

MHBU110005942024



ORDER BELOW EXH. 1 IN SESSIONS CASE NO. 21 OF 2024

1. On framing of charge, I have heard learned Spl. PP Shri. Bapat for the prosecution, learned Advocate Shri. P. C. Kulkarni, advocate for accused Nos. 1 & 2; and learned Shri. T. M. Hussain, Advocate for accused No.3. I have also heard learned Shri. Badgular, advocate for the brother of the deceased. I have gone through the charge-sheet and documents therewith; and also written notes of arguments filed by accused No. 3 at Exh. 59 and 62.

2. It may be noted that learned advocates for accused Nos. 1 and 3 has also argued the bail application at Exh. 26 and 37. They submitted that the same argument shall be treated in hearing before charge.

3. Learned Spl. PP Shri. Bapat has referred the charge-sheet and documents therewith. He submitted that though there is no eye witness and the case is based upon the circumstantial evidence, there

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is sufficient material in support of each circumstance and those circumstances forms unbroken chain of events showing that there are reasonable grounds for proceeding against each accused.

4. On the other hand, learned advocates for the accused refuted the claim and they submitted that the case is based on assumptions and presumptions, therefore no offense is made out against any accused. They orally prayed for discharge.

5. First informant Sandip Tayade is the owner of land in block No. 340 of village Malegaon Gond. According to him on 03.03.2024, he found a dead body on the boundary of his land with multiple injuries on head, face and other parts of the body. As apparently, it was the case of murder, the Police Station, Nandura registered offence under Section 302 of IPC vide Crime No. 162 of 2024 against unknown person. The Police visited the spot, prepared spot panchanama and collected necessary samples from the spot. The inquest panchanama was carried. As it was dead body of unknown person, it was kept in mortuary for being identified. During the investigation on 04.03.2024 Abhishek Ghope identified the dead body as that of his brother Harshal Ghope. The postmortem was conducted on 05.03.3024 and biological samples of the body were taken out and they are sent to the Forensic Laboratory along with the clothes of the deceased. It may be noted this part of the investigation is not

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challenged by any accused during the hearing. On the basis of this material, considering the antemortem multiple injuries on the dead body and the opinion expressed by the medical officer, it can be safely said that there is sufficient material to show that it is case of murder/culpable homicide.

6. On 07.03.2024, all three accused came to be arrested. On the same day, the police seized black coloured Indica car bearing No. MH-06-AW-0548. During the search of the car one blood-stained handkerchief, one blood-stained iron ring spanner, one blood-stained spanner, one blood-stained stone weighing 5 to 6 KG, one blood-stained piece of stone, the soil found in the car, the blood found on the car seat and the car were seized with the help of Asstt. Forensic Analyser (Asstt.) in presence of two panchas and search and seizure panchanama was prepared. The articles were sent to the Forensic Laboratory.

7. The investigation officer also recovered CCTV footage recorded in almost 8 cameras installed in Shegaon Town by the Municipal Council. With the help of expert CCTV footage was taken out and hash value panchanama was also prepared. The CCTV footage indicated that during the intervening night between 02.03.2024 to 03.03.2024 at around 2.20 a.m. to 2.30 a.m., the deceased was seen sitting on driver seat of one autho rickshaw and he was talking with

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his friend Nitin @ Golu Gaikwad. Black Indica car was seen chasing the auto rickshaw. In another CCTV footage, at around 2.34 a.m. to 2.50 a.m., accused No. 1 Adinath @ Akash was seen while alighting from black India car and he was forcing the deceased to sit inside the car.

8. After arrest, the investigation officer got medical examination of all three accused performed through medical officer. Biological samples of the accused came to be collected on 07.03.2024 itself. It appears that during the investigation, on 08.03.2024, the accused had shown the how they had been to spot and also shown the spot. At the instance of accused Rupesh Kurwade, the shirt, jeans pant, one mobile phone along with two sim cards bearing No. 9168329294 and 8265000372 were discovered at his house. At the instance of accused Akash Rawankar, one mobile phone along with two sim cards bearing No. 7020915610 and 9307954655 were seized. At his instance, the ash of burnt clothes was seized from the back side of his house and from the front side of the primary school. All the seized muddamal came to be sent to Forensic Laboratory.

9. The investigation officer also recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure. Witness Nitin @ Golu stated the relations between him and the deceased and the relation between the accused and the deceased. He also stated what was happened from the evening of 02.03.2024 till

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the deceased alighted from rickshaw at Gandhi Chouk. His statement shows deceased told him that the accused told that he would kill him (Nitin @ Golu) and the accused got angry over the same. The statements of Mohd. Javed Mohd. Nisar, Nilesh Gavhale, Pradip @ Barkya Samdur and Sk. Javed Sk. Hasan are more or less on the same line. There are also the statements of the relatives of the accused that the mobile phones were being used by the respective accused at whose instances, they were seized. The relatives of the deceased stated in their respective statements that the accused killed the deceased due to previous quarrels.

10. It may be noted the CDRs of the mobile phones are also collected by the investigation officer. After filing of the charge-sheet, the CDRs are produced along with the certificate under Section 65B(4) of the Indian Evidence Act.

11. Learned advocates for the accused rightly submitted the FIR does not state name of any accused and the accused were arrested on suspicion. They also submitted that the case is only based on the circumstantial evidence. They further submitted that prosecution has not stated specific role of each accused. They further submitted that there is no witness to state that the deceased and the accused were seen together. They further submitted that the Indica car was not seized from the accused and it cannot be said that it is discovered

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under Section 27 of the Indian Evidence Act. They further submitted that the case cannot be made out only on the basis of call details record. They further submitted that CCTV footage is not primary evidence, but it is secondary evidence. They also submitted that there is nothing against any accused in CCTV footage.

12. Learned Advocates for the accused rightly relied on the decision of the Hon'ble Supreme Court in **Kashi Ram vs. State of Rajasthan [(2006 12 SCC 254)]**; and the decisions of the Hon'ble Bombay High court in **Shaikh Kedar @ Guddu Shaikh vs. State of Maharashtra [2022 SCC OnLine Bom 1833]** and **Digamber Bhimshankar Kanade vs. State of Maharashtra [2021 SCC OnLine Bom 2540]** to submit that unless the chain of circumstantial evidence is complete and leads only to the guilt of accused, benefit must go in favour of the accused. Considering the circumstances shown in the present case, if they proved by the prosecution, they would complete the chain and would lead only to the guilt of accused. Moreover, at this stage framing of charge, it is sufficient to show that there is strong suspicion against the accused.

13. It is not challenged by any accused that the deceased was belonging to Scheduled Caste and they are not SC or ST. It is also not challenged that they did not know that the deceased was belonging to SC.

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14. Learned advocates for the accused also tried to scrutinize the statements of the witnesses recorded under Section 161 of the Cr.P.C., but such close scrutiny is not expected at this stage.

15. In view of the above discussion, upon hearing learned Spl.PP for the prosecution and the defence advocates; and upon going through the charge-sheet and documents therewith I am of the opinion that there are sufficient grounds for proceeding against the accused for the offence punishable under Sections 302, 201, 364 r/w 34 and 120B of the Indian Penal Code, 1860 and Sections 3(2)(v) and 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. Accordingly, I passed the following order : -

ORDER

The charge shall be framed against all accused for the offence punishable under Sections 302, 201, 364 r/w 34 and 120B of the Indian Penal Code, 1860 and Sections 3(2)(v) and 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

Malkapur, Dist. Buldhana.

Date: 25.08.2025.

(Purushottam B. Jadhav)
Spl.Judge u/SC&ST(POA)Act &
Additional Session Judge Malkapur.

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Certificate

I affirm that the contents of this P.D.F. file order are same word for word as per original order.

Name of Steno : Mrs.Nishat Anjum Mohd.Rafique.

Name of Court : Special Judge, Malkapur, Dist. Buldana.