

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**906 CRIMINAL APPEAL NO.69 OF 2002
WITH APPLN/6052/2017 IN APEAL/69/2002**

**BABASAHEB S/O BAJIRAO GAWALI and ORS
VERSUS
STATE OF MAHARASHTRA**

Mr.R.R. Karpe, Advocate for the appellants.
Mrs.D.S. Jape, APP for the respondent/State.

**CORAM : KISHORE C. SANT, J.
DATED : 24.11.2022**

PC :-

01. This matter is of the year 2002 challenging the judgment and order passed by the learned Sessions Judge dated 31.01.2002 in Sessions Case No.26 of 2001. Appellant No.1 Babasaheb is husband of deceased Rekha and son-in-law of respondent No.2, who is now sought to be added through Criminal Application No.6052 of 2017. Appellant Nos.2 and 3 are real brothers of appellant No.1. The appellants/accused are convicted for the offence punishable under sections 306 and 498-A of the Indian Penal Code [for short "IPC"]. They are directed to suffer imprisonment for three years and to pay fine of Rs.500/-, in default, to suffer simple imprisonment for one month for the offence punishable under section 498-A of the IPC. So far as offence punishable under section 306 read with section 34 of the IPC is

concerned, they are directed to suffer three years' rigorous imprisonment and to pay fine of Rs.500/- in default to suffer further simple imprisonment for one month. It is submitted that the accused appellants are ready to plead guilty. The only prayer is made to reduce the sentence to the period they have already undergone. It is prayed that now almost 22 years have passed after the incident and that can be considered as mitigating circumstance to reduce the sentence. He further pointed out that appellant No.1 since thereafter has not even re-married and has looked after his children. One of the sons namely, Bhausahab is serving in Indian Navy and another son was studying in 12th standard in the year 2017. There are two daughters and they are married.

02. The criminal application is filed by the accused, wherein the informant is made respondent No.2. The facts mentioned above are also verified by respondent No.2. It is stated in the application that the informant is a maternal uncle of the appellants. Respondent No.2 in an unfortunate incident lost his only son in 2012. Now he states that he along with his wife both are looked after by the appellants, as he happens to be maternal uncle of the appellants. In this view of the matter, respondent No.2 has no objection, if

the sentence is reduced to the period already undergone. The criminal application is filed praying for allowing the parties to bring on record compromise terms. It is submitted that this application itself in-fact records the compromise.

03. The parties have relied upon judgment in the case of Gian Singh Vs. State of Punjab & Anr., 2012 AIR (SCW) 5333. Today also learned Advocate for the appellant has produced copy of judgment reported in 2021 SCC OnLine page 966 in the case of Ramawatar Vs. State of Madhya Pradesh and another judgment reported in 2021 SCC OnLine 834 in the case of Ramgopal and Another Vs. State of Madhya Pradesh and an order passed by this Court in Criminal Appeal No.452 of 2001 dated 7th October, 2015, wherein sentence was reduced to the period already undergone.

04. Learned APP also produced on record judgment reported in 2005(1) Bom.C.R. Cri. (721) in the case of Bankat & Anr. Vs. State of Maharashtra and another case reported in 2009(1) Bom.C.R. (Cri.) 162 in the case of Chandrakant Gujaba Raut & Anr. Vs. State of Maharashtra and Anr.

05. Thus, considering all these judgments, this Court finds it appropriate in the interest of justice to reduce the substantive sentence to the period already undergone by confirming the conviction recorded by the Sessions Court. The appellants are directed to pay Rs.5000/- (Rupees Five Thousand) for both the offences punishable under sections 306 and 498-A of the IPC. The appellants to deposit the amount in this Court as a condition precedent. This order to take effect after deposit of fine amount.

06. The appeal thus stands disposed off.

07. Pending application stands disposed off.

[KISHORE C. SANT, J.]