



Judgment

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

CRIMINAL APPEAL NO.37 OF 2024

Bharat @ Abhiman Sanap,
aged 49 years, occupation -
agriculture, resident of Kanherwadi,
Beed, Maharashtra. **Appellant.**

:: VERSUS ::

1. The State of Maharashtra,
through Police Station Officer,
Police Station, Sindkhed Raja,
district Buldhana.

2. Nitin Sakharam Sonawane,
aged about 62 years, resident of
Sindkhed Raja, district Buldhana. **Respondents.**

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Shri Atharva Manohar, Counsel for the Appellant.
Shri R.S.Nayak, Counsel Appointed for R-2/Complainant.
Shri G.S.Umale, Additional Public Prosecutor for R-1/State.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 25/06/2024

PRONOUNCED ON : 28/06/2024

JUDGMENT

1. Heard learned counsel Shri Atharva Manohar for the
appellant; learned counsel Shri R.S.Nayak appointed for
respondent No.2/complainant, and learned Additional Public

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Prosecutor Shri G.S.Umale for respondent No.1/State. **Admit.**
Heard finally.

2. By this appeal under Section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC and ST Act), the appellant has challenged order dated 3.2.2023 passed by learned Special Judge, Mehkar, district Buldana in Criminal Bail Application No.314/2022 whereby the application filed by the appellant, for grant of bail in connection with Crime No.22/2011 registered with respondent No.1/police station for offences punishable under Sections 302, 397, 411, and 201 read with 34 of the Indian Penal Code and 3(2)(v) of the SC and ST Act and 181 and 282 of the Motor Vehicles Act, came to be rejected.

3. As per allegations, the appellant was working as Driver on truck bearing registration No.MH-12/AU/6449 owned by the deceased. The allegations in the First Information Report are that an unidentified dead boy was found in burnt condition at Sindkhed Raja near a bridge. A crime was registered against an unknown person on 19.3.2011. On 23.3.2011, informant gave a statement on the basis of which the crime is registered against the

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appellant. It was alleged that the deceased left Pune for Raipur along with the appellant to load winding wires in his truck. He, after loading the truck, was proceeding from Pune to Raipur. With an intent to commit a theft of the said goods, the appellant and other co-accused committed murder of the deceased and stolen bundles of the said wires. On the basis of the said report, the police registered the crime against the appellant and other co-accused.

4. Learned counsel for the appellant submitted that the entire case is registered on circumstantial evidence. The identification of dead body of the deceased was not established as DNA Report does not support the same. The other circumstance on which the prosecution relied upon is that the appellant was lastly seen with the deceased. The place where the dead body of the deceased was buried is discovered at the instance of the appellant. The death of the deceased is due to the head injury. There is no explanation by the prosecution, regarding calls from his mobile phone. As per story of the prosecution, there was no communication from the deceased since 18.3.2011. The truck was found at Bhagwangad.

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The dead body was found at Buldana and location of calls shows location of the appellant as well as the deceased at Beed. He submitted that the entire evidence creates a doubt about the prosecution case. Now, investigation is completed and chargesheet is filed. Other two accused, against whom similar allegations are made, are already released on bail. In view of the same, the appellant be released on bail.

5. Learned Additional Public Prosecutor for the State, opposed the application on ground that though the entire case is based on circumstantial evidence, chain of circumstances shows that the appellant was seen lastly with the deceased. The motive suggested by the prosecution is for stealing of goods, which was recovered at the instance of the co-accused. The CDRs collected during the investigation show location of the appellant nearby the place of the incident. The confessional statement of the appellant was recorded, who has shown the place where the dead body was burnt. The blood stained clothes, blood stained footwear, and mobile phone of the deceased were recovered from the truck.

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Thus, the prosecution established involvement of the appellant in the alleged offence.

6. Learned counsel for respondent No.2/complainant also took me through the entire material and submitted that the circumstantial evidence collected during the investigation sufficiently shows involvement of the appellant and, therefore, the application deserves to be rejected.

7. After hearing learned counsel appearing for respective parties and perusing investigating papers, it reveals that the deceased and the appellant left from Pune to Raipur on 10.3.2011. As per the First Information Report lodged by brother of the deceased, he communicated with the deceased on 17.3.2011 by making him a call at 11:00 am and subsequent to that, there was no communication. It is further alleged that on 18.3.2011 he made a phone call to the appellant, but the appellant told him that he got down at Jalna and the deceased proceeded to Pune. The truck was found at Bhagwangad on 21.3.2011. On search, mobile phone of the deceased, his blood stained footwear and blood stained clothes were found in the truck. Pancha of the truck shows

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blood stains in the truck. During the investigation, statements of various witnesses including Balkrushna Ingole and Shakeel Bagwan were recorded.

As per the statement of said Balkrushna, the appellant had been to his Dhaba situated at Mangrulpir, district Washim at about 10:30 pm. He saw the appellant driving the said truck. As far as the deceased is concerned, he stated that the appellant informed him that the deceased is sleeping in the truck as he is not well.

As per the statement of Shakeel, truck No.2374 passed from Dusrbeed Toll Naka on 18.3.2011 at about 5.03. am. The said truck was loaded with winding wire.

8. Besides these statements, the prosecution relied upon recovery of winding wire at the instance of the co-accused. The motive was suggested that the appellant and the other co-accused committed the murder of the deceased for committing the theft of the said winding wire. When the truck was seized, there were 2-3 bundles of the said wire and rest of bundles were recovered at the instance of the co-accused, who is already released on bail.

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9. The entire prosecution case is relied upon CDRs.

10. Mobile numbers of the complainant, deceased, and the accused are 9860134711, 8860133920, and 9011370957 respectively. As far as the call from the complainant to his brother deceased on 17.3.2011 is concerned, the same is not substantiated by CDRs.

11. The contention of the complainant that he made a call to the appellant is also not reflected in CDRs.

12. CDRs show that calls were made from the mobile phone of the deceased on 18.3.2011 till 5:49:36. As per the prosecution, dead body of the deceased was found in the vicinity of village Sindkhed Raja. Whereas, the truck was found at Bhagwangad approximately at 100 kilometers away from the place where the dead body was found. The location of the last call made from the mobile of the deceased shows that he was at Rajuri, district Beed. Whereas tower location of the accused was shown to be at Sambhaji Nagar, district Beed.

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13. It is well settled that when the case is rested on circumstantial evidence, the prosecution has to establish link between all circumstances pointing towards guilt of the accused.

14. Here, the entire prosecution case is rested on circumstance that the deceased and the appellant were together. There is a long gap between the incident of departure between them and finding of the dead body.

15. At this stage, CDRs raise a suspicion about occurrence of the incident. At this moment, evaluation of the evidence is not required, but considering facts that on the same set of evidence the co-accused are released on bail, ground of parity is available to the appellant. The identification of the dead body is also in question as the DNA Report does not support the same.

16. It is submitted by learned Additional Public Prosecutor for the State that the accused is arrested in the year 2022 i.e. after 11 years. If he is released on bail, he may be absconded and may not be available for trial. As far as absconding is concerned, neither Section 82 nor 83 of the Code of Criminal Procedure was taken nor

there was any effort to trace the appellant by the investigating agency is noticed.

17. In the light of the above, I pass following order:

ORDER

(1) The appeal is **allowed**.

(2) The order dated 3.2.2023 passed by learned Special Judge, Mehkar, district Buldana in Criminal Bail Application No.314/2022 is quashed and set aside.

(3) The appellant be released on bail, in connection with Crime No.22/2011 registered with respondent No.1/police station for offences punishable under Sections 302, 397, 411, and 201 read with 34 of the Indian Penal Code and 3(2)(v) of the SC and ST Act and 181 and 282 of the Motor Vehicles Act, on his executing a P.R.Bond in the sum of Rs.25000/- with one solvent surety of the like amount.

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(4) The appellant shall attend the Sindkhed Raja Police Station twice a month i.e. 1st and 15th of every month and the police station officer shall record his presence.

(5) The appellant shall attend the proceedings before the Sessions Court without seeking any exception, unless there are exceptional circumstances.

(6) The appellant shall not induce or threat or promise to any of witnesses connected with the crime in question and shall not tamper the prosecution evidence.

(7) Fees of learned counsel Shri R.S.Nayak appointed for respondent No.2/complainant are quantified and the same be paid to him as per Rules

The appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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