellant - Girija has been alleged to have assaulted deceased with Chappal and the appellant - Bharat is stated to have assaulted deceased with stick, but in the FIR it is not stated which part of the body of deceased received the blow given by Bharat. Rather the FIR by respondent No.2, who is the wife of deceased, would show that accused - Shivaji had raised quarrel, abused the deceased in the name of caste and then took out the axe, which he had concealed in his shirt at the backside and the blow was received on the head of deceased Janardhan. After he fell down on the earth, other accused i.e. accused Balu, Girija, Baban and Bharat went near Janardhan and at that time Balu, Bharat and Baban had assaulted deceased with stick

and Girija had assaulted the deceased with Chappal. Now the investigation is complete. The sticks have been recovered from the spot. Further physical custody of the appellants is not required and, therefore, they ought to have been released by the learned Special Judge.

4. Per contra, the learned APP as well as learned Advocate Mr. A. L. Kanade appearing for respondent No.2 strongly opposed the appeal and supported the reasons given by the learned Special Judge while rejecting the bail applications. The appellants and deceased and his family members are resident of same village and they have the lands adjacent to each other. Deceased was cultivating Gairan land, which is adjacent to the field of one Mahadu Gangaram Autade since last 35 to 40 years. Therefore, they had the knowledge about the caste of the deceased. It is stated that the dispute triggered around 1.00 p.m. on 18.08.2022 when Janardhan was taking the agricultural implements to his field. There appears that there are disputes in the Court in respect of land as well as atrocity. Accused - Shivaji Mahadu Autade was insisting that Janardhan should withdraw the case, but Janardhan told him that he would accept the verdict of the Court and then accused - Shivaji had assaulted deceased with Axe and the others have assaulted him with sticks. Definitely, they all were forming unlawful assembly and being the member of unlawful

assembly, they had the knowledge that deceased Janardhan would be eliminated. These two appellants have actively participated. The charge-sheet is filed and it would show that there are eye witnesses to the incident. Under such circumstance, if the appeal is allowed and the accused persons are released on bail, then they will tamper with the evidence of the prosecution. Further both of them have criminal background. Accused Girija is accused in a theft case. In view of the said fact there is no necessity to interfere with the decision of the Special Court.

5. At the outset, it is to be noted that the appellants have been arrested, the investigation is complete and charge-sheet is filed. They had filed application under Section 439 of the Code of Criminal Procedure and therefore, there was no question of bar under Section 18 of the Atrocities Act. The said bar is applicable only for Section 438 of the Code of Criminal Procedure. The contents of the FIR lodged by present respondent No.2 - widow of deceased as well as the statements of witnesses would show that the role attributed to accused Bharat is assault by stick and as regards accused Girija is concerned, the FIR says that she simply assaulted deceased with Chappal, but Rutik Gudhekar and Sawan Kasare, who have been posed as eye witnesses, state that accused Girija had abused deceased in the name of caste also. In fact, the informant - present respondent

No.2 is also the eye witness, but she does not speak about the abuses in the name of caste by accused Girija. The postmortem report shows following injuries in Column No.17 :-

"1. Chop wound present over left parietal region, 3 cm left lateral to midline and 14 cm above left mastoid, of size 05 cm. x 01 cm x bone deep, underlying bone cut fractured, obliquely placed, margins of the injury are sharp, reddish.

2. Lacerated wound present over left temporal region, of size 06 cm x 2.5 cm x bone deep, 1.5 cm behind left mastoid, obliquely placed, margins of the injury are contused and blood infiltrated, underlying bone fractured, reddish.

3. Lacerated wound present over left occipital region, 2.5 cm behind to injury no.2, of size 5 cm x 3 cm x bone deep, margins irregular, cruciate shaped, reddish.

4. Contused lacerated wound present over right ear pinna helix, of size 02 cm x 02 cm x cartilage deep, margins irregular and contused, reddish.

5. Multiple contused abrasions present on right side of face, of sized varying from 1.5 cm x 01 cm to 01

cm x 01 cm, reddish.

6. Two contusions present over posterior aspect of left arm at mid portion, placed 03 cm apart from each other, of sized 05 cm x 03 cm and 03 cm x 03 cm, obliquely placed, reddish."

The probable cause of death is stated as "Head injury". Neither witness Ritik, nor witness Sawant and the informant have stated on which part of the body deceased Janardhan received injury by the stick used while committing the offence by appellant - Bharat. Mere presence and even making a statement that he has actively participated will not end, but it should be specifically stated which part of the body the blow was received. As regards the head injury is concerned, there is specific averment that the said blow was given by Shivaji with the help of axe. Now, when the entire evidence has been collected and the charge-sheet is filed, taking into consideration the role attributed to the appellants, the learned Trial Judge ought to have allowed the applications. The appeal, therefore, deserves to be allowed, however, taking into consideration the fact that the fields are adjacent to each other, restrictions are required to be imposed. Hence, the following order :-

ORDER

- i) Criminal Appeal Nos.54 of 2023 and 936 of 2022 stand allowed.
- ii) The order passed below application Exhibit-10 in Special Case No.323 of 2022 dated 07.01.2023 and order passed below application Exhibit-04 in Special Case No.323 of 2022 dated 15.11.2022 by learned Special Judge, under the Atrocities Act, Aurangabad, stand set aside. Both the said applications stand allowed.
- iii) The Appellant in Criminal Appeal No.54 of 2023 i.e. **Bharat @ Suresh Mahadu @ Madhavrao Autade** and the Appellant in Criminal Appeal No.936 of 2022 i.e. **Girija w/o Balu Autade**, who have been arrested in connection with Crime No.341 of 2022 registered with Chikalhana Police Station, Dist. Aurangabad for the offences punishable under Sections 302, 120-B, 143, 147, 149 and under Sections 3(2)(v), 3(1)(r) and 3(1)(s) 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 appellant in Criminal Appeal No.54 of 2023 i.e. **Bharat @ Suresh Mahadu @ Madhavrao Autade** shall not enter the jurisdiction of Sai Nagar, Pisadevi, Harsul, Tq. and Dist. Aurangabad till the conclusion of trial. He should reside elsewhere, and before submission of bail papers, the appellant should give complete address of his proposed residence with his mobile number to the Trial Court as well as to the Investigating Officer.

- v) The appellants in both the appeals shall not tamper with the evidence of the prosecution in any manner.
- vi) They shall not indulge in any criminal activity.
- vii) Bail before the Trial Court.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm