

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL APPEAL NO. 26 OF 2023

Shubham S/o Laxminarayan Jaiswal

Vs.

The State of Maharashtra, Thru. PSO, PS Wardha (City), Wardha and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. R.M. Daga, Advocate for appellant.
Mr. A.M. Kadukar, APP for respondent No.1.
Mr. A.M. Jaltare, Advocate for respondent No.2.

**CORAM : VINAY JOSHI, AND
BHARAT P. DESHPANDE, JJ.**

DATE : 20.04.2023.

This is an appeal in terms of Section 14-A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, raising a challenge to the order of rejecting of regular bail dated 24.11.2022, passed in Mis. Criminal Bail Application No.421/2022, relating to the offences punishable under Section 302, 324, 201 read with Section 34 of the Indian Penal Code and Section 3(2) (va), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The appellant-Shubham has claimed bail on account of innocence, absence of intention, inadequacy of material as well as on the ground of parity. The State resisted bail by pointing towards the act of accused of assaulting by means of knife, existence of eye witnesses and the seriousness of offence.

3. At the instance of report lodged by injured Anand, crime was registered. It is his case that on 31.05.2022 around 9 p.m. informant went near the house of appellant for consuming liquor. At relevant time, son of the informant namely Ashish (deceased) came to the spot and asked informant that is to his father, as to why he came there and asked to go back. The father of appellant namely Laxminarayan came out of his house and there were exchange of abuses in between Laxminarayan (co-accused) with the informant Anand. After hearing the noise of quarrel, the people of the vicinity gathered on the spot. The appellant-Shubham saw the things and said to the deceased that he would kill him and immediately, went inside the house and came with a knife. The appellant dealt a knife blow at the neck of Ashish. One Samir Sheikh tried to intervene however, as he also sustained knife injury

at his hand, he went aside. At that time, Laxminarayan (co-accused) caught hold deceased Ashish whilst appellant-Shubham again gave a knife blow. Later on, co-accused Laxminarayan also dealt stick blows, at the head of deceased-Ashish. The informant was also assaulted at his thigh by appellant-Shubham with the aid of knife and therefore, the report. The injured-Ashish died on the very day.

4. The learned counsel appearing for appellant has not disputed about the involvement of appellant-Shubham in the occurrence. The main thread of submission is that the incident as emerges from police paper does not constitute the offence of murder. In other words, it is his submission that there was total absence of requisite intention to kill Ashish. According to him, the case squarely falls within the Exception 4 to Section 300, as the incident erupted out of sudden fight and the assault was without pre-meditation. Moreover, it is argued that though the postmortem note shows two stab injuries, however, the evidence of eye witnesses says that the appellant-Shubham, has inflicted only a single injury at the neck of deceased. The learned counsel appearing for appellant relied on the

decision of the Supreme Court in case of ***Atul Thakur Vs. State of Himachal Pradesh and ors., (2018) 2 SCC 496***, to substantiate his contention that the case would fall within Exception 4 to Section 300 of the Indian Penal Code. Particularly, our attention has been invited to the observations made in para 12 of the decision, which reads as below:

“12. Taking overall view of the matter, the facts of the present case warrant invocation of Exception 4 to Section 300 of IPC. For, it is a case of culpable homicide not amounting to murder inasmuch as the incident happened on account of sudden fight between the friends who had gathered for a drink party arranged at the behest of Hitesh Thakur. There was no pre-mediation and the act done by the appellant was in the heat of passion without the appellant taking any undue advantage or acted in a cruel manner. The number of wounds caused by the appellant, it is a well established position, by itself cannot be a decisive factor. The High Court committed manifest error in being influenced by the said fact. What is relevant is that the occurrence was sudden and not premeditated and the offender acted in the heat of passion.

The evidence supports the case of the appellant in this behalf. The fact that the appellant used weapon such as knife, is also not a decisive factor to attract Section 302 of IPC. Neither the use of a knife in the commission of offence nor the factum of multiple injuries given by the appellant would deny the appellant of the benefit of Exception 4.”

5. On the basis of these observations, it has been argued that in absence of pre-meditation, the intention cannot be inferred as well as number of blows and weapons used cannot be treated as a sure criteria to infer the intention. There can be no dispute about the proposition, however, on the basis of given facts of the case the inference about intention and knowledge is to be drawn. Though, the appellant's learned counsel has tempted us to make the comments on said aspect, however, we are not inclined to undertake said exercise while dealing with the bail application. Surely, we are considering his submissions on *prima facie* basis.

6. The main submission is that when the incident started, the appellant was absent. Initially, there was a quarrel between appellant's father

Laxminarayan (co-accused) with the father of deceased-Ashish. When appellant arrived on the spot, he saw the quarrel and then, went into his house brought knife and gave a single blow at the neck of the deceased. In this regard, it is submitted that the incident as narrated by witnesses itself postulates that there was total absence of pre-meditation. The appellant was not armed with weapon but after looking the quarrel of his father, he brought knife from his house. Moreover, it is submitted that the appellant gave a single blow at neck and therefore, intention to kill cannot be inferred.

7. At this stage, it would suffice to say that, it is a matter of appreciation at the trial as to whether given facts falls under Exception 4 to Section 300 of the Indian Penal Code. Apparently, it reveals that the appellant has used a knife in the occurrence, the part chosen for attack was neck, a vital part of the body. Moreover, postmortem note discloses that there were two stab injuries, one at neck and another at the stomach. It is argued that as per statement of informant and one eye witness Sheikh Samir, the appellant gave only one knife blow at the neck. The other side countered said

submission by attracting our attention to the supplementary statement of informant and some witnesses, who stated that the appellant also gave second knife blow at the stomach of the deceased. The first information report says that the appellant initially inflicted knife blow at the neck and when co-accused Laxminarayan caught hold the deceased, the appellant gave another blow. The said statement nowhere says as to on which part of body, the second was blow inflicted. Therefore, it is a matter of appreciation in trial after recording the evidence. The fact remains that *prima facie*, there is material to state that appellant gave two knife blows, one at neck and another at the stomach of the deceased. Obviously, due to stab injury Ashish died. There are four to five witnesses to the occurrence. The informant also sustained stab injuries in the occurrence. There is no submission on the point about delay in filing FIR. The knife used in commission of crime has been seized at the instance of appellant.

8. Though, co-accused Laxminarayan has been released on bail, however, rule of parity does not apply, as the allegations against Laxminarayan are restricted to inflicting stick blow only. The police

papers indicates prime role to the appellant of inflicting repeated knife blows on the person of deceased, resulting into instant death.

9. Having regard to the specific role of the appellant, existence of eye witnesses, we find existence of ample material against the appellant. The submissions about applicability of Exception 4 would be matter for consideration after recording evidence. However, at this stage, we cannot prejudice the said issue. The offence is of serious nature. The specific role of appellant emerges in the occurrence. Therefore, it is not a fit case to exercise judicial discretion. In view of above, appeal stands dismissed.

JUDGE

JUDGE