

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

CRIMINAL APPEAL NO. 431/2023

Dharmaraj S/o. Ghansham Yewankar,
Aged about 48 yrs., Occ. Labourer,
R/o. Girgaon, Tah. Nagbhid,
Dist. Chandrapur.
(Presently District Prison At Chandrapur)

... **APPELLANT**

VERSUS

1. The State of Maharashtra,
through Police Station Officer,
P.S. Sindewahi, Dist. Chandrapur.
2. Uddhav s/o. Kawadu Parchake,
Aged about 62 yrs., R/o. Mendhamal,
Tah. Sindewahi, Dist. Chandrapur.

... **RESPONDENTS**

Mr. C.R. Thakur, Advocate with L.B. Khergade, Advocate for
appellants.

Mr. N.R. Rode, APP for respondent No.1.
Ms. M.A. Sharma, Advocate (appointed) for respondent No. 2.

CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.

DATE : 04.08.2023.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard.

2**2. Admit.**

3. This is an appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act ('SC and ST Act') raising challenge to the order of rejection of bail (Exh.12) dated 13.04.2022 passed by the Trial Court.

4. On 28.09.2022 around 11.30 p.m. deceased Ishwar was slept in his house with others. Two unknown assailants came to his house, dragged him out, and made assault, to which Ishwar succumbed. Brother of deceased namely Udhav lodged report in the wee hours on the following day. He has stated that after learning about untowards incident, he rushed to the house of his brother Ishwar (deceased) to see the matter. Grand-daughter of Ishwar namely Sonali disclosed that, at night hours around 11.00 p.m. two masked men barged in her house, pulled Ishwar out of the house and assaulted him by means of axe and fled away. On the basis of said information, crime has been registered.

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5. The investigation is complete and charge-sheet has been filed. The prosecution case is mainly rests on the evidence of two witnesses i.e. first Witness Sonali and her kin Baban, who has witnessed the occurrence. Sonali has stated that at the relevant time, she saw two masked men wearing white hand gloves, assaulted deceased by means of axe. Witness Baban arrived on the spot and seen Ishwar lying in a pool of blood. He has also seen in the electric light that one person wearing black coloured T-shirt and full-pant was armed with an axe. The said person had also covered his face by scarf, however as the scarf came down, witness saw that he was father-in-law of neighbouring person Ranjit Thakare meaning thereby, he was accused No.1 Namdeo. The prosecution also relied on the statement of Chemist namely Nitin Jaiswal. He stated that on the same day of occurrence accused No.1 Namdeo and appellant Dharmaraj (accused No. 2) had purchased white colour hand gloves from his shop.

6. Besides that the prosecution is unable to point out any other material against appellant Dharmaraj. Though child witness Sonali stated about two assailants, neither she has recognized them nor test

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identification parade was conducted. Witness Baban has seen only one assailant i.e. co-accused Namdeo. The only material available against appellant is about purchasing of white colour hand gloves. To our mind, this is not sufficient ground to curtail the liberty. Investigation is complete and charge-sheet has been filed. In view of that following order:-

- (I) Appeal is allowed.
- (II) We hereby quash and set aside impugned order dated 13.04.2023 passed by the Trial Court in Spl. (Atro) Case No. 205/2022.
- (III) The appellant – Dharmaraj S/o. Ghansham Yewankar be released on bail on furnishing PR Bond of Rs. 50,000/- with one surety of like amount.
- (IV) The appellant shall not enter within the territorial limits of Tahsil Shindewahi till conclusion of Trial.
- (V) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.
- (VI) The appellant shall make himself available for investigation by Police as and when required.

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7. Fees be paid to the learned counsel appointed for respondent No. 2 as per Rule.
8. Appeal stands disposed of in above terms.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

Gohane