

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

**INTERIM APPLICATION NO.3634 OF 2022
IN
CRIMINAL APPEAL NO.1079 OF 2022**

Appasaheb @ Kashinath Pandurang
Shingade Applicant
Versus
The State of Maharashtra Respondent

Mr. Viresh V. Purwant, Advocate for the Applicant.
Smt. M.R. Tidke, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 15th NOVEMBER, 2022

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1. This is an application for bail pending hearing and final disposal of Criminal Appeal No.1079/2022.

2. The applicant was convicted and sentenced by the Additional Sessions Judge, Solapur vide his judgment and order dated 29.9.2022 passed in Sessions Case No.99/2017. The applicant was convicted for commission of offence punishable under Section 304 (Part II) of IPC and

was sentenced to suffer RI for five years and to pay fine of Rs.1,000/- and in default to suffer RI for one month. He was also convicted for commission of the offence punishable under Section 324 of IPC, but, no separate sentence was awarded in view of the sentence imposed under Section 304 Part II of IPC. The other accused i.e. wife of the applicant was acquitted from all the charges.

3. Heard Shri Viresh Purwant, learned counsel for the applicant and Smt. M.R. Tidke, learned APP for the State.

4. The prosecution case is that on 9.6.2016 it was a weekly market day. There was a land dispute between the appellant and one Basappa Pandhare. A quarrel took place between them. The deceased in this case Kalappa Koli was present there and in the incident the appellant assaulted Basappa with a stick lying nearby and he also beat Kalappa Koli. Kalappa was shifted to Civil Hospital, Mandrup. He died on 24.6.2016. In between, on 16.6.2016, son of the

deceased Kalappa lodged FIR against the applicant and his wife. Initially, the FIR was lodged under Section 324 of IPC and subsequent to the death of the deceased Section 304 Part II of IPC was added. The investigation was carried out. The appellant faced the trial. He was convicted and sentenced, as mentioned earlier.

5. Learned counsel for the appellant invited my attention to the evidence of two eye witnesses i.e. PW-4 Bhimashankar Chitapure and PW-7 Sanjaykumar Alagi. PW-4 had turned hostile. However, the prosecution case is supported by the evidence of PW-7. But his evidence also shows that the quarrel was between the applicant and Basappa and in that quarrel the applicant had beaten Kalappa who was present there with Basappa.

6. The evidence of PW-10 Dr. Himanshu Bodare who had treated Kalappa on 10.6.2016 mentions that there was laceration of 4 cm x 0.5 cm on left eye and on forehead. He has specifically deposed that the injury was simple in

nature. It appears that there was internal damage and he died.

7. The evidence of PW-14 Dr. Rijwan Kamle is also important. He had conducted the post-mortem examination. He has given cause of death as 'head injury'. In the cross-examination he has deposed that two injuries suffered by the victim – one on the head and one on the right forearm, were possible by fall on the ground.

8. According to learned counsel for the applicant even the offence under Section 304 Part II of IPC is not made out. Learned counsel for the applicant further submitted that the applicant was on bail during trial and he has not misused that liberty.

9. Learned APP submitted that since 10.6.2016, the deceased was unconscious and ultimately died on 24.6.2016 and, therefore, knowledge can be attributed to the applicant for his act.

10. I have considered these submissions. The appeal is already admitted. The sentence is five years. The appeal is not likely to be heard within a reasonably short period. Even on merits, one of the eye witnesses has not supported the prosecution case. The other eye witness has described the incident. According to him, the quarrel was between the appellant and Basappa and during that incident Kalappa was assaulted. Whether the appellant had requisite knowledge will have to be tested during final hearing of the appeal. However, the evidence of PW-7 mentions that even according to that doctor, the injury was simple in nature. There appears to be internal damage. Thus, there is scope to argue that the appellant will not have that knowledge about the seriousness of the injury which he was causing. There was only one blow given on the head during the incident.

11. All these aspects will have to be decided during final hearing of appeal. However, the applicant has made out an arguable case and, therefore, I am inclined to grant bail pending appeal.

12. Hence the with following order :

:: O R D E R ::

- i. During pendency and final disposal of Criminal Appeal No.1079/2022, the applicant is directed to be released on bail on his furnishing P.R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- ii. Interim Application is disposed of accordingly.

(SARANG V. KOTWAL, J.)