

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

**49 CRIMINAL APPLICATION NO.275 OF 2023
IN
APEAL/46/2023**

Bhimrao Ashokrao Pohare ...Applicant

VERSUS

The State of Maharashtra ...Respondent

...
Advocate for Applicant : Mr.Kadam Vikram S.
APP for Respondent-State : Ms.R.P.Gaur
...

CORAM : R. G. AVACHAT, J.

DATE : 27.03.2023.

PER COURT :

1. Heard. The applicant has been convicted for the offence punishable under Section 304-II of the Indian Penal Code and sentenced to suffer Rigorous imprisonment for a period of 10 years and to pay fine of Rs. 50,000/-, in default to suffer Rigorous Imprisonment for 3 years. He is further convicted under Section 307 of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for a period of 10 years and to pay fine of Rs. 50,000/-, in default to suffer Rigorous imprisonment for a period of 3 years. He is further convicted for the offence 201 of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for a period of 3 years

and to pay fine of Rs. 10,000/-, in default to suffer Rigorous Imprisonment for a period of 1 year. He is further convicted under Section 504 of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for a period of 6 months and to pay fine of Rs. 5,000/-, in default to suffer Rigorous Imprisonment for 6 months. All the substantive sentences have been directed to run consecutively.

2. The incident took place in the night. There was no electricity at the place of incident. As per the case of the prosecution the deceased, injured and four others including one lady had been to the room of the applicant herein. There was quarrel between the applicant on one hand and Ganesh Gundle and Nilesh Gundle on the other. The said quarrel took place at 9.30 p.m. After the quarrel was over, Ganesh and Nilesh went to their house. They woke up Ganesh and Nilesh and in the company of those two, they came to the room of the applicant herein. The applicant opened the door of the house. The deceased kicked the applicant on his abdomen. Evidence indicates that, due to the kick, the applicant fell down. He got up and stabbed the deceased. The applicant denied to have stabbed the deceased. The dead body of the deceased was found at a distance of 200 feet away from his room. A knife was seized at the instance of the applicant. It did not bear the blood group of the deceased. As per the

case of the prosecution, after the deceased Alishah was stabbed, the applicant removed the knife and stabbed Shaikh Khadir (PW 6), who was present at the entrance of the room of the applicant. The evidence of the prosecution suggest that, all the interested witnesses namely the injured and others were in his company. The applicant denied to have killed Alishah. It has also been brought to the notice of the Court that the investigating officer had initially arrested two other persons suspecting their involvement in the commission of murder of Alishah. They were let off without filing of the charge-sheet against them. It is reiterated all the substantive sentences ought to have been directed to run concurrently.

3. The assault on deceased Alishah, prima-facie appears to be the result of exercise of right of private defence. True, the applicant thereafter was not justified in assaulting Khadir. The applicant has, therefore, rightly been convicted for the offence punishable under Section 307 of the Indian Penal Code. There is, however, no evidence of independent witnesses. All those who have deposed against the applicant are relations of the injured and those were in the company of him to visit the applicant's residence to question him about the quarrel with Ganesh and Nilesh. It will take time for the appeal to come up for hearing in near future. The applicant has been in jail for last 8 months. He was in jail for little

four and half months during inquiry, investigation and trial.

4. Considering the nature of the offence and the reasons for the offence which was committed by the applicant, this Court finds it is a fit case for suspension of substantive sentence. In view of the same, the application is allowed in terms of following order :

ORDER

- (a) The application is allowed.
- (b) Pending the appeal, the execution of substantive sentences of imprisonment imposed against the applicant by the learned Additional Sessions. Judge-1, Nanded, in Sessions Case No. 230 of 2013, by the judgment and order dated 16.12.2022, to stand suspended and the applicant is released on bail on his executing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(R. G. AVACHAT)
JUDGE

mahajansb/