

(2022) 10 BOM CK 0114
In the Bombay High Court
Case No : Criminal Appeal No. 588 Of 2022

Sunil Yadavrao Dhage

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 20-10-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(2)(v), 3(2)(va)

Citation : (2022) 10 BOM CK 0114

Hon'ble Judges : Vinay Joshi, J;Vrushali V. Joshi, J

Bench : Division Bench

Advocate : A.A. Naik, M.H. Deshmukh

Final Decision : Allowed

Judgement

Vrushali V. Joshi , J

1. Being aggrieved by the rejection of application for grant of bail filed by the appellant, the appellant has filed this appeal. The appellant is arrested in Crime No.423/2021 for the offences punishable under Section 302 r/w 34 of the Indian Penal Code and Section 3(2)(v) and 3(2)(v-a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on the report lodged by the mother of deceased Udalat.

2. The appellant along with accused no.2 was arrested.

Initially the name of four persons was mentioned by the first informant who is mother of the deceased.

As there was monetary transaction between the family of deceased and the accused persons and the quarrels used to take place between the deceased and the accused persons, the first informant has mentioned the name of this appellant along with other accused persons in her first information report. In supplementary statement she has mentioned the names of only two accused

persons and the crime is registered against both of them.

3. It is the case of the prosecution that on 28.12.2021, Udalat had left the house at 10.30 a.m. but did not return. The first informant was under impression that her son had gone to Panhala village and had stayed there. On 30.12.2021 i.e. after two days, at about 12.00 noon, the informant came to know from the villagers that the body of her son had been found in the field of one Khushabu Zodape. The informant rushed to the field and saw that a nylon cord was found tied around the neck of the dead body and dead body was bloated. There were disputes between the accused persons and her son, due to which, she suspected that the accused persons had murdered her son. As the deceased was from scheduled caste community, crime under the atrocity act is also registered.

4. The counsel for the appellant has stated that the appellant is arrested on the basis of suspicion. \

There was nothing against the appellant apart from the statement of informant that she suspect that the murder has been committed by the appellant and accused no.2. The prosecution relied on the last seen theory. There is nothing in the charge-sheet to even remotely connect the present appellant with the alleged offence. Though one of the witness has stated that he saw both of them in field, but before discovery of the body, he has informed the other person that the accused had committed murder of the deceased. There is time gap between his statement about he saw him and the discovery of body. There is recovery of nylon cord. Nylon cord was found around the neck, but the recovery is shown at the hands of this accused and it was recovered from the neck of one bullock. The remaining part of the nylon cord was recovered as it was tied to the bullock. The learned counsel for the appellant has stated that the said cord is the remaining part of the cord used for strangulation is clearly inadmissible, which shows that investigation is carried out in a malafide manner. The nylon rope is an object of common use and is commonly used by the agriculturists. Thus, no evidentiary value attached to the said recovery.

5. He has further argued that the dead body was found in an open field from the location of the spot on which the body was found, it can be seen easily by the members of public passing by. The body was decomposed and in such circumstances it would have emitted foul smell, which have been noticeable to any person passing by. The alleged spot of incident is not a place in which an offence could have been committed without the accused persons having been seen. There were previous disputes between the informant and the present appellant. Two other accused persons who had been named in the first information report i.e. Kishor Dhage and Sandeep Dhage have not been named as accused in the final report which clearly shows that the appellant has been falsely implicated in the offence. The accused no.2 is already on bail. Only because there is statement and one of the witness has stated that he has seen the accused in company with the deceased, the bail of this applicant was rejected by the trial court. Hence prayed to allow this appeal by setting aside impugned

order.

6. Learned Additional Public Prosecutor opposed the application stating that there is ample evidence against the accused.

The last seen theory is confirmed through the witnesses, the recovery of rope is there, the motive was there to commit an offence as there was monetary transaction, the offence is of serious nature and hence prayed to reject the application.

7. Heard Shri A.A. Naik, learned counsel for appellant and Smt. M.H. Deshmukh, learned Additional Public Prosecutor for respondent no.1-State. Though respondent no.2 (informant) is served, she chooses to remain absent.

8. The appellant is arrested as the first informant suspected and mentioned his name. Initially she has suspected the four persons, thereafter, she had in her supplementary statement, stated about two accused persons only. The prosecution has relied on the last seen theory, but after going through the evidence, we come to the conclusion that the last seen theory will be considered at the time of trial. It appears that two different statements are made by said witness about informing the crime committed by accused even before the discovery of body. The rope which was recovered from this appellant is not the rope which was used in the crime. It was the remaining portion and it was tied in the neck of bullock which cannot be treated as concealed. Only because there was some monetary transaction and as the mother of deceased suspected that he might have committed the said offence, the offence is registered. Investigation is complete and chargesheet has been filed. The trial will take its own time for disposal. The prosecution is unable to point out any other material against the appellant- accused. Considering all above circumstances, we are of the opinion that this is a fit case to release the appellant on bail. Hence, the following order :

ORDER

(i) Criminal Appeal is allowed.

(ii) The impugned order dated 29.06.2022 passed by the trial Court is hereby quashed and set aside.

(iii) The appellant-Sunil Yadavrao Dhage be released on bail on his furnishing P.R. Bond in the sum of Rs.25,000/- with one surety in the like amount.

(iv) The appellant shall not tamper with the prosecution evidence in any manner.