

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 923 of 2022****With****CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE) NO.
1 of 2022****In R/CRIMINAL APPEAL NO. 923 of 2022**

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LOMESHBHAI MANUBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

SHRIKAR H BHATT(2573) for the Appellant(s) No. 1,2

MR HARDIK SONI, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE B.N. KARIA**Date : 06/05/2022****ORAL ORDER IN CRIMINAL APPEAL NO. 923 OF 2022**

By preferring present appeal, appellants have requested to quash and set aside the judgment and order dated 16.03.2022 by learned Special Judge (POCSO) and 3rd Additional Sessions Judge, Bharuch in Special (POCSO) NO. 5 of 2014.

Heard learned advocate for the appellants.

It was submitted by learned advocate for the appellants has submitted that the defence witness namely Arvindbhai Kashibhai Amin was examined vide Ex. 227 wherein he has clearly deposed that height of temple is 30 feet from land and first floor of temple is having RCC work and there is only one way to go for first floor. He further deposed that there is no possibility of way to enter in the house of the victim through

Swaminarayan Temple. As per the evidence before the learned Judge that entering in the house as trespass and breaking, physically not possible because the height of temple and the adjoining house of Jagdishbhai and Nileshbhai with the stop of steel roof sheets. The prosecution has not examined the neighbours as independent witness as Nileshbhai and Jagdishbhai for this incident dated 30.10.2013.

Referring the deposition of Dr. Tushar Sugvagiya (Exh. 212-Defence witness no.1), learned advocate for the appellants has submitted that this doctor had examined the patient Lokesh on 30.10.2013 and at that time, he was unconscious and before that, he had taken treatment at CHC Jambusar also. That, the said fact was not considered by the trial Court for defence of alibi and wrongly considered the time of offence is 12.30 hours and committed grave error, while not considered the defence of alibi of accused no.1. It was further submitted that Criminal Appeal No. 776 of 2022 filed by the co-accused is already admitted by this court and application for suspension of sentence filed therein was fixed on 6th July 2022. Issue requires consideration.

ADMIT. Learned APP waives service of notice of admission for and on behalf of the respondent-State.

(B.N. KARIA, J)

**ORAL ORDER IN CRIMINAL MISC. APPLICATION NO. 1 OF
2022 IN CRIMINAL APPEAL NO. 923 OF 2022**

Rule returnable on 6th July 2022.

Learned APP waives service of notice of rule for and on behalf of the respondent-State.

On a request being made by learned advocate for the applicants, applicants are permitted to produce paper book containing the evidence recorded by the trial court on or before the next date of hearing before the registry of this Court.

K. S. DARJI

(B.N. KARIA, J)