

2) Heard Mr. Mundargi, learned Senior Counsel for the Applicant and Ms. Hiwrale, learned APP for the Respondent-State.

3) The incident occurred between the night of 1st December, 2017 and 2nd December, 2017. The prosecution case is that, the villagers had attended an entertainment programme. At that time, the Applicant's group had behaved in an unruly manner and they had disturbed the programme. One Ashok Bhosale and his brother Prakash Bhosale objected to such behaviour and they complained to the village panchas. The Applicant's group got annoyed. In the night, all the Accused came on two wheelers carrying weapons like gupti and sticks. Prakash and Ashok were assaulted. Ashok was assaulted on his thigh and buttocks with sharp weapon, cutting his femoral vein causing his death. On these allegations, the F.I.R. was lodged by Ashok's father. The investigation was carried out and the Applicant was arrested on 4th December, 2017. During trial the prosecution relied mainly on the evidence of the eye witnesses i.e. PW1- Tanaji Bhosale, who was the father of the deceased, PW3-Prakash Bhosale, who was the brother of the deceased and who was also injured in the incident. The third eye witness was PW4-Dnyaneshwar Bhosale, who was one of the panchas in the village. They have consistently narrated the incident.

4) Learned Senior Counsel appearing for the Applicant submitted that, the investigation in this case was not honest. The incident had occurred in an entirely different manner. There is record to show that there

were seven motorcycles which were damaged. That was the beginning of the incident. The group of the deceased was the aggressors and the true story is not told by the eye witnesses, to the police or to the Court. He submitted that in any case, it cannot be held that, there was common object to commit murder of the deceased-Ashok. There was no recovery of any weapon from the Applicant. Even the clothes which he allegedly was wearing at the time of incident were not recovered at his instance. Seven sticks were recovered at the instance of the acquitted accused-Kolekar. Therefore, that circumstance and use of sticks cannot be held as an incriminating circumstance against the Applicant. The clothes were recovered at the instance of Accused No.4. He further submitted that, the Applicant was on bail during trial and there are no allegations that he has misused that liberty.

5) Learned APP opposed these submissions. According to her, the evidence of PW Nos.1, 3 and 4 was absolutely consistent. The Accused had come on the spot carrying weapons and therefore, the common object is seen with the description given by the eye witnesses. She submitted that, the deceased was assaulted with sharp weapons causing his death. Therefore, all the Accused had this common object of causing death.

6) We have considered these submissions. PW1-Tanaji Bhosale is the father of the deceased. He has described about the disturbance in the entertainment programme which was going on in the night. According to

him, the Applicant's group was causing disturbance. At that time, his both sons i.e. Ashok and Prakash told a panch committee that, the Applicant's group should be told to behave properly. After the entertainment programme was over, all the Accused came to that spot. This witness has named all the six Accused. He also had named the seventh acquitted Accused. He has further deposed that, the Accused Sandip and Vishal were carrying gupti, Sagar was having kukri, the others were having sticks. Specific role of assault with gupti is attributed to Sandip and Vishal. There is a general statement that the other Accused assaulted Ashok with sticks on his shoulder, back and other parts. His other son Prakash (PW3) was assaulted on his eye and back by the Accused-Kolekar. The Accused then left their two wheelers at that same spot and then ran away. Ashok was taken to the dispensary but he was declared dead.

7) PW3-Prakash Bhosale has substantially deposed in the same manner. There is hardly any discrepancy in the evidence given by the PW3.

8) PW4-Dnyaneshwar Bhosale was a panch of that committee. He has stated that Prakash and Ashok had complained about the Applicant's group. He has described the incident in the same manner as it is described by the other eye witnesses.

9) The postmortem notes show that the deceased had suffered three incised wounds. The two wounds were on the right thigh and one wound was on the right gluteal region. The cause of death was mentioned

as hemorrhagic shock due to multiple injuries. Medical certificate of the Prakash shows that, he had suffered three contusions, one abrasion and one incised wound near his eye. All the injuries were described as simple injuries. In this background, it is clear that the complaint was made by both Ashok and Prakash to the panch committee. Therefore, if there was a common object arising out of that grudge, then Prakash and Ashok both were the targets. However, it can be seen from the evidence that Prakash had suffered only simple injuries, whereas three incised wounds were caused to Ashok on the thigh and the surrounding region. It was not on the abdomen or thorax. Therefore, at this stage, we find substance in the submissions of the learned senior counsel that, the common object was not to commit murder of the deceased but to cause assault, which could have resulted in causing hurt or even grievous hurt but not the injury resulting in death. The Applicant is attributed the role of using a stick. There were contusions on the shoulder and the stick was not used to assault the deceased on any vital part. Therefore, for consideration of bail, at this stage, the submissions of the learned senior counsel for the Applicant can be accepted. There is no other corroborating piece of circumstance against the Applicant in the form of recovery of weapons or recovery of clothes.

10) The Applicant was on bail during trial. There are no allegations of misuse of that liberty. Therefore, we are inclined to allow this Application. Hence, the following order :-

::ORDER ::

- (i) During pendency and final disposal of Criminal Appeal No.126 of 2025, the Applicant is directed to be released on bail on his executing PR. Bond in the sum of Rs.25,000/-, with one or two sureties in the like amount.
- (ii) The Application is disposed of.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)