

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

**CRIMINAL APPLICATION NO. 865 OF 2020
IN
CRIMINAL APPEAL NO. 60 OF 2020**

1. Shriram Bhau Pandit,
Age : 57 years, Occu. Agri.,
2. Prashant Shriram Pandit,
Age : 25 years, Occu. Agri.,
3. Nitin Shriram Pandit,
Age : 40 years, Occu. Agri.,
4. Devidas Shankar Pandit,
Age : 38 years, Occu. Agri.,

All R/o. Shirapur, Tq. Parner,
Dist. Ahmednagar.

...Applicants

Versus

1. The State of Maharashtra
2. Priyanka Rajesh Shishupal,
Age : 30 years, Occu. Household,
R/o. Shirapur, Tq. Parner,
Dist. Ahmednagar.

...Respondents

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Shri. Satej S. Jadhav, Advocate for the applicants
Shri. R. V. Dasalkar, APP for respondent no.1/State
Shri. A. B. Girase, Advocate (appointed) for respondent No. 2

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**CORAM : RAVINDRA V. GHUGE
AND
B. U. DEBADWAR, JJ.**

DATE : 25th November, 2020

PER COURT : -

1. By this application, the four applicants, who have been convicted by the Judgment & Order dated 06.12.2019 in Sessions Case No. 175 of 2017, delivered by the learned Addl. Sessions Judge, Ahmednagar, pray for suspension of the substantive sentence of life imprisonment and for bail, during the pendency and hearing of the Criminal Appeal.

2. We have heard the learned Advocates for the four convicts namely Shriram Bhau Pandit, aged about 60 years, Prashant Shriram Pandit, aged about 26 years, Nitin Shriram Pandit, aged about 41 years and Devidas Shankar Pandit, aged about 39 years and on behalf of respondent no. 2, who is the widow of deceased Rajesh Shishupal. We have heard the learned APP on behalf of the State. We have also gone through Criminal Appeal No. 66 of 2020 filed by Akshay Shriram Pandit, aged about 24 years, Mandabai Shriram Pandit, aged about 50 years, Shankar Bhau Pandit, aged about 80 years and Savita Nitin Pandit, aged about 32 years.

3. Shriram, Prashant, Nitin and Devidas have been held guilty for having committed an offence punishable u/s 302 of the Indian Penal Code (hereinafter referred to as 'IPC') and hence, have

been sentenced to suffer imprisonment for life and pay fine of Rs. 50,000/-, each. Akshay, Mandabai, Shankar and Savita have been convicted for offences punishable u/s 323, 504 and 506 of the IPC and have been sentenced to suffer imprisonment for one year under each offence and pay fine of Rs. 1000/- each, for each offence. All these sentences are to run concurrently.

4. The record and proceedings before us indicate that a canal was passing from the lands of the Pandit family and the Shishupal family. Though both the families were benefited by the water flowing from the canal which was used for agricultural activities in their respective lands, the deceased Rajesh had created one *bandhara* connecting the said canal to his agricultural land. This was the nucleus of the dispute between the parties. The record also reveals that, on 06.03.2017, Rajesh had brought a JCB machine for repairing the *bandhara* and it was the allegation of Rajesh Shishupal and his family that the *bandhara* was damaged by Shriram Pandit and his family. The members of the Pandit family objected to the use of JCB machine for the repairing of the *bandhara*. Rajesh had tried to calm down the persons involved in the dispute. It is undisputed that the Shishupal and the Pandit families are closely related.

5. It has been proved before the trial Court that, on 07.03.2017, at about 06:30 p.m., the informant, respondent no. 2 - Priyanka, widow of deceased Rajesh along with the deceased and two other persons had been to the *bandhara*. At that time, the ten accused arrived with sticks, wooden planks and stones. This resulted in a free-for-all fight between the two families. In that melee, deceased Rajesh fell down having suffered a stick blow. It is alleged that, Nitin Pandit had suffered an injury on his forehead, proved to have been caused by a sword, at about 6.00 pm when he was attacked near his residence by the members of the Shishupal family. It was established that, Nitin used a wooden plank to strike a blow to Rajesh which hit him on the head and he had fallen unconscious. After having taken him to the hospital for treatment, Rajesh was referred for a C.T. Scan and an M.R.I. at Dr. Dathe's hospital at Narayangaon. As Rajesh had internal injuries on his head, he was referred to another hospital operated by Dr. Dhande where he was declared dead on arrival.

6. Having considered the strenuous submissions of the learned Advocates for the respective sides and the learned Prosecutor and having gone through the record and proceedings before us, it is apparent that the Pandit family had used sticks and wooden planks

for attacking the Shishupal family. The members of the Shishupal family were equally equipped with weapons. A sword had caused an incise injury on the forehead of Nitin, at about 6.00 pm. Nitin is said to have reacted violently with the use of a wooden plank which hit Rajesh Shishupal on his head resulting in his death.

7. It is undisputed that all the members of the Shishupal family have been acquitted in Crime No. I-44/2017 tried in Sessions Case No. 85 of 2018, vide Judgment & Order of the learned Additional Sessions Judge, Ahmednagar, dated 06.12.2019. An FIR was registered at the behest of the members of Pandit family against the members of the Shishupal family alleging that they had arrived with swords and deadly weapons on 07.03.2017 at about 06:00 pm near the residence of the Pandit family and had assaulted a few members. Nitin had suffered a sword injury in the said attack. Nitin and other family members had chased the attacking party and while crossing the river, Rajesh Shishupal had slipped and fallen down thereby suffering a head injury since his head dashed against a large stone.

8. It is quite evident from the record that Rajesh suffered death on account of the following injuries : -

1. Acute extra-dural hematoma in the left temporal, left fronto-parietal region. There is midline shift to the right side for a distance of 16 mm from middle. Subfalcine and descending transtentorial herniation is seen.
2. Diffuse cerebral edema.
3. Un-displaced fracture of the left temporo-parietal bones and left petrous temporal bone is seen with overlying soft tissue scalp hematoma and there was no evidence of fracture.

9. The Deceased's wife, the informant, had suffered injuries as under : -

1. Generalised cerebral edema.
2. No obvious evidence of any fracture.

10. It is quite apparent that Rajesh did not suffer any incise injury/external injury and his skull bone was intact having not suffered any fracture. He succumbed due to internal injuries which are as follows:

1. Sub dural haematoma under the scalp.
2. Sub dural haematoma under the skull.
3. In the left cerebral hemisphere of brain there was blood clot ad-measuring 400 to 600 cc blood was found.
4. Blood clot present in left frontal, parital and temporal region.
5. Rest of the organs were found normal.

The witness opined the cause of death as intra-cerebral hemorrhage due to the head injury, due to unnatural cause.

11. Having considered the evidence before us and the Judgment impugned in this appeal, we are of the *prima-facie* view

that the act on the part of Nitin, Shriram, Prashant and Devidas resulting in the death of Rajesh Shishupal, may not have been a result of their specific intention or object. Considering the seriousness of the attack and the use of sticks and wooden planks, the contention of the learned Advocate for these accused is that there was no intention to kill Rajesh and the case would therefore fall under Part-I or Part-II of Section 304 of the IPC.

12. Section 304 of the IPC reads as under : -

S. 304 : - Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder shall be punished with 1[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

13. Per contra, the use of a sword which caused an incise injury on the forehead of Nitin, allegedly at 6.00 pm, near his residence, can be said to be serious aggression since the use of the sword would by itself indicate that the person wielding the sword intended to use it to cause maximum injury and the fact that the sword was used on a vital part like a forehead of the Nitin. No doubt, the accused in this act, have been acquitted of the said charge.

14. We find that, an arguable case appears to have been made out by the four appellants in Criminal Appeal No. 60 of 2020 that their case would not be covered by Section 302 and would fall under either of the parts of Section 304 of the IPC. It is undisputed that these four appellants were on bail during trial and they have not misused or violated any of the bail conditions. They are now lodged in Jail on account of the Judgment dated 06.12.2019 impugned in the appeal.

15. We also find that, Section 34 of the IPC was not applied as against these four appellants along with the other three accused whose sentence of simple imprisonment for one year has been suspended by the order of the learned Single Judge dated 10.02.2020 in Criminal Application No. 232 of 2020 in Criminal Appeal No. 66 of 2020. It also cannot be overlooked that Section 149 of the IPC may not be attracted in a situation involving family members/blood relatives living under the same roof in having attacked another group of family members.

16. In view of the above, this application is allowed. The substantive sentence of life imprisonment handed down to these four

applicants vide Judgment dated 06.12.2019 in Sessions Case No. 175 of 2017, shall stand suspended and the applicants shall be released on bail on the following conditions : -

- (i) Each of these four applicants namely Shriram Bhau Pandit, Prashant Shriram Pandit, Nitin Shriram Pandit and Devidas Shankar Pandit, shall tender a P.R. Bond of Rs. 25,000/- (Rupees Twenty Five Thousand) and a solvent surety of the like amount.
- (ii) Each of these applicants shall surrender their Passport, if any, to the SHO.
- (iii) Each of these applicants shall mark his attendance before the Parner Police Station on the 7th and the 21st day of each month in between 10:00 am to 02:00 pm, until the appeals before this Court are decided.
- (iv) Each of these applicants shall tender a self-attested copies of the Voter ID Card issued by the Election Commission of India and Aadhaar Card, before the said Police Station.
- (v) Their attendance shall be marked in the Station Diary by the Station House Officer and their signatures would be obtained to evidence their attendance.
- (vi) These four accused shall not attempt to meet or confront any member of the family of the deceased and shall not indulge in any crime.

17. Since Shri. A. B. Girase, learned Advocate was appointed by the Court to represent respondent no.2-informant, his fees are quantified at Rs. 7,500/- (Rupees Seven Thousand Five Hundred) to be paid by the High Court Legal Aid Services, Sub-Committee, Aurangabad. Shri. A. B. Girase graciously submits that, the said amount may be donated for the treatment of Covid-19 patients. As such, the High Court Legal Aid Services, Sub-Committee, Aurangabad, shall transfer an amount of Rs. 7,500/- to the District Collector, Aurangabad for being utilized for the treatment of Covid-19 patients.

[B. U. DEBADWAR]
JUDGE

[RAVINDRA V. GHUGE]
JUDGE