

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.460 OF 2024

Arvind @ Sonya Ganesh Ghuge
Age 24 years, Occ. Labour,
R/at Santosh Sawant, Vijaynagar,
Behind Jogeshwari Hotel
Near Ramesh Kale, Kalewadi,
Pune.

....Appellant

V/S

1 The State of Maharashtra
Through Wakad Police Station,
Pune, District Pune.

2 Sheshrao Rangnath Angarakh
Age 67 years, Occ. Nil.
R/at Santosh Nivas Police Colony
Rahatani, Pune.

....Respondents

Mr. Kuldeep Patil i/b Mr. Suhas B. Rohile *for the Appellant.*

Ms. Shilpa K. Gajare-Dhumal, **APP** *for Respondent No.1-State.*

Mr. Ankur Pahade *for Respondent No.2-Complainant.*

CORAM: SANDEEP V. MARNE, J.
RESERVED ON : 26 JULY 2024.
PRONOUNCED ON: 30 JULY 2024.

JUDGMENT

1 This is an Appeal filed under provisions of section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC & ST Act) challenging the Order dated 12 April 2024 passed by

Special Judge, Pune rejecting his application seeking discharge under provisions of Section 227 of the Code of Criminal Procedure, 1973.

2 Appellant is arraigned as Accused No.4 in Special Case No.671 of 2020 in which four accused are charge-sheeted for offences punishable under Sections 363, 364, 302, 201 and 120B of the Indian Penal Code, 1860 (IPC). Since the deceased belongs to Scheduled Caste community, offences punishable under sections 3(2)(v) and 3(2)(va) of the SC & ST Act came to be added.

3 Brief prosecution story is that the main accused Ganesh Pawar (Accused No.1) had lent certain amounts to the deceased, which was not refunded. Additionally Accused No.1 was miffed on account of the deceased holding his sister's hand. The deceased went missing from 16 August 2020. It is alleged that accused No.1, in association with the other accused, including the Appellant, have killed the deceased and buried his body in a pit dug by using JCB with intention of destroying the evidence. The dead body is alleged to have been recovered at the instance of the first accused by conducting panchanama under Section 27 of the Indian Evidence Act, 1872 (**Evidence Act**).

4 Mr. Kuldeep Patil, the learned counsel appearing for Appellant would submit that there is no material to indicate Appellant's participation either in commission of crime or even in conspiracy. That nothing has been recovered from him. That there is no CCTV footage or Call Detail Record (CDR) indicating Appellant's presence at crime scene or association with accused in commission of crime. That Appellant had no motive to commit

the crime. That Appellant is not last seen in company of the deceased. That even in extra-judicial confession sought to be relied upon by prosecution, Appellant is not named. Even in statements of witnesses recorded for showing preparation for commission of crime, no role is ascribed to Appellant. That the only evidence sought to be relied against Appellant is statement of witness Sharad Khonde, containing reference to Appellant's name in alleged planning made by the first accused. That statement of witness-Pandit Natekar again does not indicate that Appellant is named in the so called confession made by accused No.1. Mr. Patil would take me through the three panchanamas prepared under section 27 of the Evidence Act to demonstrate that Accused no.1 named only Mangesh Jagtap and Pradeekumar Lalji in his so called statements for recording panchama relating to discovery of dead body. That in another panchanama relating to discovery clothes of Accused No.1, once again only Mangesh Jagtap and Pradeepkumar Lalji are named by the first accused. That the name of Appellant was deliberately inserted in the third panchanama relating to discovery of JCB, at the instance of the first accused. That the learned Judge has erroneously relied upon the said statement of the main accused recorded under Section 27 of the Evidence Act, which is required to be discarded. Mr. Patil would also seek to highlight the position that despite witness Sharad Khonde's statement about driving Scorpio vehicle alongwith deceased, he is not made an accused. Similarly, one Mr. Paigambar named in the statement of Sharad Khonde is also not made an accused. That the Appellant has been falsely implicated by the prosecution and that he is completely innocent. Mr. Patil would rely upon judgment of the Apex Court in ***Suresh Budharmal Kalani alias Pappu Kalani vs. State of Maharashtra***, (1998) 7 SCC 337, in support of his contention that mere

confession made by co-accused has no evidentiary value and cannot be a basis even for framing of charge. He would therefore submit that a clear case is made out for Appellant's discharge.

5 *Per contra*, Ms. Gajare-Dhumal, the learned APP would oppose the Appeal submitting that section 120B of the IPC has been applied in the present case and every accused has been ascribed specific role. That there is enough material to indicate Appellant's involvement both in assisting the accused as well as misguiding the police. That Appellant is manager of accused No.1 and was always in his company and it is difficult to believe that he had no knowledge of plan, preparation and execution of crime. That Appellant has actively assisted the main accused not only in commission of crime but also in misleading investigations. That Appellant has been specifically named by two witnesses Sharad Khonde and Pandit Natekar, who is the partner of accused no.1. That voluntary confession has been made by the main accused in the present case. That prosecution desires to rely upon CDR showing conversation between the main accused and Appellant before and after commission of crime. That the Appellant used to visit the house of the deceased for making false enquiries about whereabouts of the deceased with a view to misguide the police and to leak details of investigations to accused no.1. That Appellant himself had gone missing after discovery of dead body and came to be arrested later on 7 September 2020. She would submit that the prosecution has connected various events to complete the chain of circumstantial evidence with a view to build a concrete case against main accused and the said chain will be broken if Appellant is discharged in the present case. She would pray for dismissal of the Appeal.

6 Mr. Pahade, the learned counsel appearing for Respondent No.2 Complainant (Legal Aid Panel Advocate appointed by Court) would also oppose the Appeal submitting that the Appellant is undoubtedly a part of conspiracy. That since Section 120B of the IPC is invoked, Appellant cannot be discharged in the present case. He would also pray for dismissal of the Appeal.

7 Having heard submissions canvassed by the learned counsel appearing for parties and after going through the records of the case as well as order passed by the learned Judge, it is seen that the main accused in the case is Ganesh Pawar (Accused No.1). Appellant is described to be the manager of Accused No.1. Though it is sought to be suggested that there is absolutely no material available on record to indicate *prima facie* involvement of Appellant in commission of crime, it must be noted that Appellant has been named by witness Shardad Khonde. The prosecution alleges that on 16 August 2020, witness Sharad Khonde was with main accused Ganesh Pawar and drove his Scorpio vehicle in which deceased was sitting in the front seat. It is prosecution case that accused No.1 informed Paigambar that he wanted to kill the deceased on account of deceased not refunding several amounts and holding his sister's hand. It is alleged that when Sharad Khonde attempted to persuade accused No.1 not to kill the deceased, first accused told him to keep driving since all planning was done by him alongwith Mangesh Jagtap, Pradeepkumar Lalji, Arvind Ghuge and Paigambar. This is how Appellant is named by witness Sharad Khonde and he is accused of being a part of conspiracy hatched by main accused for killing the deceased. Another witness Pandit Natekar, who is

alleged to be partner of first accused, has also named Appellant. However his name is reflected in respect of hearsay information acquired by the said witness about killing of the deceased by all the four accused. In my view therefore, it cannot be stated that there is absolutely no material against the Appellant *qua* section 120 B of the IPC.

8 Reliance by Mr. Patil on the judgment of the Apex Court in ***Suresh Budharmal Kalani alias Pappu Kalani*** (supra) will not assist the case of the Appellant. The evidentiary value of extra-judicial confession made by the first accused is a question to be determined at the time of trial. The prosecution claims that the witness Sharad Khonde has heard the main accused telling Paigambar that commission of murder was planned by him alongwith Mangesh Jagtap, Pradeepkumar Lalji, Arvind Ghuge and Paigambar. The prosecution desires to rely upon CDR indicating series of conversations between accused No.1 and the Appellant. Though Mr. Patil has submitted that being employee of the main accused, the Appellant is bound to have telephonic conversations with regard to work related issues, this is something which needs to be considered during the course of trial. I have been taken through the CDR which indicates several conversations between accused No.1 and Appellant on 16 August 2020. If indeed accused No.1 has killed the deceased on 16 August 2020, conversations between accused No.1 and Appellant on the day of murder may be of some relevance. I am therefore unable to hold that there is complete absence of material to charge Appellant in the present case. I therefore do not find any reason to interfere in the impugned order passed by the learned Special Judge.

9 In fact, the Public Prosecutor had raised an allegation before the Special Judge accusing Appellant of deliberately filing belated application for discharge with a view to assist accused No.1 in delaying trial and applying for bail. Appellant has been released on bail by this Court vide order dated 22 September 2021. However, it appears that he was advised to file application for discharge on 6 October 2023. Appeal filed by accused No.1 challenging order of rejection of bail was withdrawn before this Court on 21 December 2022 granting liberty to file fresh application for bail in the event of trial not concluding within one year. The roznama indicates that accused No.1 had refused to co-operate with the learned Special Judge for framing of charge on 4 July 2023 and 18 July 2023 and had made statements before the Court that he desired to apply bail before this Court. In the light of the above background, filing of application for discharge by the Appellant on 6 October 2023 assumes importance. Be that as it may. Without delving further into the allegations made by the learned Public Prosecutor before the Special Judge, I am of the view that sufficient material exists for charging the Appellant in the present case.

10 I therefore do not find any reason to interfere in the order passed by the learned Special Judge. The Criminal Appeal, being devoid of merits, is accordingly **dismissed**. The Trial Court shall however not be influenced by the observations made in the order while deciding the case finally.

(SANDEEP V. MARNE, J.)

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