



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 748 OF 2023

Shaikh Mazhar Shaikh Yousuf

....Appellant

VERSUS

The State Of Maharashtra And Others

.....Respondents

.....

Mr. S.S. Gangakhedkar, Advocate for appellant.

Mr. N.B. Patil, APP for respondents-State.

Ms. Bharati Gunjal, Advocate appointed for respondent No. 2.

Mr. C.C. Deshpande, Advocate appointed for respondent Nos. 3 and 4.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 15th JANUARY, 2024

ORDER :

1. Appellant is accused in Crime No. 706 of 2022, registered with Nanded Rural Police Station, for the offences punishable under Sections 302, 307, 326, 504 r/w. 34 of the Indian Penal Code, under section Section 3(2)(v) and 3(2)(va) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act and under section 4/25 and 4/27 of Arms Act.

2. FIR is lodged by Akshay Jamdade alleging that on 01.12.2022, at about 1.55 hours in the night he along with his friends Amol Chawre, Harshawardhan Lohakare were proceeding

towards Dhanegaon. Amol was riding motorcycle and informant and Harshawardhan were sitting behind him. At that time, at about 2.15 hours they came to the *Idgah kaman* at Degloor Naka. They wanted to take garland from the closed flower shop, therefore, motorcycle was halted. At that time, they lost balance and fell on the road. Three accused persons who were there in auto rickshaw bearing No. MH 26 BD 4964 told informant and his friends to ride properly. They also abused them. There was altercation between informant, his friends on one hand and accused persons on the other. Thereafter, Harshawardhan took out a garland from the closed flower shop by moving aside cloth curtain. Accused persons then started abusing informant and others as to why they taken out garland. One of the accused Shaikh Sohail alias Talwarbhai took out a dagger and assaulted Amol on back, west and chest. Informant was also assaulted with dagger, which landed on the right side of underarm. Present appellant who was driving auto rickshaw caught hold of Harshawardhan and Sohail assaulted him with dagger.

3. Appellant came to be arrested on 01.12.2022 and thereafter charge sheet is filed on 27.01.2023. After filing of

charge sheet, appellant again preferred bail application, which is rejected by the Trial Court. Hence, the present appeal.

4. Heard learned advocate for appellant, learned APP for respondent-State, learned advocate appointed to represent respondent No. 2 and learned advocate appointed to represent respondent Nos. 3 and 4. Perused the charge sheet.

5. There appears sufficient material collected during the course of investigation to show active involvement of appellant in the present crime. Amol is murdered and Harshawardhan and informant were seriously injured.

6. Learned advocate for appellant has urged that the only role attributed to appellant is that he had caught hold of hands of Harshawardhan and he has not assaulted deceased or injured with any weapon.

7. Since, appellant along with co-accused is involved in commission of serious offence of murder and his involvement is revealed during the course of investigation, this is not the fit case to exercise discretion in favour of appellant. Appeal being devoid of merit is dismissed.

8. High Court Legal Services, Sub Committee, Aurangabad to pay fees of learned advocates appointed to represent respondent No. 2 and respondent Nos. 3 and 4 as per schedule, within four weeks from today.

[NITIN B. SURYAWANSHI, J.]