

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1155 OF 2022

IN

CRIMINAL APPEAL NO.258 OF 2022

1. Alka w/o. Shahaji Pagare.

2. Shahaji s/o. Nana Pagare .. Applicants.

Versus

The State of Maharashtra
through Police Station Bhoom,
Dist. Osmanabad. .. Respondent.

Mr. Nikhil S. Tekale, Advocate for applicants
Mr. S.D. Ghayal, APP for respondent.

With

CRIMINAL APPLICATION NO. 1146 OF 2022

IN

CRIMINAL APPEAL NO.257 OF 2022

1. Sagar s/o. Shahaji Pagare.

2. Kiran s/o. Shahaji Pagare. .. Applicants

Versus

The State of Maharashtra
through Police Station Bhoom
Dist. Osmanabad. .. Respondent.

..

Mr. Mayur V. Salunke, Advocate for applicants
Mr. S.D. Ghayal, APP for respondent.

**CORAM : V.M. DESHPANDE
& SANDIPKUMAR C. MORE, JJ.**

DATE : 19TH APRIL, 2022.

P.C.:

1] Criminal application No. 1155 of 2022 is filed in Criminal Appeal No. 258 of 2022, whereas, Criminal Application No. 1146 of 2022 is filed in Criminal Appeal No. 257 of 2022.

2] So far as Criminal application No. 1155 is concerned, it is filed by original accused Nos. 2 and 3 i.e. Alka and Shahaji are concerned, who are parents in law of deceased Shekhar Shinde. In this application, they are represented by Advocate Nikhil Tekale. Criminal application No. 1146 of 2020 filed by original accused No.1 Sagar and accused No.6 Kiran, who are brothers in law. They are represented by Mr. Mayur Salunke, Advocate.

3] These applications are considered and disposed of by this common order since both the applications arise out of judgment and order of conviction dated 17.3. 2022 passed by the learned Additional Sessions Judge, Bhoom ,Dist. Osmanabad in Sessions Case No. 161 of 2014, whereby, the learned Sessions Judge convicted them for the offences punishable under Sections 302, 143, 149 and 504 of IPC and directed them to suffer R.I. for life and fine of Rs. 3000/- each. In default of payment of fine, accused Nos. 1 to 4 and 6 shall suffer R.I. for one year.

4] The notes of evidence are placed on record, so also, the relevant documents, namely, Dying Declarations, Spot Panchanama is also placed on record, copies of which are already furnished to the learned APP

5] The learned APP is also ready with the matter and he also made elaborate submissions on behalf of the prosecution.

6] The applications, in our view, can be decided at this stage, pending appeal. Deceased Shekhar Shinde was married with Sapna, who is not before the Court in these applications. Their marriage took place on 13.2.2013. The deceased was discharging his duties in the Armed Forces and he was serving at Sagar in Madhya Pradesh.

The incident in question is dated 26.7.2014, which occurred in the house of the parental house of the wife of deceased Shekhar. Though the incident occurred on 26.7.2014, he died on 28.7.2014 primarily due to the burn injuries which he suffered in the incident dated 26.7.2014.

When the deceased was admitted in the hospital as indoor patient, two dying declarations made by him were recorded; one at Exhibit 76 and another is at Exhibit 87. Both dying declarations are recorded on 27.7.2014. Exhibit 76 is recorded by PW-2, Police Constable, whereas, Exhibit 87 is recorded by PW-7 Naib Tahsildar. According to prosecution, the incident in question occurred in the porch of the house of in-laws of the deceased, as can be seen from the Spot Panchanama, a typed copy of which is placed on record at Page Nos. 107-A to 107-E. The recitals of the said document show that the incident in question appears to have been occurred in the porch of the house of the in-laws of the deceased.

7] According to dying declaration at Exhibit 76, which is at page No. 98-A, when the deceased and all accused persons were

chit-chatting inside the house, it appears that a dispute arose in between them and at that time, accused No.1 Sagar, Accused No.6 Kiran brought a kerosene can. Therefore, the deceased tried to run away from the spot. At that time, as per the Dying Declaration Exhibit 76, accused No.1 Shahaji, father in law of deceased, assaulted on the legs of the deceased by means of iron rod, which resulted in deceased falling on the ground and thereafter, the accused persons poured kerosene on him and set him ablaze.

8] Dying Declaration at Exhibit 87, which is recorded by the Executive Magistrate. In so far as the incident in question, the question put to deceased and the answer given is as under :-

प्रश्न 19. तुम्हांस याबाबत याशिवाय आणखी काही सांगावयाचे आहे काय ?

उत्तर : जेवन करतांना सासरे, पत्नी यांनी अंगावर पेट्रोल टाकले मुळे जळीत झाले.

9] Thus, there is a material difference in the statements alleged to have been made by the deceased in Dying Declarations at Exhibit 76 and 87. Exhibit 87 clearly absolves the mother in law and brother in law of the deceased. Also, Exhibit 87, does not show as to who actually set the deceased ablaze.

Further, in so far as Exhibit 76 is concerned, though it is alleged that while deceased was trying to run away from the spot, he was assaulted by Shahaji by means of iron rod. However, the post-mortem report certificate copy of which is at Exhibit 92, does not show that there was any injury on the leg of the deceased which can be attributed to iron rod. Further, as per Exhibit 76, the incident in question has occurred inside the house, which runs counter to the prosecution story that, the incident in question has occurred in the porch of the house of father in

law of the deceased. It could also be seen from Exhibit 108 - Spot Panchanama.

10] In view of the aforesaid discussion, we are of the view that the applicants have made out a prima facie case to release them on bail. Further, from the impugned judgment it is clear that during trial all the applicants were on bail. It is not the case of the prosecution that while they were on bail, they have misused the liberty.

11] Conspectus of the aforesaid discussion, leads us to pass the following order :-

[i] Criminal Application No. 1155 of 2022 in Criminal Appeal No. 258 of 2022 and Criminal application No. 1146 of 2022 in Criminal Appeal No.257 of 2022 are hereby allowed. The judgment and order of conviction passed by the learned Additional Sessiona Judge, Bhoom, Dist. Osmanabad in Sessions Case No. 161 of 2014 shall stand suspended qua applicants during the pendency of the present appeals.

[ii] The applicants Alka w/o. Shahaji Pagare; Shahaji s/o. Nana Pagare and Sagar s/o. Shahaji Pagare and Kiran s/o. Shahaji Pagare be released on bail on their executing PR Bond in the sum of Rs. 5000/- each with one solvent surety in the like amount.

[iii] The applicants are directed to attend police station, Bhoom, and mark their presence once in six months.

[iv] The applicants are directed to remain personally present before this Court at the time of final hearing.

[v] With above observations, both the applications are allowed and stand disposed of.

[SANDIPKUKAR C. MORE]
JUDGE

[V.M. DESHPANDE]
JUDGE.

grt/-