



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

CRIMINAL APPEAL NO. 109 OF 2024

SHAM @ BALU BHARAT PHULSE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. Sachin S. Deshmukh, Advocate for Appellant
Mr. R.B. Dhaware, APP for Respondent No.1/State
Mr. Kiran T. Jamdar, Advocate for Respondent No.2

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 20th MARCH, 2024

PER COURT :

1. By this appeal filed under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, appellant takes exception to the order dated 19/12/2023, passed by learned Special Judge and Additional Sessions Judge, Latur, below Exhibit-24 in Special (Atrocity) Case No.86/2023, thereby rejecting bail to appellant in C.R. No.154/2023, registered with Renapur Police Station, Latur, for offence punishable under Sections 302, 323, 324, 504 r/w 34 of the Indian Penal Code and Sections 3(2)(v) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. FIR is lodged by Mahadev Baliram Khodke alleging that there is dispute about boundaries between informant and Bharat Nivrutti Phulse. On 19/05/2023, at about 09:00 a.m. when informant along with his father and brother-in-law Satish was doing work of

leveling the ground in their agricultural field with the help of tractor, Bharat Phulse and his son Sham (appellant) started abusing Satish. When Satish told them not to abuse, Sham attacked Satish from behind and caught his mouth. At that time, Bharat took out a knife and assaulted Satish on abdomen and back. When informant tried to obstruct Bharat, wife of Bharat pushed him. When sister-in-law of informant came at the spot and tried to intervene the quarrel, Bharat's wife picked up stick lying there and assaulted informant's mother on her face. Satish was admitted in the hospital, however, he expired on the same day at about 03:30 p.m.

3. Bharat and appellant both were arrested on 19/05/2023. After filing of charge-sheet on 15/07/2023 appellant moved application for regular bail which is rejected by the trial Court. Hence, the present appeal.

4. Heard learned advocate for appellant, learned APP for respondent No.1/State and learned advocate for respondent No.2. Perused the investigation papers.

5. From the papers of investigation and charge-sheet it is clear that allegation against present appellant is that appellant caught hold of deceased from behind and his father Bharat Phulse took out a knife and assaulted Satish. It appears that after the first blow given by Bharat on abdomen of Satish, immediately appellant

has left Satish, therefore, second blow is inflicted by Bharat on his back.

6. Admittedly, there is civil dispute going on between informant and accused. Statement of son of Satish who is aged 11 years, is recorded after about eight days of incident, wherein he has stated that appellant caught hold of Satish from behind. Assault with knife is done by Bharat Phulse and it is not the case of prosecution that appellant has assaulted deceased or any of the witnesses. There are no allegations which attract the offence under Atrocity Act.

7. Appellant is arrested on 19/05/2023. Charge-sheet is filed and the case is numbered as Special Case No.86/2023, trial is not likely to conclude in near future. Appellant could not be kept behind the bars for indefinite period. Appellant is resident of village Samsapur, Tq. Renapur. He has deep roots in the society and has movable and immovable properties, he will not abscond if released on bail. However, taking into consideration the fact that informant and appellant's agricultural lands are adjacent, for some time, appellant needs to be kept away from the village.

8. In the result, appeal is allowed. Impugned order dated 19/12/2023, passed by learned Special Judge and Additional Sessions Judge, Latur, below Exhibit-24 in Special (Atrocity) Case No.86/2023, is hereby quashed and set aside.

9. Appellant Sham alias Balu Bharat Phulse be released on executing Personal Bond and Surety Bond of Rs.25,000/- with one surety in the like amount, in connection with C.R. No.154/2023, registered with Renapur Police Station, Latur, for offence punishable under Sections 302, 323, 324, 504 r/w 34 of the Indian Penal Code and Sections 3(2)(v) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

10. Appellant shall not enter the village Samsapur, Taluka Renapur, District Latur, for a period of six months from today. He shall inform his residential address to investigating officer and trial Court, and shall not tamper prosecution evidence.

(NITIN B. SURYAWANSHI, J.)