

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

Criminal Application No. 4660 of 2016

District : Beed

1. Shivaji s/o. Kedarnath Pingale,
Age : 24 years,
Occupation : Agriculture,
R/o. Thadi Kavadgaon,
Taluka : Majalgaon,
District : Beed.

2. Kedarnath s/o. Devrao Pingale,
Age : 45 years,
Occupation : Agriculture,
R/o. Thadi Kavadgaon,
Taluka : Majalgaon,
District : Beed.

.. Applicants.

versus

The State of Maharashtra,
Through Police Station,
Majalgaon (Rural),
Taluka : Majalgaon,
District : Beed.

.. Respondent.

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Mr. S.J. Salunke, Advocate, for the applicant.

*Mr. A.S. Shinde, Addl. Public Prosecutor, for
the respondent.*

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CORAM : A.M. BADAR, J.

DATE : 24TH AUGUST 2016

ORAL ORDER:

Applicants / accused in Crime No. 114/2016, for offences punishable under Sections 302, 307, 498A, 323, 504, read with Section 34 of the Indian Penal Code, registered with Majalgaon (Rural) Police Station, District Beed, are praying for releasing them on bail.

2. Heard the learned Counsel for the applicant / accused. He argued that charge-sheet reflects two versions of the prosecution case and statements of parents of the deceased consistently shows that the deceased who is second wife of applicant no.1 Shivaji Pingale was not willing to cohabit with him.

3. As against this, the learned Addl. Public Prosecutor opposed the application by contending that the crime in question is serious and deceased Shymal died within about 9 months of her marriage with applicant no.1. Her two dying declarations which are consistent are showing commission of her murder by applicants i.e. husband and father-in-law of deceased Shymal.

4. Perused the charge-sheet. The crime in question was registered on the basis of first officially recorded dying declaration of Shymal

Shivaji Pingale. Incident of sustaining burns by Shymal took place at her matrimonial house on 23.05.2016. She succumbed to the burn injuries on 27.05.2016.

5. In her first officially recorded dying declaration by a Police personnel on 24.05.2016 at about 04.45 a.m., deceased Shymal had declared that at about 04.00 p.m. of 23.05.2016, her father-in-law i.e. applicant no.2 Kedarnath asked her to cook food and when she replied that it will be too early, he slapped her. Thereafter her husband Shivaji also abused and assaulted her. Then, her father-in-law Kedarnath (Applicant no.2) poured kerosene on her person and her husband Shivaji (Applicant no.1) ignited her by means of a match-stick. The declarant further disclosed that her mother-in-law Lankabai and employee of Pandurang doused the fire by pouring water on her person.

6. Second official dying declaration of Shymal came to be recorded at 08.00 a.m. of 24.05.2016 by the Executive Magistrate, wherein deceased Shymal had disclosed the incident in the similar manner.

7. Record as such shows that both dying declarations of deceased Shymal are consistent in material particulars. However, it is well settled that there is no initial presumption that the dying

declaration contains truth and nothing but the truth. Such declaration is generally not made in presence of the accused nor the accused has an opportunity to cross-examine the declarant. As such, unless and until it is shown that the dying declaration is truthful, no reliance can be placed on such dying declaration. Some corroboration is required for acting upon the dying declaration.

8. In the case in hand, deceased Shymal sustained burn injuries in her matrimonial house and died within 9 months after her marriage. She is second wife of applicant no.1 Shivaji. In this context, statements of mother and father of deceased Shymal becomes much relevant. Statement of her father Rajebhau Parekar recorded on 28.05.2016 goes to show that when both applicants and Rajebhau were in the field of Shivaji and Kedarnath, they heard shouts of Shymal and therefore they rushed to see that Shymal was burning and Lankabai was extinguishing the fire by putting a quilt on her person. Rajebhau - father of the deceased disclosed that his daughter Shymal told him that she suffered accidental burns. Then supplementary statements of Rajebhau and Godabai - mother of the deceased were recorded on 01.06.2016. Both parents of deceased Shymal are stating that on the day of the incident, they were at the matrimonial house of their daughter Shymal. They consistently disclosed that at the time

of incident, they had been to the house of Pandurang Chaure for having tea and at that place, applicant no.1 Shivaji had informed telephonically, that Shymal sustained burn injuries.

9. Statements of parental relatives of Shymal shows that she was not ready to cohabit with applicant no.1 Shivaji. She had spent majority of time after marriage at her parental house and she reached to her matrimonial house on 20.05.2016 with parents. In that night itself, deceased Shymal left company of her husband Shivaji and slept with her mother.

10. These facts reflected in the charge-sheet are disclosing two versions regarding the same incident. One is indicating sustaining self-inflicted burns by Shymal. It is well settled that even while considering the matter at the stage of bail, two versions of prosecution case can be examined and the benefit thereof goes in favour of the accused.

11. It is worthwhile that none of the parental relatives of deceased Shymal has made whisper about any illtreatment to her by her in-laws and husband.

12. In this view of the matter, further pre-trial detention of applicants is not warranted.

Hence, I pass the following order :-

(a) The Application is allowed.

(b) Applicants / accused, in the above crime, be released on bail on their executing P.R. Bond in the sum of Rs. 15,000/- each and one or more solvent sureties of the like amount by each of them.

(c) Applicants shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case so as to dissuade them from disclosing such facts either to the Court or to any police officer.

(d) Applicants shall not temper with the prosecution evidence in any manner and shall cooperate the learned trial Judge in expeditious disposal of the trial.

(e) Applicants shall not repeat commission of similar type of offences in future.

13. The Application stands disposed of in the aforesaid terms.

(A.M. BADAR)
JUDGE

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