

(2021) 04 BOM CK 0008

In the Bombay High Court

Case No : Criminal Writ Petition No. 512 Of 2021

Yash @ Gotya Pandurang Mane

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 05-04-2021

Acts Referred:

Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(1), 3(2)(v), 3(2)(va), 14(2)
Indian Penal Code, 1860 — Section 34, 302, 504, 506
Code Of Criminal Procedure, 1973 — Section 161
Evidence Act, 1872 — Section 27

Citation : (2021) 04 BOM CK 0008

Hon'ble Judges : S.S. Shinde, J; Manish Pitale, J

Bench : Division Bench

Advocate : Umesh Mankapure, Vaibhav R. Gaikwad, A.S. Pai, Janhavi S. Karnik

Final Decision : Dismissed

Judgement

S.S. Shinde, J

1. This appeal is filed under Section 14 (2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "Special Act") seeking quashing and setting aside the order dated 30.05.2020 passed by the learned Special Court, Satara, below Exhibit-8 and 146 in Special Case No. 39 of 2019.

2. It is the case of the appellant that C.R. No. 157 of 2019 registered with Shahupuri Police Station, Satara, for offences punishable under Section 302, 504, 506 read with 34 of IPC and Section 3(2)(v), 3(2) (va) of the Special Act. The appellant was arrested on 15.05.2019. Thereafter, the police completed the investigation and filed the chargesheet and the case is numbered as Special Case No. 39 of 2019 before the learned Special Court, Satara. The appellant had filed an application for bail below Exhibit-8. The learned Special Court, Satara, vide order dated 30.05.2020 rejected the bail application of the appellant.

3. Learned counsel appearing for the appellant submits that the FIR has been lodged with malafide intention by the complainant and same is false and concocted. The offence under Section 3(1) is not made out in the FIR, as allegation in the FIR does not fulfill the ingredients of the said provision, and there is no name of the appellant in the FIR. It is submitted that when the identification parade was conducted, the appellant was not identified by the eye witness.

4. It is further submitted that there is no evidence against the appellant. The appellant was arrested on 15.05.2019, and he is in jail for more than one year and as such further custody of the appellant is not warranted. It is submitted that the appellant is permanent resident of the address mentioned in the cause title and hence, there will be no question of flee away from the jurisdiction of the Court.

5. In addition to aforesaid grounds, learned counsel appearing for the appellant relied upon the High Power Committee decision to consider the cases of under trial/convicts for releasing them on temporary bail, in view of Covid-19 pandemic situation.

6. We have given careful consideration to the rival submission. With the able assistance of learned counsel appearing for the appellant and learned APP appearing for Respondent-State, we have perused the grounds taken in the appeal memo, so also annexures thereto and the chargesheet.

7. Upon careful perusal of the accompaniments of the chargesheet it is noticed that there are eye witnesses to the incident. One witness namely Sumeet Bansode in his supplementary statement stated that at the time of alleged incident the appellant was holding iron rod in his hand, and by said iron rod, he assaulted Vilas Bansode (deceased). Even other witnesses have stated that the appellant herein was holding iron rod in his hand. It appears that the present appellant with other accused has committed brutal murder. The victim was from the Scheduled Caste community, therefore, provisions of the Special Act are also attracted in the present case.

8. We are of the prima facie opinion that the prosecution agency has collected sufficient evidence against the appellant. It appears that the appellant did file the application below Exhibit-1 in Criminal Misc. Application No. 377 of 2019, which was rejected on 09.08.2019. In the said order the Trial Court observed that on careful reading of the statement of first informant and eye witnesses recorded by the police under Section 161 of the Code of Criminal Procedure, it appears that, the witnesses specifically stated that, they have seen the incident of assault. Accused No. 1 assaulted by means of wooden stick and caused injuries on the head and accused No. 2 assaulted the deceased by means of iron rod and caused head injury. Eye witnesses have identified the accused. It is also observed that the eye witnesses also identified by the accused before making the statement before the police, therefore, no question of test identification parade would arise.

The police arrested the accused No. 1 and recorded his memorandum under Section 27 of the Indian Evidence Act and weapons were discovered at the instance of accused No. 1 wherein the accused No. 1 has stated that, he along with his friend committed murder by means of iron rod and wooden stick. The said statement of accused No. 1 is not admissible in the evidence.

9. Therefore, in our opinion, no case is made out for allowing the present appeal. Hence, the appeal stands dismissed.

10. The concerned Trial Court is directed to expedite the trial and complete the same as expeditiously as possible, however, within eight months from receipt of copy of this judgment/order.

11. The observations made hereinabove are prima facie in nature and confined to the adjudication of the present appeal only. The Trial Court shall not get influenced by the said observations during the course of trial.