

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.1317 OF 2017
IN
CRIMINAL APPEAL NO.446 OF 2014**

Nilesh Akaram Chavan

..Applicant

Versus

The State of Maharashtra

..Respondent

**Mr. Nitin Pradhan a/w Shubhada D. Khot, Advocate for the
Applicant.**

Mrs. S. V. Sonawane, APP for the Respondent – State.

CORAM : B. R. GAVAI &

B. P COLABAWALLA, JJ.

DATE : 18th DECEMBER, 2017

PC.

1] The Applicant has approached this Court seeking his release on bail. The Applicant is convicted for the offence punishable under Section 302 of the Indian Penal Code (“IPC” for short) by the judgment and order recorded by the learned Additional Sessions Judge Karad dated 30th April 2014.

2] The Application is vehemently opposed by the learned APP. The learned APP relying on the provisions of Section 300 of the IPC would persuade us to accept that the case would fall only under Section 302 of the IPC and not under any of the parts of Section 304. The learned APP submits that force with which assault was made on the part of the

body, on account of which death is caused, clearly shows that the case would fall under Section 302 of the IPC.

3] The Apex Court in the catena of cases including Niranjan Singh and another Vs Prabhakar Rajaram Kharote and others reported in (1980) 2 SCC 559 has held that the detailed elaboration of evidence should be avoided at the stage of grant of bail.

4] The name of the first informant is Mansing Chavan who is the son of the deceased and the father of the PW-3 who is the star witness. Since Mansing Chavan has died during the pendency of trial, he could not be examined. As such, the most vital evidence is that of PW-3 Dinesh Mansing Chavan.

5] The perusal of testimony of PW-3 which is at Exh.48 would reveal that there was rivalry between the family of the deceased on one part and the family of the accused on the other part on sharing of the water which was lifted from the river. The evidence would reveal that on the date of incident itself when the said witness had started electric motor and diverted the water towards field of the deceased, somebody from the family of accused had stopped the outlet towards the field of the deceased. It would further reveal that when this fact was known, there

was altercation between the family of the deceased on one hand and the family of the accused on the other hand. The evidence would reveal that in that fight the accused Nilesh Akaram Chavan caught hold of the stick which was lying there and dealt its blow to the deceased on his head.

6] It could thus be prima-facie seen that there was no premeditation. It appears that on account of fight which took place out of quarrel between the two families, the Appellant/Applicant assaulted the deceased. The evidence of the prosecution witness would itself reveal that the said case is of single blow. It is not the evidence of the prosecution that after the deceased fell down, the Applicant took disadvantage of the situation and continued assaulting him. We are prima-facie of the view that the case would fall either under Part I or Part II of Section 304 of the IPC. Reliance in this respect is placed on the case of Chenda alias Chanda Ram Vs. State of Chhattisgarh reported in (2013) 12 SCC 110.

7] Ordinarily sentence for the same would be between 5 years to 10 years.

8] The Applicant has undergone almost 4 years of sentence. Taking into consideration this aspect of the matter, we find that the

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application needs to be considered.

9] In that view of the matter, the application is allowed. The order of sentence shall stand suspended. The Applicant is directed to be released on bail on furnishing bail bond in the sum of Rs.25,000/- with one or two sureties in the like amount. The Applicant is directed to report to Karad Taluka Police Station every fortnight.

[B. P. COLABAWALLA, J.]

[B. R. GAVAI, J.]