



Judgment

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL APPEAL NO.246 OF 2024

Astha d/o Rajesh Karemore,
aged about 18 years, occupation : student,
r/o : Salwa, tahsil – Mauda, district
Nagpur. **Appellant.**

:: VERSUS ::

1. State of Maharashtra,
through PSO PS
Ramtek, Nagpur.

2. Smt.Sangita w/o Rupal
Taram,
aged about 47 years, occupation :
labour, r/o Jhansinagar,
tahsil Mor Gaon Arjuni, district
: Gondia. **Respondents.**

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Shri Prakash S.Jaiswal, Counsel for the Appellant.
Shri A.A.Dhawas, Counsel for R-2/Complainant.
Shri A.G.Mate, Additional Public Prosecutor for R-1/State.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 10/07/2024
PRONOUNCED ON : 12/07/2024

JUDGMENT

1. Heard. **Admit.** By this appeal under Section 14A of the
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities)
Act, 1989 (the SC and ST Act), the appellant arraigned as accused in

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Crime No.785/2023 registered with respondent No.1/police station for offences punishable under Sections 302 and 201 of the Indian Penal Code read with 3(2)(v) of the SC and ST seeks bail.

2. The accusations against the appellant are on the basis of report lodged by mother of Divya (the deceased). As per her report, on 30.7.2023, her deceased daughter and another daughter Diksha attended labour work under Contractor Parasram Chakate and returned on 14.8.2023. The said Contractor informed her that Chotu Yadav, working with her daughter Divya, is not having good intentions and her daughter likely to run away with said Chotu Yadav. On this, as per the report, the informant gave an understanding to her daughter Divya and also took out her mobile phone. On 15.8.2023, her daughter Divya left the house and did not return back. The informant learnt that her daughter married with said Chotu and is residing with him. On 19.10.2023, the police made enquiry with the informant as to whether her daughter Divya returned to her house as her husband lodged a missing report that the deceased had a quarrel with her husband and left the house. On 24.10.2023, a dead body was found which

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is identified by the informant to be her daughter Divya on the basis of clothes and anklets on her person and, therefore, on 25.10.2023, the mother of the deceased lodged the report against said Chotu Yadav.

3. On the basis of the said report, the police registered the crime against Chotu Yadav and other co-accused. During investigation, it revealed that the appellant and other co-accused hatched conspiracy as the appellant was having relationship with said Chotu Yadav and eliminated the deceased. After registration of the crime, the appellant filed application below Exhibit-5 in Special Case No.712/2023 for grant of bail. The said application was rejected. Being aggrieved and dissatisfied with the same, the present appeal is preferred for grant of bail.

4. Heard learned counsel Shri Prakash S.Jaiswal for the appellant; learned counsel Shri A.A.Dhawas for respondent No.2/complainant, and learned Additional Public Prosecutor Shri A.G.Mate for respondent No.1/State.

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5. Learned counsel for the appellant submitted that insofar as involvement of the appellant is concerned, there is no *prima facie* evidence against the appellant. The First Information Report is lodged on a suspicion against co-accused. There is no single circumstance to connect the appellant with the alleged offence. When the case is rested on circumstantial evidence, the prosecution has to establish circumstances beyond reasonable doubt. Extra judicial confession is a weak piece of evidence and, therefore, it cannot be taken into consideration. As such, the order rejecting the bail of the appellant deserves to be quashed and set aside.

6. Learned Additional Public Prosecutor for the State strongly opposed the appeal on ground that the appellant was having relationship with the husband of the deceased. In fact, the appellant is the main culprit who hatched the conspiracy. The co-accused purchased poison to kill the deceased and, thereafter, the deceased was eliminated by taking her on motorcycle to forest and assaulted by stone and, thereafter, her dead body was thrown. The mobile conversations of the appellant with the co-accused

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sufficiently show her involvement in the conspiracy as well as in the elimination of the deceased. Considering manner in which the deceased was eliminated, learned Judge below rightly rejected the bail application. As such, the application be rejected.

7. Learned counsel for respondent No.2/complainant also endorsed the same contentions made by learned Additional Public Prosecutor for the State.

8. Having heard learned counsel appearing for respective parties and perused investigation papers, it reveals that the entire case is rested on circumstantial evidence. The circumstances, on which the prosecution relied upon, are, relationship between the appellant with the co-accused, their communications showing conspiracy between them and extra judicial confession by the co-accused. Perusal of the chargesheet shows that stone, by which the appellant assaulted the deceased, is recovered on the basis of her memorandum statement. In the said incident, the deceased resisted the act and the co-accused sustained injury to left side of forehead. The said injury is in the nature of abrasion. There was continuous call records between the appellant and the co-accused

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form 17.10.2023 to 23.10.2023. The transcript of CDRs seized by the investigating agency shows that phone calls of the appellant and the co-accused were recorded, which clearly establish involvement of the appellant in the alleged offence. The deceased was taken by the co-accused on his motorcycle on a pretext of roaming at Ramtek and she was taken into Shirpur Forest whereat the appellant assaulted the deceased by stone and, thereafter, the co-accused pressed her neck with the help of dupatta and she was eliminated.

9. Thus, manner, in which the deceased was eliminated, shows brutality of the crime as well as circumstances on record show that no remorse was shown to the deceased. Moreover, there is extra judicial confession to independent witness. Admittedly, extra judicial confession is a weak piece of evidence, however when it is coupled with other circumstances, it can be acted upon.

10. At this stage, sufficient material is collected by the investigating agency to show involvement of the appellant and, therefore, the application for grant of bail is rightly rejected by learned Judge below.

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11. In view of the above, I do not find any merits in submissions of learned counsel for the appellant that there is absolutely no material to connect the appellant with the crime in question. Considering the *prima facie* material against the appellant, as the appeal being devoid of merits deserves to be dismissed, the same is **dismissed**.

The appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!