



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

CRIMINAL APPEAL NO. 259 OF 2024

APPELLANT:

Satyendra alias Sattu s/o Gajendra Giri,
Aged 25 years, Occu: Student,
R/o Govindpuram Colony, Balaghat (M.P.)
presently residing at Ambada Tahsil
Ramtek, District: Nagpur (Presently at
Central Prison, Nagpur)

...VERSUS...

RESPONDENTS

- 1] The State of Maharashtra,
through Police Station Officer, Ramtek,
District Nagpur.
- 2] Vishwanath s/o Govardhan Khobragade,
Aged 51 years, R/o Ward No.2, Sitapur
(Deolapar) Tahsil Ramtek,
District Nagpur.

Mr. R.M. Daga, counsel for appellant.

Mr. D.V. Chauhan, Public Prosecutor for the respondent/State.

Mr. A.R. Fule, counsel for respondent No.2.

CORAM : **URMILA JOSHI-PHALKE, J.**
DATE : **10/07/2024**

ORAL JUDGMENT :

1. Heard. **Admit.** Heard finally with the consent of learned counsel appearing for the parties.

2. By preferring this appeal, the appellant has challenged the order passed by the Additional Sessions Judge-8 and Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, rejecting the bail application of the present appellant by passing order below Exhibit-8 in Special Case No. 63/2024. The appellant came to be arrested on 26/11/2023.

3. The accusation against the present appellant is on the basis of a report lodged by informant Vishwanath Khobragade, alleging that the deceased Vivek is his son, and on 25/11/2023, at about 7.00 p.m. the deceased, along with his friend Faizan Khan, went to see the procession at Ramtek on a motorcycle. On 26/11/2023 at about 6.00 p.m., when the informant returned home after attending duty, he saw that his son was not in a position to walk properly, he was shivering and limping. On inquiry with his son, his son disclosed that he has been assaulted by some persons at Ramtek, and he is unable to speak and stand properly. Immediately, he took him to the hospital however, the medical officer stated that the deceased was brought dead. Thereafter, the informant approached the Police station, and after

making an inquiry with the Faizan Khan, the Faizan Khan disclosed that at about 8.30 p.m. on 25/11/2023, when they were returning from Gad Mandir Ramtek on motorcycle, their motorcycle dashed against the motorcycle of the co-accused Manish, and therefore, co-accused Manish and his friends stopped the motorcycle and dashed them from the motorcycle, and the deceased was assaulted by all these persons by fist and kick blows. Due to which, the deceased has sustained the injuries, and Faizan Khan has also sustained the injuries. On the basis of said report, police have registered the crime against the present appellant.

4. Learned counsel Mr. R.M. Daga for the appellant submitted that, as far as the occurrence of the incident is concerned, the deceased was assaulted in a sudden fight and sudden quarrel. There was a scuffle between the two parties, and in that scuffle, the deceased was assaulted.

5. He submitted that, as far as the appellant is concerned, his role is not specifically mentioned. The eye-witness Fizan Khan, has not identified the present appellant. He further submitted that other witness, Rehan is concerned, who identified him, but he has not witnessed the present appellant assaulting either the deceased or any other witness. Thus, there is no prima-

facie material against the present appellant. Now, investigation is already completed and charge-sheet is already filed, further incarceration of the present appellant is not required. In view of that, the appeal deserves to be allowed.

6. Learned Public Prosecutor and learned counsel for the complainant strongly opposed the said application on the ground that the deceased was assaulted by 5 to 6 persons repeatedly. The PM Report clearly shows the probable cause of death is due to an injury to a visceral organ in the abdomen (spleen injury). Thus, the cause of death clearly shows that the accused persons have beaten the deceased mercilessly, which resulted into his death. Though Faizan Khan has not identified the present appellant but his presence at the spot is established, as Rehan has specifically stated that he can identify the persons who have assaulted the deceased, and the said Rehan identified the present appellant. Thus, there is prima-facie material against the present appellant, and in view of that, the application deserves to be rejected.

7. After hearing learned counsel for the appellant, learned Public Prosecutor for the State and learned counsel for the complainant, perused the investigation papers. There is no dispute as to the fact that quarrels started between the co-accused and the

deceased on account of dash to the motorcycle. As per the allegation, the deceased was assaulted by 5 to 6 persons by fist and kick blows, which resulted into his death. The statement of the eye witnesses Faizan Khan shows that they were dragged from the motorcycle, and immediately the co-accused and the friends of the co-accused started assaulting to them. In that deceased Vivek has sustained the grievous injuries, whereas Faizan has sustained the simple injuries. Thereafter, the said Faizan has called Rehan who is his brother. The statement of Rehan is also recorded who stated in his statement, that he has not witness actual assault, but he reached at the spot, and he also stated that he can identified the said persons, who were present there is the present appellant, during the identification parade. The P.M. Report shows that there were several injuries on the person of the deceased, the injuries were Ante-mortem in nature. The cause of death is of deceased is due to injury on spleen.

8. Thus, the presence of the present appellant is established from the investigation papers. Considering the circumstances under which the deceased was assaulted by 5 to 6 persons, for the trifle reason though the weapon was not used, the manner in which the deceased was assaulted is to be taken into

consideration. Thus, considering the prima-facie case is made out against the present appellant, the appeal is devoid of any merits and liable to be dismissed. Accordingly, I proceed to pass the following order:

The appeal is dismissed.

[URMILA JOSHI-PHALKE, J.]