

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

909 CRIMINAL APPLICATION NO.656 OF 2023
IN APPEAL/251/2019 WITH APPEAL/251/2019 WITH
APPLN/1378/2019 IN APPEALST/382/2019

SANJAY S/O. SHIVAJI DHAPSE
VERSUS
THE STATE OF MAHARASHTRA

Advocate for Applicant / Appellant in APPLN/656/2023 & APPEAL/
251/2019 : Mr.Rajendrraa Deshmukh, Senior Advocate a/w.
Mr.Rajat P. Untwal i/b. Mr.D.R.Deshmukh
APP for Respondents-State in APPLN/656/2023 &
APPEAL/251/2019 and for Applicant / Appellant in
APPLN/1378/2019 & APPEALST/382/2019 : Mr.Rajendra D.Sanap

**CORAM : SMT. VIBHA KANKANWADI &
ABHAY S. WAGHWASE, JJ.**

DATE : 23rd February, 2023

PER COURT :-

1. Heard Mr.Rajendrraa Deshmukh, learned Senior Advocate for the applicant / appellant (original accused No.1) and Mr.Rajendra D.Sanap, learned APP for the State.
2. Learned Additional Sessions Judge, Ahmednagar has convicted the applicant in Sessions Case No.306 of 2015 on 18-01-2019 for the offence punishable under Section 304 Part-II of the Indian Penal Code (IPC) and therefore, has been directed to suffer simple imprisonment for three years and to pay fine of Rs.1,000/-, in default to suffer simple imprisonment for six months.

3. It will not be out of place to mention here that the charge was framed and the present applicant alongwith other accused faced trial for the offence punishable under Sections 302 and 201 read with 34 of the IPC. However, taking into consideration the fact that the learned trial Judge has acquitted the present applicant from the offence under Sections 302 and 201 read with 34 of IPC but held guilty for committing offence under Section 304 Part-II of IPC, the appeal that has been preferred by him lies before the Single Judge of this Court. However, at the same time, the State has filed Criminal Application No.1378 of 2019 for condonation of delay caused in preferring appeal under Section 377 of the Code of Criminal Procedure and therefore, the matter is before this Court.

4. At the outset, the learned APP submits that as on today the position stands is that applicant / accused no.1 has been held guilty and sentenced to suffer simple imprisonment for three years and the set off has been granted and therefore, he has already undergone the sentence and therefore, question of stay to the said conviction will not arise.

5. To this submission, learned Senior Advocate for the applicant / accused no.1 submits that the appeal has been

preferred and it is pending. The applicant intends to contest the election for Ahmednagar Merchant's Co-operative Bank Ltd. Ahmednagar. Objection was raised in respect of his nomination, however, in view of the appeal that has been preferred, which is yet to be adjudicated, he has the right to seek stay to the conviction. The learned trial Judge erred in holding that the offence under Section 304 Part-II of IPC has been proved against the present applicant. Since the evidence has not been properly appreciated, the applicant has every hope of success in the appeal. The appeal would take long time to be heard and decided and therefore, stay should be granted.

6. It is to be noted that this Court at this stage would only consider the *prima facie* case. It appears that prosecution has examined in all 24 witnesses in the matter. Deceased was found in injured condition in front of Hotel Ashoka at Ahmednagar. He was then taken to Anand Rushi Hospital, Ahmednagar. It appears that the CCTV footage of the hotel was tried to be obtained and even the charge was that the CCTV footages were forcibly deleted by present accused alongwith co-accused by giving threats to the Manager of the hotel. However, CCTV footage from Ashoka Lodging were said to be intact and the Police have seized Hard-Disk. It appears that there is evidence in that

respect also. The law on the said point in respect of certificate under Section 65-B of the Evidence Act has been dealt by the learned trial Judge. The learned trial Judge has also considered the testimonies of **PW5** Kiran Gulve and the other witnesses, who say that how the present applicant was involved in the matter. When there is such *prima-facie* evidence and finding out that the accused persons had no intention to kill, but had the knowledge that the injuries may result in causing death, learned trial Judge appears to have convicted the present applicant for the offence punishable under Section 304 Part-II of the IPC. Sentence that has been awarded is three years and it appears that present applicant was in custody for that much period. It has been treated by the learned trial Judge that the said sentence has already been undergone. In view of the same, if it has been already undergone, there is no question of stay to the said conviction and therefore, the application deserves to be rejected. Accordingly, Criminal Application no.656 of 2023 stands rejected.

7. In respect of Criminal Application No.1378 of 2019, issue notice to the respondent. Mr.Rajendraraa Deshmukh, learned Senior Advocate waives service for sole respondent.

8. The delay alleged to have been caused is only five days in preferring the appeal by State under Section 377 of the Code of Criminal Procedure. Therefore, taking into consideration the period of delay and for the reasons mentioned in the application, it stands condoned. Application No.1378 of 2019 stands allowed and disposed of.

9. Registry to verify and register the appeal filed by the State.

10. The Criminal Appeal (Stamp) No.382 of 2019 has been filed under Section 377 of the Code of Criminal Procedure for enhancement of the punishment imposed on the respondent / original accused No.1, which was undergone under Section 304 Part-II of IPC. Since arguable points are made, appeal is **“admitted”**.

11. Criminal Appeal (Stamp) No.382 of 2019 to be tagged alongwith Criminal Appeal No.251 of 2019.

12. Criminal Appeal No.251 of 2019 has been preferred by the original accused No.1 challenging his conviction in the said Sessions Case after holding him guilty of committing offence under Section 304 Part-II of IPC. Since arguable points are made out, appeal stands **“admitted”**.

13. Call Record and Proceedings with paper book.
14. To be listed after the receipt of paper book as per its turn.

(ABHAY S. WAGHWASE)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

SPT