

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 658 OF 2024****Mahadev Namdev Powar****....Appellant****V/s.****The State of Maharashtra and Anr.****....Respondents**

Mr. Aditya Raktade *a/w Mr. Dnyanesh Patil, Mr. Anup Kamble, Aarti Shah, Santosh Mane, for the Appellant.*

Ms. Shilpa G. Talhar, *for the Respondent No.1-State.*

Mr. Swaraj Jadhav, *Advocate appointed for Respondent No.2.*

Ms. Kishori Sable, PSI, Shahapur Police Station, present.

CORAM : SANDEEP V. MARNE, J.

Date : 3 OCTOBER 2024.

P.C. :

1) This is an appeal under the provisions of Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SCST Act) challenging the order dated 3 August 2023 passed by the Additional Sessions Judge, Ichalkaranji rejecting the application for bail filed by the Appellant in connection with Crime No.295 of 2022 for the offence punishable under Section 302 of the Indian Penal Code and Section 3(2)(va) of the SCST Act.

2) I have heard Mr. Raktade, the learned counsel appearing for the Appellant, Mr. Jadhav, the learned counsel appointed by

the Court to represent Respondent No.2 and Ms. Talhar, the learned APP appearing for Respondent No.1-State.

3) The prosecution case is built on circumstantial evidence. There are several witnesses, whose statements indicate that the deceased was last seen in the company of the Appellant at 10.00 a.m. In this connection statement of witness- Ashwini Shankar Malge indicates that the deceased had left home for work on 3 October 2022 at 7.45 a.m. and returned home at 9.00 a.m. without attending duties. At 10.00 a.m. Appellant being the manager of establishment visited the home of the deceased and took the deceased along at 10.00 a.m. Similar is the statement of witness Swati Pravin Asode, which again reflects the deceased being last seen in the company of the Accused at 10.00 a.m. on 3 October 2022. Similar are the statements of Shrimati Bablabhai B. Kamble and Rupali Shashikant Kamble. The dead body of the deceased is discovered at 3.00 p.m. on 3 October 2022. Thus, the time gap between various witnesses last seeing the deceased in the company of Appellant (10.00 a.m.) and discovery of the body (3.00 p.m.) is not too long. There is nothing on record to indicate that the deceased was seen in the company of any other person during this short gap between 10.00 a.m. and 3.00 p.m.

4) In addition to the last seen theory, the Appellant apparently made extra judicial confessions to 3 witnesses. The statement of Shri Bablu Subhash Kurkute indicates that there was telephonic conversation between the Appellant and the said

witness where after Appellant met the witness and during the course of meeting the Appellant disclosed to the said witness that he killed the deceased on account of the deceased entered Appellant's house two years ago in the presence of Appellant's Sister. The witness's statement further discloses altercations taking place between the Appellant and the deceased for 8 days prior to the incident.

5) Similarly, witness Dipak Subhash Kurkute has stated that the Appellant made telephonic call to the witness at 1.00 p.m. on 3 October 2022 and disclosed that there was altercation between the Appellant and deceased and that the Appellant killed the deceased. Similarly, witness Subhash Rambhau Kurkute has also stated in his statement that there was telephonic conversation between the witness and the Appellant at 12.30 p.m. During the course of second telephonic conversation, Appellant informed the witness that he had killed the deceased.

6) Thus, there are several statements of witnesses indicating the deceased being last seen in the company of the Appellant in addition to 3 extra judicial confessions made by the Appellant.

7) The 'Cause Of Death Certificate' would indicate the probable cause of death as head injury, which matches the extra judicial confession made to Subhash Rambhau Kurkute that the Appellant killed the deceased by giving a blow with stone. The stone used for committing the crime has been recovered

under punchnama conducted under Section 27 of the Indian Evidence Act.

8) Considering the above material available on record, I am of the view that though there is no direct evidence to prove the prosecution story, there is enough circumstantial evidence suggesting possible involvement of the Appellant in commission of the Crime. It is not that the Appellant has undergone long incarceration since the date of his arrest is 4 October 2022. If convicted, the Appellant is likely to be sentenced for life imprisonment.

9) In that view of the matter, this is not a fit case for enlarging the Appellant on bail. Therefore, no serious error can be traced in the order dated 3 August 2023 passed by the Additional Sessions Judge, Ichalkaraji. The Appeal is accordingly **dismissed**. However, in the event no substantial progress takes place in the trial, the Appellant shall be at liberty to file a fresh application for bail before the Trial Court after one year. Also, observations made in the order are *prima facie*, which shall not influence the trial of the case.

[SANDEEP V. MARNE, J.]