



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

914 CRIMINAL APPEAL NO. 530 OF 2024

ARJUN MACHINDRA FIMPALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Appellant : Mr. Rohit P. Patwardhan h/f Mr.Jadhav Satej S.
APP for Respondent/State : Mrs. M.L. Sangit
Advocate for Respondent no.2 : Ms.Varsha Shelke (Kolpe) (appointed)

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CORAM : **SHIVKUMAR DIGE, J.**

DATE : 6th August, 2024.

P.C.:

1. This appeal is preferred against the order dated 29th April, 2024 passed by Additional Sessions Judge, Aurangabad below Exhibit-3, 4 and 6 in Special Case No.107 of 2024 filed in pursuance of F.I.R. No.20 of 2024 registered with M.I.D.C. Waluj Police Station, Dist.Aurangabad, for the offences punishable under sections 302, 307, 323 read with 34 of the Indian Penal Code (For short, "IPC") and sections 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. It is prosecution's case that on 31st December, 2023, brother of informant and one Gayatri Gaikwad had eloped. On 3rd January, 2024 informant, his father Kailas and mother Sheela had gone to Police Station for filing missing complaint of his brother. On 4th January, 2024 around midnight 12 to 1:00 a.m., the neighbour of informant Babasaheb Gaikwad made phone to the informant and told him that

his father was lying in Pratap Chowk. After hearing that news, when the informant went there, he saw the friends of co-accused Ganesh Gaikwad co-accused Udhav Gholap and appellant were present there. It is alleged that appellant caught hold the informant and co-accused Uddhav and Ganesh assaulted his father with fist and kick blows. It is alleged that the informant was praying before the appellant and co-accused that he had no role in elopement of his brother Bhushan and Gayatri. Thereafter, the informant rescued himself from the clutches of co-accused and appellant and took his father to his home on his motorcycle. When they were going on motorcycle at that time the father of the informant told him that the appellant and co-accused Udhav assaulted him saying that to bring Gayatri back. It is alleged that on 8th January, 2024, the informant tried to wake up his father to lodge the complaint but he did not wake up. Thereafter, the father of the informant died due to brain hemorrhage.

3. It is contention of the learned counsel for the appellant that the appellant has been falsely implicated in this case. There is delay of four days in lodging the complaint. The role attributed to the appellant is that he caught hold the informant and other co-accused assaulted the father of the informant. The learned counsel further submitted that the supplementary statement of the informant was recorded by the police. In the supplementary statement, he has stated that on 7th January, 2024, his father was assaulted by Gayatri's father i.e. co-

accused Babasaheb Gaikwad, co-accused Ganesh Gaikwad, maternal uncle Pravin Wagh and co-accused Balu Shinde and in that assault, his father had sustained the injuries to his head. So the father of informant has died due to incident of 7th January, 2024 and immediately on the next date, the F.I.R. was lodged. In the supplementary statement of the informant, no name of the appellant is mentioned that he was present on 7th January, 2024. The appellant is behind bar more than seven months. Investigation is completed. Charge-sheet has been filed. The appellant is Karta of his family. It may take time to conclude the trial and requested to allow the appeal.

4. It is contention of the learned APP along with learned counsel for respondent no.2. that the appellant had assaulted the father of the informant with co-accused. Father of the informant has stated the said fact to the informant. The deceased has died due to brain hemorrhage due to internal injuries. The appellant and co-accused assaulted to the deceased with fist and kick blows on his head. Due to assault of appellant and co-accused deceased has died. If the appellant is released on bail he may abscond or he may influence the prosecution witnesses and requested to dismiss the appeal.

5. I have heard all the learned counsel. Perused the impugned order passed by the Special Court.

6. The allegations against the appellant are that on 4th January, 2024, he caught hold the informant when the informant had gone to

see his father in Pratap Chowk and co-accused Ganesh and Uddhav assaulted his father. It is alleged that when the informant was taking him on motorcycle at that time, his father told that the appellant also assaulted him with fist and kick blows along with other co-accused. In supplementary statement of the informant, he has stated that on 7th January, 2024, his father was assaulted by other co-accused. Immediately on the next day, the informant lodged the F.I.R. against the co-accused. It shows that after 4th January, 2024 till 7th January, 2024 father of the informant was well and he was not admitted in the hospital, but after the assault of 7th January, 2024, he was admitted in the hospital and thereafter he died due to brain hemorrhage. So apparently no involvement of the appellant appears in causing the death of the father of the informant. The appellant is behind bar more than six months. It may take time to conclude the trial. Considering these aspects, further detention of the appellant is not required and I pass the following order :-

ORDER

- (i) The appeal is allowed.
- (ii) The order dated 29th April, 2024 passed by Additional Sessions Judge, Aurangabad below Exhibit-3, 4 and 6 in Special Case No.107 of 2024 is quashed and set aside.
- (iii) The appellant in connection with F.I.R. No.20 of 2024 registered with M.I.D.C. Waluj Police Station, Dist.Aurangabad, for the offences

punishable under sections 302, 307, 323 read with 34 of the Indian Penal Code and sections 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act be released on executing personal bond in the sum of Rs.15,000/- with one surety of the like amount, on the following conditions :-

(a) the appellant shall not tamper the prosecution evidence and shall not pressurize the prosecution witnesses and informant.

(iv) Fess of Rs.10,000/- be paid to Ms. Varsha Shelke (Kolpe), learned counsel appointed to represent the cause of respondent no.2 through High Court Legal Services Sub-Committee, Aurangabad.

[SHIVKUMAR DIGE, J.]

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