

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO.332 OF 2023

Datta Kundlik Dukare, Aged
about 31 years, Occ. Saloon,
R/o Karli, Washim.

... APPELLANT

VERSUS

1. State of Maharashtra, through
Police Station Officer, Police Station,
Jaulka, Dist. Washim.
2. Lilabai Vishwas Kamble, Aged about
55 years, R/o Borala, Tah. Malegaon,
Washim.

... RESPONDENTS.

AND

CRIMINAL APPEAL NO.394 OF 2023

Keshao s/o Narhari Wankhede, Aged
about 39 years, Occ. Agriculturist and
Business, R/o Borala, Tq. Malegaon,
District : Washim. (Presently at District
Prison at Washim.)

... APPELLANT

VERSUS

1. State of Maharashtra, through
Police Station Officer, Police Station,
Jaulka, Tq. Malegaon, Dist. Washim.
2. Lilabai Vishwas Kambale, Aged about
55 years, Occ. Household, R/o
Borala, Tah. Malegaon, Dist. Washim.

... RESPONDENTS.

Shri Mir Nagman Ali, Advocate for the appellant (In Criminal Appeal No.332/2023)
 Shri R.M. Daga, Advocate for the appellant. (In Criminal Appeal No.394/2023)
 Shri V.A. Thakare, A.P.P. for the respondent/State.
 Shri P.S. Wathore, Advocate for respondent no.2.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.
DATED : 03.08.2023.

ORAL JUDGMENT : (Per : Vinay Joshi, J.)

Heard. **ADMIT.** Appeals are taken up for final disposal by consent of learned Counsel appearing for the parties.

2. Rejection of regular bail of accused no.5 Keshao s/o Narhari Wankhede, and accused no.8 Datta Dukare in Crime No.41 of 2023 registered with the Jaulka Police Station District Washim, for the

offence punishable under Sections 302, 364, 120-B of the Indian Penal Code and Sections 3(2)(v) and 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'the Atrocities Act'), caused them to file these appeals in terms of Section 14A of the Atrocities Act.

3. One Vishwas Kamble was abducted on 18.02.2023 around 2.00 p.m. and after few hours his dead body was found. The cause of death was strangulation with the aid of ligature. Wife of deceased namely Lilabai Kamble lodged the report on 19.02.2023, which caused the Police to register the Crime and commence the investigation. It is the informant's case that there was village political rivalry between her husband at one side and the group of Wankhede family on the other.

4. In the year 2022, the Gram Panchayat election was held in which the informant's husband got elected as a member and then became Upsarpanch of the Village. Since then four brothers namely Keshao (appellant), Ramchandra Wankhede, Shyamsundar Wankhede and Namdev Wankhede were annoyed against the deceased Vishwas. On 18.02.2023 around 2.00 p.m., the informant had gone with her husband (deceased) to the dispensary. On their return journey, around 3.30 p.m. deceased went to the side for urination. Within few minutes,

the informant heard shouts from that side. She saw that three persons have forcibly made her husband to sit in white color car and took him away. They threw some articles of the deceased on the road while leaving the place. Some of the village boys have seen the occurrence and noted registration number of the Car. After some time, the informant wife learnt that her husband was lying dead, hence, she lodged the report against four Wankhede brothers including appellant Keshao Wankhede. The Police have recorded several statements, seized some articles, collected CDR and on completion of investigation, filed the final report. The name of the appellant Datta Dukare surfaced during the course of investigation, hence the Police have filed the charge-sheet against eight accused including both appellants Keshao and Datta. Both have applied to the Trial Court for regular bail, however vide separate impugned orders, their urge was turned down.

5. Both learned Counsel appearing for appellants would submit that, the material collected during the course of investigation is quite short to curtail the appellants' liberty. There are no eye-witnesses to the occurrence nor the persons who have abducted have been identified. Merely on suspicion, the appellants have been arrested. The case is totally based on the circumstantial evidence. Already investigation is complete, and therefore, they claimed for bail.

6. Learned A.P.P. as well as learned Counsel Shri Wathore appearing for the informant put strong resistance to these appeals. They equally made exhaustive submissions to convince about adequacy of material for rejection of bail. They also took us through the certain statements to impress that the appellants have conspired with co-accused to commit murder of Vishwas Kamble.

7. Perusal of First Information Report (FIR) indicates that though name of appellant Keshao and his three brothers has been stated, however that appears to be perception of the informant. The FIR does not state that the informant has identified the three miscreants who forcibly abducted the deceased. The prosecution has recorded the statements of two witnesses namely Gopal and Ganesh, who have seen the incident of abduction. Both stated that four persons have abducted the deceased. It is their contention that the abductors had covered their faces by scarf, however they have noted the registration number of the vehicle used in the process of abduction. These witnesses also does not speak about the identity of the abductors. Statement of one Vinod Tayde states that he has also seen the occurrence and particularly, co-accused Namdev was seen in the Car. However, he has not identified the assailants besides co-accused Namdev. Perusal of Post Mortem note indicate that cause of death is strangulation. Ligature mark was present

on the neck besides the corresponding injury and abrasion. The ligature was seized at the instance of co-accused Namdev.

8. Prosecution has collected call details of the accused. It reveals that on the date of incident, the appellant Keshao had eight calls with co-accused Namdev, one call with co-accused Shyamsundar whilst 19 calls with co-accused Ramchandra. Likewise, in case of appellant Datta he had six calls with Namdev and one call with co-accused Sandip. On the basis of said CDR, it has been submitted that the appellants were in constant touch with co-accused, and thus, they were part of criminal conspiracy. Though tower location was collected however it was of no use. Cloths of the appellant Keshao were seized however no blood stains were noted nor it is a case where blood stains could be found.

9. The prosecution has pointed to the statement to say that on the date of occurrence itself, appellant Datta had purchased insecticide. Contextually, our attention has been invited to the supplementary statement of the informant, wherein she stated that there was smell of insecticide on the cloths of the deceased. However as a matter of fact, it was not a case of poisoning but the death was by strangulation. It is also argued that the accused initially planned to administer poison and

therefore, the said piece of evidence is material. However, at this preliminary stage, we are unable to accept the said submission since there was no administration of poison. Though it is pointed out that an insecticide bottle was seized from accused No.1 Namdev however, it is a matter of appreciation. It is submitted that appellant Datta has facilitated the crime by providing his motorcycle, which came to be seized. However, prosecution is unable to point out any witness who could say that the appellant Datta was seen while escorting the Car used for abduction. During the trial, the prosecution has to establish nexus of motorcycle of Datta as well as use of insecticide or its relevance with the crime.

10. Learned Counsel appearing for the informant took us through the gist of prosecution case submitted by Police along with the charge-sheet. However, the same cannot be considered, for want of admissibility. We have been taken through the statement of one Pramod Bhoyar in whose presence co-accused Gunwant expressed that he is about to commit murder of somebody. The said expression even if accepted, does not connect the appellants. Statement of Mangala Kamble is pressed into service, which speaks about the relevance of co-accused Namdev only. Our attention is invited to the statement of Arun Surve, which does not convey anything about the involvement of

appellant Datta. Statement of Dhananjay Avagan is also read over however we are unable to find any incriminating material therein.

11. Learned A.P.P. would submit that though it is a case of strangulation, however finding of bottle of insecticide is relevant circumstance. In this regard, reliance is placed on the decision of the Supreme Court in case of *Hajabhai Rajashibhai Odedara vs. State of Gujarat (2022) 9 SCC 75*. In said decision, the bottle of pesticide was found at the place of occurrence. Having regard to the peculiar facts of that case, the said circumstance was found to be relevant. Herein, the death is occurred due to strangulation and bottle was recovered at the instance of some one else.

12. Learned A.P.P. by placing reliance on the decision of the Supreme Court in case of *Pratapbhai Hamirbhai Solanki vs. State of Gujarat and anr. (2013) 1 SCC 613* submitted that, direct evidence of conspiracy is seldom to have, but inference is to be drawn from various circumstances. Certainly, conspiracy is a matter of inference, however there must be the circumstances to indicate that there was an agreement in between the accused to do an illegal act. *Prima facie* mere telephonic conversation amongst brothers fell short to draw definite inference of conspiracy in absence of other material. Besides the aspect

of telephonic conversation and prior enemical terms between two groups nothing has been brought to our notice to infer about hatching of conspiracy.

13. Learned Counsel for the appellants would submit that both sides have filed criminal cases against each other. Particularly, copy of First Information Report in crime No.306 of 2018 registered against the appellant Keshao for the offence punishable under Section 326 has been produced on the record. It appears that said occurrence relates to somebody else and was of the year 2018. Besides that one N.C. report has been produced however we does not see any relevance of the appellants. Criminal antecedents is one of the aspect but that cannot over power the lack of existing material. On the other hand, the learned Counsel for the appellants by placing reliance on the decision of the Supreme court in case of ***Maniklal Mehta vs. The State of Bihar (Special Leave to Appeal (Crl.) No.3490/2023 dated 16.05.2023)*** would submit that under similar circumstances of telephonic conversation between the accused, the supreme Court has granted bail.

14. In short, there are no eye-witnesses to the occurrence. No one has identified the appellants as the persons who have abducted the deceased. No prior TI Parade was conducted. The witnesses have seen

the incident of abduction but the abductors had covered their faces. Besides telephonic conversation between appellant Keshao with his brothers, there is nothing on record to suggest the conspiracy. Purchase of insecticide bottle which has no relevance with the cause of death, cannot be termed as an incriminating circumstance. Merely on the ground of rivalry in two groups, the liberty cannot be curtailed. In view of above, impugned orders of rejection of bail would not sustain in the eyes of law, hence the following order :

- (a) The appeals are allowed.
- (b) We hereby quash and set aside the impugned order dated 12.05.2023 passed in Criminal Appeal No. 174 of 2023 (Keshao vs. State) and order dated 12.04.2023 passed in Criminal Appeal No. 130 of 2023 (Datta vs. State).
- (c) The appellants Keshao s/o Narhari Wankhede and Datta Kundlik Dukare shall be released on bail on their furnishing P.R bond of Rs.50,000/- with one solvent surety in the like amount, each.
- (d) Both the appellants/accused shall attend the concerned Police Station on every alternate Monday in between 10.00 am to 12.00 noon till the conclusion of trial.
- (e) The appellants shall not tamper with the prosecution evidence in any manner.
- (f) The appellants shall provide their residential address and telephone/mobile number to the concerned Investigating

Officer.

15. The appeals are disposed of accordingly.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

Trupti