



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

CRIMINAL APPEAL NO. 59 OF 2024

APPELLANT: Sagar Devidas Latke,
Age-27 years, Occupation – Labour,
R/o Botha (Warwand), Tah. Mehkar,
District Buldhana.

...V E R S U S...

RESPONDENTS 1] The State of Maharashtra,
through the Police Inspector,
Dongaon Police Station,
Tah. Mehkar, District – Buldhana.

2] Mandakini B. Bhosale,
R/o Shedala, Janephal, Buldhana.

Mr. Aditya Pande, counsel h/f Mr. A.D. Raut, counsel for appellant.
Mr. Ganesh Umale, APP for respondent No.1.
Ms. Archana P. Murrey, counsel (appointed) No.2.

CORAM : **URMILA JOSHI-PHALKE, J.**
DATE : **18/06/2024**

ORAL JUDGMENT :

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

2. The present appeal is preferred by the appellant
under Section 14A of the Scheduled Castes and Scheduled Tribes
(Prevention of Atrocities) Act, 1989. The appellant is arrested on

16/01/2022, in connection with Crime No. 14/2022 for the offences punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code, 1860 and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. On 03/01/2022, the daughter of the informant informed her that, Sadashiv i.e. deceased who is the father of the informant had been to the field and thereafter, he did not return for taking a meal. In the evening also, he did not turn up towards home, and therefore, on 05/01/2022, the informant had lodged the missing report. On 11/01/2022, the dead body of the deceased was found in the forest at Sawargaon to Ghatbori road. The dead body was in semi-decomposed condition. The informant has identified the dead body of her father, and thereafter, she lodged the report against the unknown persons. During the investigation, the investigating officer recorded the statement of various witnesses including the statement of the daughter of the informant, who discloses that on the day of the incident, three unknown persons came to her house, and they took the deceased alongwith them. During the investigation and various statements, the appellant was arrested. The statement under Section 27 of the

Evidence Act, 1872 was also recorded, and at his behest, the incriminating articles like Axe was recovered. Thereafter, he was put for the test identification parade and the appellant was identified by the daughter of the informant. After completion of the investigation, the charge-sheet was submitted.

4. After arrest, the appellant has preferred an application before the Special Judge i.e. District and Additional Sessions Judge, Mehkar. After considering the evidence on record by observing that the appellant was identified during the identification parade, as well as the weapon was recovered at his instance. Therefore, the Sessions Court has rejected the application filed by the appellant.

5. Being aggrieved and dissatisfied with the same, present appeal is preferred by the appellant, on the ground that the entire case is based on circumstantial evidence. Except the identification parade and the incriminating articles, which are recovered at the instance of the present appellant, no other material is collected. Now, the investigation is already completed and charge-sheet is filed, further incarceration of the present appellant is not required. The circumstances on which the prosecution relied upon, are not sufficient to complete the chain.

In view of that, he be released on bail.

6. Learned counsel for the appellant submitted that the other two co-accused are already released on bail. Thus, on the ground of parity also, the present appellant is required to be released on bail.

7. Learned APP and learned appointed counsel for respondent No.2 strongly opposed the said appeal on the ground that sufficient material is on record to show the involvement of the present appellant. On the basis of the statement of the present appellant, the incriminating article Axe is recovered. The query report shows that the injury sustained by the deceased is possible by the said weapon, and during the test identification parade also, the present appellant is identified. Hence, the application deserves to be rejected.

8. After hearing learned counsel for the appellant, learned APP for the State, and learned appointed counsel for respondent No.2, perused the investigation papers. Admittedly, during the investigation, nowhere it reveals that there was any previous enmity between the present appellant and the deceased. As far as the investigation is concerned, which revolves around the statement of the daughter of the informant who has seen the

persons, who took the deceased alongwith them. Admittedly, she has not narrated any description of the said persons. The test identification parade is held after three and half months and while holding the test identification parade, it appears that the test identification parade panchanama does not bear the signature of the panchas. The guidelines are not followed while holding the test identification parade. Besides the test identification parade, the prosecution placed reliance on the statement of the present appellant, on the basis of which, the incriminating article i.e.Axe is recovered. Admittedly, no blood stains are found on the said Axe. The trial Court has rejected the bail application merely observing that as the Medical Officer has opined that injuries are possible from such types of weapons.

9. Considering the fact that the circumstances on which the prosecution relied only two circumstances, the statement of the present accused on the basis of which the weapons are recovered and the test identification parade. As observed earlier, the test identification parade is held after long gap of three and half months. The investigation papers, nowhere discloses during that period. The identity of the present appellant was not disclosed or there was no opportunity for the prosecution witnesses to see

the present appellant. As far as the statement of the present appellant is concerned, admittedly no blood stains are found on the Axe. Thus, considering the law which is well settled, when the case is based on circumstantial evidence, the prosecution has to establish the chain of the circumstances.

10. At this stage, considering the material which is collected during the investigation and the entire case is based on circumstantial evidence, there was no previous enmity between the deceased and the present appellant. From the investigation papers, no motive came forward for which the deceased was eliminated. Therefore, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order:

- a) The criminal appeal is **allowed**.
- b) The appellant – Sagar Devidas Latke, shall released on bail, in connection with Crime No. 14/2022 for the offence punishable under Section 302, 201 read with Section 34 of the Indian Penal Code, 1860 and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on executing P.R. bond in the sum of Rs.25,000/- with one solvent

surety in the like amount.

- c) The appellant shall attend the concerned Police Station once in a month on first Sunday of every month and the Police Officer shall record his presence.
- d) The appellant shall not leave the jurisdiction of the Sessions Court Mehkar, District Buldhana, till the disposal of the appeal.
- e) The appellant shall attend the proceedings regularly without seeking exemption unless there are exceptional circumstances.
- f) The order passed by the learned Special Judge, Mehkar is hereby quashed and set aside.
- g) The fees of the appointed counsel be quantified as per the Rule.

The Criminal Appeal is **disposed of** accordingly.

[URMILA JOSHI-PHALKE, J.]