

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

9 CRIMINAL APPLICATION NO. 1807 OF 2021
IN CRIMINAL APEAL NO. 71 OF 2020

SHASHIKANT @ PAPPU SHIVANAND ZURALE
VERSUS
THE STATE OF MAHARASHTRA

.....
Advocate for Applicants : Mr. P. P. More
APP for Respondent-State : Mr. R. D. Sanap

.....

CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.
DATED : 20th SEPTEMBER, 2021

PER COURT:-

1. Pending Criminal Appeal No. 71 of 2020 preferred against the judgment and order of conviction dated 06.10.2018 passed by the Additional Sessions Judge, Osmanabad in Sessions Case No. 30 of 2017, convicting thereby the applicant-accused for the offence punishable under Section 302 of IPC and sentencing to undergo rigorous imprisonment for life and pay fine of Rs.2,000/-, in default to undergo rigorous imprisonment for one year, the applicant-accused has preferred this application for suspension of the substantive part of the sentence and for bail.

2. Learned counsel for the applicant-accused submits that the prosecution case rests upon circumstantial evidence and there is no direct evidence about the actual commission of crime. Learned counsel submits that the judgment and order of conviction is solely based on conjectures, assumptions and presumptions. Learned counsel submits that there is no clear evidence about homicidal death. The external injuries as noted in the postmortem report are simple in nature and none of the injuries as noted in column no.17 is sufficient in the ordinary course of nature to cause death. Learned counsel submits that the medical officer, who has conducted the postmortem examination, has given the opinion that death of deceased Anil was due to threats of injuries and shock.

3. Learned counsel for the applicant-accused submits that on 23.01.2017, deceased Anil left the house at about 3.00 p.m. to 3.30 p.m. and thereafter he was not found. It further appears from the prosecution evidence that PW-1 and others had started taking search of the deceased from 10.00 p.m. to 10.30 p.m. and onwards. Learned counsel submits that as per the opinion given by the medical officer, who has conducted the postmortem

examination, the death might have occurred within 6 to 8 hours after taking the last meal. Learned counsel submits that prosecution witnesses 1, 5 and 6 have deposed that when they reached the dilapidated house, which is situated behind the house of the deceased, they found the applicant-accused sitting next to the deceased and on seeing them, he ran away from the spot. Learned counsel submits that after taking the last meal, if the deceased died within 6 to 8 hours, then the time of death is around 9.00 p.m. to 9.30 p.m. Prosecution witnesses 1, 5 and 6 went to the spot at 11.00 p.m. and onwards. Learned counsel submits that in all probability, it is very unlikely on the part of the applicant-accused to remain near the deceased waiting for the arrival of these witnesses. Learned counsel submits that the prosecution has failed to prove the case beyond reasonable doubt. The applicant-accused may be released on bail.

4. Learned APP has strongly resisted the application on the ground that the evidence of prosecution witnesses 1, 5 and 6 is reliable, trustworthy and consistent. They had started taking search of deceased who was found missing and when they went to the dilapidated house situated behind the house of the deceased, they

noticed the applicant-accused sitting next to the deceased in the portion of the said dilapidated house. Learned APP submits that the applicant-accused was lastly seen near the deceased for which no explanation has been tendered. Learned APP submits that the injuries are simple in nature. The trial court has justified the cause of death by quoting the extract from the Medical Jurisprudence. The death due to shock may occur for many reasons irrespective of the injuries sustained by the deceased. Learned APP submits that the applicant-accused had strained relations with his wife Sushma, who happened to be the cousin of PW-1. Deceased Anil was intervening in the said matrimonial dispute and he was obviously backing the wife of the applicant-accused. Consequently, the applicant-accused had committed murder of the deceased.

5. We have carefully gone through the evidence and the judgment and order of conviction passed by the trial court. The prosecution case entirely rests upon circumstantial evidence and there is no direct evidence so as to the actual commission of the crime. It appears that the applicant-accused was lastly seen sitting next to the deceased in the dilapidated house by prosecution witnesses 1, 5 and 6 respectively. Deceased Anil had left the house

at about 3.00 p.m. to 3.30 p.m. on the day of the incident and since he had not returned to the house, PW-1, who happened to be his son, along with some other persons, started taking search of him. Around 11.00 p.m., they went to the dilapidated house, they noticed the presence of the applicant-accused near the deceased. Except this evidence, there is no further connecting evidence against the applicant-accused.

6. Apart from this, the homicidal death in this case is also under clouds. Deceased had sustained over-all five injuries on his person and they are abrasion over right wrist joint, abrasion over right knee joint, abrasion over left knee joint, abrasion over right foot and abrasion over left foot. We find much substance in the submission made on behalf of the applicant-accused that these injuries are not sufficient in ordinary course of nature to cause death of deceased Anil. Furthermore, we also find much substance in the submission made on behalf of the applicant-accused that in all probability, it is unlikely for the applicant-accused to remain there next to the deceased in the dilapidated house till arrival of the prosecution witnesses 1, 5 and 6 respectively. Thus, considering the entire aspect of the case, we are inclined to release the

applicant-accused on bail. Hence we proceed to pass the following order:

ORDER

- I. The criminal application is hereby allowed.
- II. Pending Criminal Appeal No. 71 of 2020, preferred against the judgment and order of conviction dated 06.10.2018 passed by the Additional Sessions Judge, Osmanabad in Sessions Case No. 30 of 2017 the substantive part of the sentence stands suspended and till then, the applicant-accused SHASHIKANT @ PAPPU SHIVANAND ZURALE be released on bail on furnishing P.B. of Rs.20,000/- with one solvent surety in the like amount.
- III. The Criminal Application is accordingly disposed off.

(SHRIKANT D. KULKARNI, J.)

(V. K. JADHAV, J.)