

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1522 OF 2016
IN
CRIMINAL APPEAL NO.794 OF 2014

Nurul Shamsul Haq Shah ... Applicant
Vs.
The State of Maharashtra,
Through Vile Parle Police Station, Mumbai ... Respondent

Mr. Y.M. Choudhary for the Applicant.
Mrs. A.S. Pai, A.P.P., for the Respondent-State.

CORAM : RANJIT MORE &
DR. SHALINI PHANSALKAR-JOSHI, J.J.
DATE : 8TH FEBRUARY 2017.

P.C. :

1. Heard.
2. This Criminal Application is taken out for bail. By the Judgment impugned in Criminal Appeal No.794 of 2014, the Applicant, along with other two co-accused, is convicted for the offence punishable under Section 302 r/w. 34 of IPC and sentenced to suffer life imprisonment.

3. Prosecution's case, in short, is that, Deceased Mohd. Yusuf Mohd. Shahid Shaikh, PW-1 Mohammad Gufran Dawood Shaikh, PW-3 Mohammad Moosa Shaikh and PW-6 Mohammad Akram Jamir Shaikh, were known to the Applicant, who is original Accused No.2, and other co-accused. On the date of the incident, there were altercations between the Deceased, present Applicant and original Accused No.1-Imtiyaz Mohd. Shahid Shaikh. During altercations, Accused No.1-Imtiyaz and present Applicant-Nurul caught hold the Deceased and Accused No.3-Mohd. Sahil Rabban Khan stabbed the Deceased.

4. The prosecution has relied upon the two Dying Declarations given by the Deceased and the evidence of three eye-witnesses to the incident, namely, PW-1 Mohammad Gufran Dawood Shaikh, PW-3 Mohammad Moosa Shaikh and PW-6 Mohammad Akram Jamir Shaikh.

5. Mr. Choudhary, learned counsel for the Applicant, has invited our attention to the history given by the Deceased to PW-8

Dr. Imran Gulab Mansoori and submits that the Deceased was brought by PW-1 Mohammad Gufran Dawood Shaikh, PW-3 Mohammad Moosa Shaikh and PW-6 Mohammad Akram Jamir Shaikh, to the hospital. They have given history of the assault by unknown persons and by unknown weapon. Mr. Choudhary also invited our attention to the deposition of PW-8 Dr. Imran Mansoori and pointed out that the Deceased was taken to the Operation Theatre at about 12:30 am in the night and he was operated for about four hours and, therefore, the submission that the Dying Declarations of the Deceased, alleged to have taken at 12 pm, cannot have much substance.

6. Having considered the diversification, in fact, the Dying Declarations of the deceased are consistent with the evidence of the eye-witnesses, namely, PW-1 Mohammad Gufran Dawood Shaikh, PW-3 Mohammad Moosa Shaikh and PW-6 Mohammad Akram Jamir Shaikh. During the trial, Applicant was in custody. The value of the Dying Declarations of the Deceased, taken immediately prior to shifting him to the Operation Theatre, cannot be considered at this stage. What is the effect of the history given

by the Deceased to the Doctor *vis-a-vis* direct evidence of the eye-witnesses, will have to be considered at the time of final hearing of the Appeal.

7. By taking overall view of the matter and in the facts and circumstances of the present case, we are not inclined to entertain this Criminal Application and the same, accordingly, stands dismissed.

8. However, hearing of Criminal Appeal No.794 of 2014 is expedited.

9. It is submitted by learned counsel for the Applicant that the Applicant is in custody since last more than six years. We, therefore, direct the Registry to place Criminal Appeal No.794 of 2014 on the 'Final Hearing Board' in the week commencing from 12th June 2017.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]