



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

CRIMINAL APPEAL NO. 404 OF 2024

APPELLANT: Ishak Shah s/o Khwaja Shah,
Age – 23 years, Occ- Labour,
R/o Near Hakkaniya Masjid,
Anand Nagar, Ward No. 25, Wardha,
Tah. & District Wardha.

...VERSUS...

RESPONDENTS 1] State of Maharashtra,
through P.S.O. Wardha City,
P.S. Wardha.

2] Siddhartha s/o Sheshrao Deotale,
Age 43 Years, Occu- Labour,
R/o Near Sathe Kirana Store,
Anand Nagar, Wardha.

Mr. A.M. Jaltare, counsel for appellant.
Mr. S.V. Narale, APP for respondent/State.
Ms. S.H. Bhagat, counsel (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 22/11/2024

ORAL JUDGMENT :

1. Heard.

2. **Admit.**

3. Heard finally with consent of learned counsel appearing for the parties.

4. By this appeal, the appellant has challenged the order passed by the Special Court i.e. learned Additional Sessions Judge, Wardha by which the application for grant of bail below Exhibit 46 in Sessions Case No. 111/2021 is rejected on 03/05/2024. The appellant was arrested on 29/07/2021, and since then, he is behind bars.

3. The accusation against the present appellant is that there was a love relationship between the co-accused Anwar and the daughter of accused No.3 – Vandeo Jawade. As per the allegations, the accused No. 3 was willing to perform the marriage of his daughter with one Kishan Deotade, and the co-accused was against the said marriage, and therefore, he is annoyed, and by keeping grudge in his mind, he has committed the murder of the deceased. It is alleged that on 27.07.2021, the younger daughter of the co-accused, Vandev called Kishan for bringing water-can, accordingly, Kishan came at their house along with the water-can and the co-accused inquired with the other co-accused Vandev

whether Kishan had come there and accused No.3 informed that he had just left the place. It is further alleged that co-accused Anwar, in furtherance of the conspiracy hatched with the present appellant and other co-accused, executed the plan and committed the murder of Kishan by taking him behind the power-house. The dead-body of the deceased was dumped in a flowing water. On the basis of the said report, police have registered the crime against the present appellant and other co-accused.

4. Learned Counsel for the appellant Mr. A.M. Jaltare submitted that the entire case is based upon circumstantial evidence, and except the statement of the present appellant under Section 27 of the Indian Evidence Act, there is no other material to connect the present appellant with the alleged offence. He further submitted that the prosecution relied upon the recovery of one mobile phone and weapon of the offence at the instance of the co-accused, but that evidence is also not sufficient to connect the present appellant with the alleged offence. He submitted that even accepting the statement, which is not admissible, the role attributed to the present appellant is only to the extent of bringing the hammer at the spot of incident and throwing the dead body in the flowing water. He submitted that the statement is not at all

admissible and therefore, cannot be considered to connect the present appellant in the alleged offence. He further submitted that moreover the appellant was arrested on 29/7/2021, and since then he is behind bar. There is no progress in the trial, there is a delay in the trial, and therefore, the right of the present appellant of the speedy trial in view of the Article 21 Constitution is affected. For all the above reasons, the order passed by the Special Court deserves to be quashed and set aside.

5. Learned APP and learned counsel for the respondent No. 2 strongly opposed the said prayer on the ground that during the investigation, the role of the present appellant was revealed. The mobile phone was seized, at the instance of the co-accused, the statement of the present appellant recorded under Section 27 also shows his involvement in the alleged offence. In view of that, the appeal deserves to be dismissed.

6. After hearing the learned counsel for the appellant on perusing the investigation papers, admittedly, the entire case is based on circumstantial evidence. It is well settled that when case is based on circumstantial evidence, the prosecution has to establish all the circumstances, which unerringly points out the guilt of the accused. The only circumstances appearing against the

present appellant is his statement recorded under Section 27 of the Indian Evidence Act. As far as the role of the present appellant is concerned, the said statement is not admissible. He submitted that the prosecution also relied upon his statement of the daughter of the co-accused and the recovery, at the instance of the co-accused Anwar. On perusal of the statement of the daughter of the co-accused, it only discloses that her father has received a phone call and made inquiry about the deceased, and her father was informed that deceased had left. It nowhere shows that the present appellant had made a phone call to the other co-accused, and the co-accused shared the location of Kishan in the present appeal.

7. The learned trial Court had considered the material and held that there are circumstances to connect the present appellant and rejected the application. After going through the investigation papers, admittedly, in the recovery panchanama, neither the description nor the IMEI number of the said mobile phone is mentioned, which was seized at the instance of the co-accused. The statement of the witnesses, namely Mayur Adwani, who is the mobile shop owner, and the Investigating Agency confirmed the fact that the deceased has purchased the said mobile phone from his shop. Even taking into consideration this fact, it is difficult to

accept that it is the same mobile which was seized by the police, as Investigating Officer has neither mentioned the make of the mobile phone nor mentioned the IMEI number. If this material is kept aside, there is absolutely no material to show that the present appellant was associated with and was formed of the conspiracy which was hatched by the co-accused with the present appellant.

8. Considering the entire material against the present appellant, it is apparent that the allegation against the present appellant is that he was member of the conspiracy. Admittedly, no direct evidence would be available as far as conspiracy is concerned, but there should be some evidence on record to show that there is an involvement of the appellant in the above said crime.

9. As far as the circumstances under which the mobile phone belongs to the deceased or not, it is to be established by the prosecution by collecting the necessary material. Even accepting the statement as it is recorded under Section 27, the only role attributed to the present appellant is that he has assisted the other co-accused in throwing the dead body in the flowing water.

10. It is submitted by learned APP that one cutter was

seized at the instance of the present appellant. However, admittedly the said cutter was not used by the present appellant in causing the injury to the deceased. Thus, considering the entire material against the present appellant, except the circumstances that memorandum statement was recorded under Section 27, there is no other material to show his involvement in the alleged crime. Moreover, the appellant has been behind bar since 29/07/2021, and there is no progress in the trial. Admittedly, the right of the present appellant of speedy trial is affected, which was guaranteed in Article 21 of the Constitution. In view of that, the appellant has made out a case for grant of bail.

11. Considering the entire material on record, at this stage, the appeal deserves to be allowed. In view of that, I proceed to pass the following order :

- a] The Criminal Appeal is **allowed**.
- b] The order rejecting the bail application below Exh.46, passed by the learned Additional Sessions Judge, Wardha in Special Case No.111/2021 dated 03.05.2024 is hereby quashed and set aside.
- c] The appellant/accused – Ishak Shah s/o Khwaja

Shah shall be released on bail on executing PR. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

- d] The appellant shall not induce, threat or pressurize any witnesses who are acquainted with the facts of the present case.
- e] The appellant shall furnish his permanent address and contact details to the Investigating Officer.
- f] The appellant shall attend the proceedings before the Special Court without seeking any exemptions unless there are exceptional circumstances.
- g] The fees of the appointed counsel for the respondent No.2 be quantified as per rules.

The Criminal Appeal is **disposed of**.

[URMILA JOSHI-PHALKE, J.]