

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1031 OF 2023
IN
CRIMINAL APPEAL NO.226 OF 2023

1. Sharad Maruti Bhade
Age: 37 years, Occu.: Agriculture,
2. Sau. Ranjanabai Sharad Bhade
Age: 31 years, Occu.: Agriculture,
Both R/o. Shedgaon, Tq. Shrigonda,
Dist. Ahmednagar

.. Applicants

Versus

The State of Maharashtra
Through Shrigonda Police Station,
Tal. Shrigonda, Dist. Ahmednagar

.. Respondent

...

Mr. A. M. Gaikwad, Advocate for applicants.
Mr. R. D. Sanap, APP for the respondent – State.

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**CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

DATE : 19th April, 2023

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

. Present application has been filed for suspension of sentence imposed on the applicants. The applicants are the accused Nos.1 and 2 in Sessions Case No.16 of 2020 before the learned Additional Sessions Judge, Shrigonda. They have been held guilty on 22.02.2023

and have been sentenced thus :-

“i) Applicants/accused Nos.1 and 2 are hereby held guilty as per the provisions of Section 235 (2) of the Code of Criminal Procedure and they both are sentenced to suffer imprisonment for life for the offence punishable under Section 302 read with Section 34 of Indian Penal Code and to pay fine of Rs.5,000/- each in default of fine, they shall further undergo simple imprisonment for six months each.

ii) Applicants/accused Nos.1 and 2 are hereby held guilty as per the provisions of Section 235 (2) of the Code of Criminal Procedure and they both are sentenced to suffer rigorous imprisonment for five years each for the offence punishable under Section 436 read with Section 34 of Indian Penal Code and to pay fine of Rs.3,000/- each, in default of fine, they shall further undergo simple imprisonment for two months each.

iii) Applicants/accused Nos.1 and 2 are hereby held guilty as per the provisions of Section 235 (2) of the Code of Criminal Procedure and they both are sentenced to suffer rigorous imprisonment for one year each for the offence punishable under Section 504 read with Section 34 of Indian Penal Code.

iv) Applicants/accused Nos.1 and 2 are hereby held guilty as per the provisions of Section 235 (2) of the Code of Criminal Procedure and they both are sentenced to suffer rigorous imprisonment for one year each for the offence punishable under Section 506 read with Section 34 of Indian Penal Code.

v) Applicants/accused Nos.1 and 2 are hereby held guilty as per the provisions of Section 235 (2) of the Code of Criminal Procedure and they both are sentenced to suffer rigorous imprisonment for five years each for the offence punishable under Section 201 read with Section 34 of Indian Penal Code and to pay fine of Rs.1,000/- each in default of fine, they shall further undergo simple imprisonment for one month each.”

2. Heard learned Advocate Mr. A. M. Gaikwad for the applicants, learned APP Mr. R. D. Sanap for respondent – State. With the able assistance of both the sides, we have gone through the evidence, which was before the Trial Court.

3. The accused persons are facing charge for committing murder of brother and brother’s wife of applicant No.1. Deceased Gorakh was the brother of applicant – Sharad and Surekha was the wife of Gorakh. They were having two sons. They were doing agriculture at Shedgaon, Tq. Shrigonda, Dist. Ahmednagar. The present applicants

were the adjacent residents. Incident took place around 5.00 a.m. of 28.08.2019. There were quarrels between accused No.1 and deceased on account of property. In the said incident, Gorakh as well as Surekha received burn injuries, as their house was set to fire and deceased Gorakh also received injuries by means of *Gupti*. Many persons witnessed the incident and then took both the injured to hospital on the same day. The first dying declaration came to be recorded between 11.25 a.m. to 12.00 p.m. and on the basis of said dying declaration, offence vide Crime No.812 of 2019 came to be registered for the offence punishable under Sections 307, 326, 324, 143, 147, 148, 149, 436, 504, 506 of Indian Penal Code and under Section 4 punishable under Section 25 of the Indian Arms Act. It appears from the record that the prosecution has examined in all 21 witnesses to bring home the guilt of the accused, which included the testimonies of writers of two dying declarations of deceased Gorakh and one dying declaration of deceased Surekha.

4. At this stage, we are required to consider *prima facie* evidence and, therefore, considering the facts of the case, it can be noted that after the alleged incident, both the injured were taken to Rural Hospital, Shrigonda. Upon the examination, medical certificate Exhibit-130 was issued by the medical officer P.W.13 Dr. Sachin Dafal. He had found six external injuries on the person of Gorakh and six

injuries on the person of deceased Surekha. As aforesaid, assault by *Gupti* was to Gorakh only. If we consider the certificate Exhibit-130, it is stated that there was CLW on right parietal region, which has been opined that probable cause by hard and blunt object and the nature of the injury is stated to be simple. Further, there was CLW on right side of back, which was also by hard and blunt object and the nature of the injury was simple. Thus, it is to be noted that the hospital where deceased Gorakh was initially examined does not support the prosecution story that there was assault by means of *Gupti*. *Gupti* has a sharp edge on one side and therefore, it would have caused different injury than noted on the person of deceased Gorakh. *Gupti* cannot be said to be a weapon of hard and blunt nature. Another fact to be noted is that the percentage of the superficial to deep burns to both the hands is stated to 9%, that means entire hand had received burn injuries. Still, Exhibit-92 the dying declaration recorded on 28.08.2019 bears the signature and Exhibit-98 – dying declaration recorded by the Naib Tahsildar bears the thumb mark of right toe of the deceased Gorakh. We could not get any reason for this difference. Further, there is much gap in recording of both the dying declarations. The first dying declaration was recorded on 28.08.2019, whereas the second dying declaration is recorded on 06.09.2019. No doubt the writer as well as the medical

officer, who has given endorsement on both the dying declarations, have been examined. We are also required to consider as to whether the said dying declarations have been proved or not. *Prima facie* it can be the impression that it is giving inconsistent theory.

5. Another fact which has been considered by this Court for the consideration of suspension of sentence is that the dying declaration-cum-FIR says that around 5.00 a.m. all the accused came in front of the house of Gorakh and the present applicants started saying as to why Gorakh is lodging report against them. They asked him to come out of the house and he would kill him by *Gupti*. As he was abusing and shouting, Gorakh did not open the door and then the applicant – Sharad latched the door from outside. He then says that the applicant – Sharad threw bottle on the roof of the house of the deceased and set the house to fire. When the fire got intensified, Gorakh and Surekha came out of the house and then Sharad assaulted him with *Gupti*. At this stage, we say that when the house was latched from outside, how Gorakh and Suresh would have come out of the house. As regards the dying declaration of Gorakh Exhibit-98 and dying declaration of Surekha Exhibit-99, they both have been recorded by Naib Tahsildar – Executive Magistrate and we could find apparent difference in the stories. Therefore, the question arises as to whether these dying declarations can be relied.

6. Apart from the dying declaration, there appears to be eye witness to the incident and many people had gathered at the said place. If many people had gathered why they had not overpowered applicant – Sharad and had not taken out deceased persons safely from the house, is a question. The testimony of the eye witness is then required to be considered from the angle of the dying declarations. There was previous complaint lodged by Surekha against both the applicants as well as their son for the offence punishable under Sections 324, 354, 323, 504, 506 read with Section 34 of Indian Penal Code. The defence is of enmity and false implication and, therefore, it is required to be seen as to whether sufficient evidence was adduced to rule out the possibility of false implication.

7. Applicant No.2 was on bail throughout the trial, however, applicant No.1 was not. Still taking into consideration the evidence on record, we found that case is made out for suspension of sentence. Hence, the following order :-

ORDER

- I) The application stands allowed.
- II) The sentence imposed on the applicants/appellants in Sessions Case No.16 of 2020 by learned Additional Sessions Judge, Shrigonda, is hereby suspended till the hearing and

final disposal of Criminal Appeal No.226 of 2023.

III) The applicants/appellants (i) **Sharad Maruti Bhade** and (ii) **Sau. Ranjanabai Sharad Bhade** be released on P.R. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.

IV) The applicants/appellants shall not commit any criminal activity.

V) The applicants/appellants to remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeal, starting from the date they tender bail papers and, thereafter, the trial Judge to fix dates for their subsequent appearances.

VI) In case of two consecutive defaults on the part of applicants/appellants to remain present before the Trial Court, the Trial Court to inform this Court about the same and in that case the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicants/appellants.

VII) Bail before the Trial Court.

[Y. G. KHOBRAGADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm