

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.144 OF 2023

Shivam S/o Narendra Tupe,
Age-26 years, Occu:Labour,
R/o-T.V. Centre, N-12, Hudco,
D-50/9, Aurangabad.

...APPELLANT

VERSUS

- 1) The State of Maharashtra,
Through P.P. Office,
High Court, Aurangabad,
- 2) Mrs. Aruna W/o Sheshrao Avhad,
Age-50 years, Occu:Labour,
R/o-Champa Chowk, Piwali Colony,
Aurangabad.

...RESPONDENTS

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Mr. Somnath G. Ladda Advocate for Appellant.
Mr. A.V. Deshmukh, A.P.P. for Respondent No.1 – State.
Mr. A.L. Kanade Advocate and Mr. S.S. Nade Advocate
for Respondent No.2.

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**CORAM: SMT. VIBHA KANKANWADI AND
Y.G. KHOBRAGADE, JJ.**

DATE : 31st MARCH, 2023

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Appeal has been filed by original accused No.6 in

Sessions Case No.317 of 2022 pending before the learned Special Judge under the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, Aurangabad, under Section 14-A of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act (for short "the Atrocities Act"), to challenge the order passed below Exhibit-24 by the learned Special Judge on 2nd February 2023 thereby rejecting his application for discharge.

2. Present appellant along with 10 other accused persons have been prosecuted in Crime No.195 of 2022 dated 21st April 2022 registered with CIDCO Police Station, Aurangabad for the offence punishable under Sections 302, 143, 147, 148, 120-B, 201, 114 read with Section 149 of the Indian Penal Code and under Section 3(2)(v) of the Atrocities Act. Application under Section 227 of the Code of Criminal Procedure was filed by the present appellant for discharge. It was contended that there is no material indicating involvement of the appellant as accused. At the most it would show his presence. The allegation against the appellant is that he was video shooting the alleged incident, that means, he was the mere spectator. He cannot be said to be the member of unlawful assembly. The statements of the

witnesses under Section 161 of the Code of Criminal Procedure would clarify that co-accused went to the house of deceased Manoj. But at that time the appellant had not accompanied them. Present appellant went to the spot after a while and then started video shooting the incident. Even if those witnesses would depose at verbatim as they had stated in their statement under Section 161 of the Code of Criminal Procedure, yet that cannot be the evidence against the appellant to hold him guilty of committing offence under Section 302 of the Indian Penal Code.

3. In view of Section 15-A of the Atrocities Act, giving right to the original informant to be heard, notice was issued and informant filed say at Exhibit-33. It was stated in the say that present appellant – original accused No.6 has played a role from start to end. He had video recorded the incident and made it viral all over Maharashtra. Appellant had instigated the other accused to assault the deceased. The confessional statement of co-accused discloses the role of the present appellant, therefore, when there is evidence against him, he cannot be discharged. The prosecution has also filed written say at Exhibit-32 stating that it is one of the heinous crimes that has been committed by

the accused persons. Deceased was the member of the scheduled caste. Video shooting of the brutal assault was made and it was made viral. It is also equally a heinous crime. When the involvement of the accused is clear, he cannot be discharged under Section 227 of the Code of Criminal Procedure.

4. Heard learned Advocate Mr. Ladda appearing for the appellant, learned APP Mr Deshmukh appearing for State and learned Advocate Mr. Kanade with learned Advocate Mr. Nade appearing for respondent No.2.

5. Learned Advocate Mr. Ladda appearing for the appellant has taken us through the charge-sheet. He has categorically stated that it is not disputed by accused No.6 at this stage that deceased was member of scheduled caste, however, when the offence was registered on 21st April 2022, the informant who is the mother of the deceased, had not disclosed her caste nor in any other way indicated that deceased was the member of scheduled caste. Later on, it was transpired that deceased was member of the scheduled caste and therefore, at that point of time the investigation was handed over to the Police Officer of the rank of Dy.S.P. The appellant is also not disputing at this

stage that the death of Manoj was homicidal in nature. The prosecution story revolves around the statement of witness Shubham Babasaheb Navture, which was recorded on 22nd April 2022. He has stated that he was knowing deceased Manoj and he was the person who suggested the employment for Manoj with one Meghawale Sabhagraha (Hall) as watchman. It appears that he also knows certain other accused persons. Around 3.00 p.m. of 20th April 2022 when he was at home, certain accused persons came to his house and accused Satish asked him that they were required to go to Manoj and he should show them the house of Manoj. Shubham asked him as to for what purpose, then it was told to him that Manoj has broke open the lock and has stolen the focus (focus lights). Shubham showed the house of Manoj to those five persons. Manoj was taken by accused No.1 Satish under the pretext that they are required to go to Hall. Shubham was taken to Meghawale Hall and he was clear in saying that they were the seven persons and he has not included the present appellant in the same. Shubham has then stated that he and one Anand Gaikwad were asked to bring Mirinda (soft drink), therefore they went and brought the same and returned to Hall. After they returned, they saw that Manoj was sitting on the ground and accused Sagar and Rohan (Sunny) and

their maternal uncle were forcibly asking him, as to how he has committed theft and where he has kept the stolen articles. Manoj was saying that he has not stolen anything. It is then stated by Shubham that the accused persons started assaulting Manoj. Shubham then says that at that time accused Sunny alias Rohan and present appellant arrived. Shubham has not stated that appellant had assaulted deceased Manoj but then he says that appellant was video graphing the entire incident. But the said statement would also show that Shubham himself had also made the video-graphy but he has not disclosed it to anybody. Thereafter when Manoj was shifted to hospital, he had shown the said video to one Salve and thereafter he had sent the said video to the Mobile of one Bawaskar. But then Shubham says that he was under fear that the video will go viral and therefore he has deleted it from his Mobile. If we consider the act of this witness as stated by him, he was the person who has taken the other accused to the house of deceased, thereupon the deceased was taken to the spot and then he had also video-graphed the entire incident. The role played by this witness is more than the role attributed to the appellant and therefore, on the basis of said piece of evidence it cannot be said that there is sufficient evidence collected by the investigating officer to frame a charge

against the present appellant. The learned trial Judge has failed to consider all these aspects.

6. Learned Advocate Mr. Ladda relied upon the decision in ***Bhawna Bai vs. Ghanshyam and others, (2020) 2 SCC 217,*** in which after referring to ***Amit Kapoor vs. Ramesh Chander, (2012) 9 SCC 460 and Diesh Tiwari vs. State of U.P., (2014) 13 SCC 137,*** the Hon'ble Supreme Court held that, for framing charge under Section 228 of the Code of Criminal Procedure the Judge is not required to record detailed reasons as to why such charge is framed. On perusal of record and hearing of parties, if the Judge is of opinion that there is sufficient ground for presuming that accused has committed offence triable by Court of Sessions, he shall frame the charge against accused for such offence. Therefore, what is required is to consider the record of the case and documents submitted therewith. Further reliance has been placed on the decision in ***State of Maharashtra and others vs. Som Nath Thapa and others (1996) 4 SCC 659,*** wherein after considering ratio in the catena of Judgments, it was observed that, if on the basis of material on record, a Court could come to the conclusion that commission of the offence is probable consequence, a case for

framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.

7. On the basis of these submissions and the ratio laid down in above said authorities, learned Advocate for the appellant prayed for setting aside the impugned order and prayed for discharge of the appellant.

8. Per contra, the learned APP as well as learned Advocate Mr. Kanade appearing for respondent No.2 strongly opposed the Appeal and submitted that the trial Judge was perfectly legal in rejecting the said application under Section 227 of the Code of Criminal Procedure. It was submitted on behalf of both of them that there is evidence on record in the form of statement of the witness Shubham Babahsaheb Navture and also the photographs which were taken at the spot. It shows presence of the

appellant. His Mobile has been seized and sent for forensic analysis. The report of the same is awaited. Before that appellant cannot seek discharge.

9. At the outset, it is to be noted that respondent No.2 is original informant – mother of the deceased. She has lodged report on 21st April 2022 and at that time the video in respect of accused Nos.1 to 5 assaulting the deceased was viral. Now it is required to be considered, as to whether it is the video that was video-graphed by the present appellant or not. That can be revealed from the report of Forensic Lab. Witness Shubham Navture in his statement under Section 161 of the Code of Criminal Procedure has stated about the fact that the accused-appellant was present at the spot and he had video-graphed the entire incident. The first and foremost fact that is required to be noted is that for what purpose the appellant was present at the spot and who had called him, would also be a point required to be considered. Whether the appellant had the knowledge about the caste of the deceased, would be the endeavour for the prosecution to prove. If appellant would have started video-graphing the incident immediately after the arrival, then whether it can be taken as his knowledge or information in advance,

would also be a point for consideration, for which evidence is required and that can be gathered during the course of the trial. Much has been said about the role of witness Shubham Navture. He has also video-graphed the incident and had sent the video to one of his friend. Whether his role is similar to the present appellant or more than that as he had taken the other accused persons to the house of the deceased, would be considered by the trial Court and if at all he needs to be added as accused, then certainly provisions of Section 319 of the Code of Criminal Procedure can be invoked.

10. As observed in ***State of Maharashtra and others vs. Som Nath Thapa and others (1996) 4 SCC 659*** (supra), at this stage we will have to consider the evidence collected in the charge-sheet as true, then we will have to observe that the appellant might be knowing the caste of the deceased. The persons from the upper caste assaulting member of scheduled caste to be video-graphed and then making it viral, would certainly amount to an offence. Whether it comes under Section 3(2)(v) of the Atrocities Act or some other sections not restricted to the Indian Penal Code or Atrocities Act or the Information Technology Act, would be considered by the concerned trial

Court at the stage of Section 228 of the Code of Criminal Procedure, but certainly there appears to be evidence against the present appellant, which is more than *prima facie* and may be sufficient to frame the charge. Hence we do not find any merit in the present Appeal and it deserves to be dismissed.

11. Accordingly, the Appeal stands dismissed.

[Y.G. KHOBRADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE