

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (BA) NO.216 OF 2013

(SHAIKH AFSAR SHAIKH KASAM & 2 OTH...VS.. STATE OF MAH. THR. PSO PS SHIRPUR, DISTT.
MALEGAON)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R.M.Mardikar, Advocate for Applicant.
Mr S.S.Doifode, A.P.P. for Respondent/ State.

CORAM : M.L.TAHALIYANI, J.
DATED : JULY 31, 2013.

Heard learned counsel for both sides.

2. The applicants are accused of the offences punishable under Sections 147, 148, 307 read with 149 and 302 read with 149 of the Indian Penal Code. The major charge against the applicants is under Section 302 read with 149 of the Indian Penal Code. It is alleged that the applicants and others, in prosecution of common object of the unlawful assembly had, on 1st March, 2012 at about 6.20 p.m., pulled deceased Devidas Ambhore out of his house and had assaulted him by means of deadly weapons like swords. The deceased had died due to cranio-cerebral hemorrhage. It, therefore, *prima-facie* appears that a sword blow was inflicted on the head of the deceased.

3. Before I proceed further, it may be stated here that the situation on the date of incident in the village was tense due to communal riots. The riots followed by the incident in which one Pintu Jadhav had teased a lady by name Rehana. There was assault and cross assault between two communities and in the process deceased Devidas Ambhore lost his life. I have gone through the statement of his brother Rameshwar Ambhore. It appears from the statement of Rameshwar Ambhore that the deceased was assaulted by Sk. Akhtar Sk. Bismilla and Sk. Kalim Sk. Ahmed by means of swords. Accused Sk. Sattar Nazir

had used pipe at the time of assault and he had inflicted pipe blows at right leg of the deceased.

4. Learned counsel Mr. Mardikar has submitted that the alleged act on the part of Sk. Akhtar Sk. Bismilla, Sk. Kalim Sk. Ahmed and Sk. Sattar Sk. Nazir cannot be said to be done in prosecution of common object of the unlawful assembly. It is submitted by Mr. Mardikar that it was not common object of the alleged unlawful assembly to commit murder of Devidas. Therefore, it is submitted that applicant Nos.1 and 2 cannot be held responsible for the acts committed by applicant No.3 and others near the house of Devidas Ambhore.

5. After having heard both sides, what has emerged is that there was a case and cross-case. The victims of the present chargesheet are the accused in the cross-case. There were series of incidents. The deceased had died in one of such incidents. Applicant Nos. 1 and 2 had not taken part in the alleged assault on the deceased. As such, it is difficult to say as to whether the assault on the deceased by some of the persons of the assembly was in prosecution of common object of the unlawful assembly. The applicants are in prison since 07.12.2012. Chargesheet has already been filed, as such the investigation is completed. Hence, I pass the following order.

Applicant No.1 Shaikh Afsar Shaikh Kasam and applicant No.2 Shaikh Kausar Shaikh Kasam be released on bail in the sum of rupees thirty thousand each with one solvent surety each in the like amount or two sureties of rupees fifteen thousand for each of the applicants. The applicants shall not leave the jurisdiction of the trial Court without permission of the trial Court.

Application of Applicant No.3 Shaikh Akthar Shaikh Bismilla stands rejected.

JUDGE