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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.150 OF 2017
(For leave to appeal)

The State of Maharashtra	..Applicant.
Versus	
Ravi Shankar Banpatte	..Respondent

Mrs S.V. Sonawane, APP for the Applicant.

CORAM: B. R. GAVAI &
SARANG V. KOTWAL, JJ.

DATE: 18th July, 2018

P.C.:-

1] State has approached this Court by way of present application to seek leave to file appeal against the judgment and order passed by the learned City Civil & Sessions Judge dated 22.09.2017 in Sessions Case No.305 of 2014.

2] Insofar as conviction under Section 302 of IPC and award of sentence under Part-II of Section 304 is concerned, Smt. Sonawane, learned APP for the State, submitted that from the perusal of evidence of eye witnesses, it is clear that accused was liable to be convicted for the offence punishable under Section 302 of Indian Penal Code. She submitted that, in any case, award of sentence of only four years under Section 302 IPC warrants interference at the hands of this Court.

3] Insofar as not convicting the accused for the offence punishable under Section 302 of IPC and for convicting him for the offence punishable under Part-II of Section 304 of IPC is concerned, the learned Trial Judge has given cogent reasons in paras 29 and 30 of the judgment. The learned Trial Judge has found that, the incident has occurred at the spur of moment on trivial quarrel between the deceased and the accused, who were undergoing treatment for drug addiction. Due to sudden hit of passion, the accused lifted a knife from kitchen platform and assaulted the deceased on his chest. In this view of the matter, finding of learned Trial Judge that though the accused did not have intention to cause death, he had knowledge that such an injury may cause death of the deceased, cannot be faulted with. We are therefore of the view that the learned Trial Judge has rightly convicted the accused for the offence punishable under Part-II of Section 304 of IPC.

4] So far as award of sentence under section 304, Part-II for a period of four years is concerned, no doubt, prima facie we find some substance in the submission made by the learned APP that the sentence imposed is too less. However, again, the learned Trial Judge has given cogent reasons in paras 34 to 37 of the judgment for awarding sentence of four years. The accused was arrested on 17/01/2014. After completion of sentence, he has been released on or about 17/11/2018. We, therefore, find that since no perversity is noticed in the approach of the learned Trial Judge, it would not be

judicious to entertain this application for leave to appeal.

5] Application for leave to appeal is rejected.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)