



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

CRIMINAL APPEAL NO.336 OF 2024

Kaustubh Sanjay Sangitrai
Aged about 29 years, Occupation – Priest,
R/o Ambada, Tah. Ramtek,
District Nagpur

...APPELLANT

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Ramtek Police Station, Ramtek
2. Vishvanath Gowardhan Khobragade
Aged 51 years, Occupation – Service,
R/o Sitapur, Post Pavni,
Tahsil Ramtek, District Nagpur

...RESPONDENTS

Mr. U.A. Gosavi, Advocate for the appellant.
Mr. D.V. Chauhan, Public Prosecutor a/b Mr. N.B. Jawade, APP for the State.
Mr. A.R. Fule, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : SEPTEMBER 4, 2024.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel
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 in Special Case No.63/2024. The appellant came to be arrested on 29/11/2023.

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, informant took him to the hospital however, the Medical Officer disclosed 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, there was a scuffle between them and during that scuffle the co-accused Manish and his friends stopped the motorcycle and enquired why their motorcyle was

dashed 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 was also assaulted and he has also sustained the injuries. On the basis of said report, police have registered the crime against the present appellant.

4. After registration of the crime and after arrest of the present appellant he approached to the Special Court for grant of bail but the Special Court has rejected the bail application on the ground that from the investigation papers the role of the present appellant reveals and considering the nature of the injuries sustained by the deceased *prima facie* case is made out.

5. Being aggrieved and dissatisfied with the same, present appeal is preferred by the appellant.

6. Learned Counsel for the appellant submitted that, as far as the role of the present appellant is concerned which is not specified by any of the witnesses. The involvement of the present appellant is not in the actual assault. Merely because he is identified during the identification parade is not sufficient in absence of any role attributed to him. He submitted that the deceased was assaulted by the co-accused. There was a scuffle between the two parties. As far as present appellant

is concerned he is not at all concerned with the alleged incident. He further submitted that even the statement of the eye-witness Fizan Khan who has not clarified that he was assaulted by the present appellant or the deceased was assaulted by the present appellant. 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.

7. Learned Public Prosecutor for the State strongly opposed the said appeal on the ground that the deceased was assaulted by 5 to 6 persons repeatedly. The postmortem 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 on a trifle reason which resulted into his death. Though Faizan Khan has not stated his specific role about the present appellant but his statement to that effect is that he as well as the deceased was assaulted by 4 to 5 persons and he has identified the present appellant during the identification parade. Though the evidence of the identification parade is not a substantial evidence but it is a corroborative evidence. The statement of the Faizan Khan is corroborated by this T.I. parade. During the T.I. parade the eye-witness

Faizan Khan has identified the present appellant is sufficient to show his involvement at this stage.

8. 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 also 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 witnessed actual assault, but he reached at the spot, and he also stated that he can identify the said persons, who were present there at the spot of incident. As far as the present appellant is concerned admittedly he is not identified by the Rehan but he is identified by injured Faizan during the identification parade. The injuries sustained by the deceased were Ante-mortem in nature. The cause of death is of deceased is due to injury on spleen.

9. 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 but 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.

10. Hence, the appeal stands dismissed accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*