

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

CRIMINAL APPLICATION NO.1380 OF 2023

IN

CRIMINAL APPEAL NO.328 OF 2023

Namdeo s/o. Rama Lakde

..Applicant

Vs.

The State of Maharashtra

..Respondent

Mr.R.O.Awasarmol, Advocate for applicant

Mr.A.A.Jagatkar, APP for respondent

CORAM : R.G. AVACHAT, J.

DATE : APRIL 19, 2023

ORDER :-

Heard.

2. The applicant/appellant, vide order dated 06.01.2023 passed by learned Addl. Sessions Judge, Ambajogai in Sessions Case NO.23 of 2016, has been convicted for the offence punishable under Section 304 Part I of Indian Penal Code and therefore, sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/- with default stipulation.

3. Learned APP has strong reservations to allow the application. According to him, the applicant has intentionally killed the deceased, although the trial Court has held it to be a case of grave and sudden provocation. He submits that the applicant first assaulted the

deceased on his neck with sickle and again gave a seconds blow of the sickle on the neck of the deceased.

4. It was the day of Dasara festival. He-goat was given in sacrifice. The applicant runs a shop of mineral water. The colleague of the deceased wanted to buy a chilled water. Since it was the night time and the shutter of the shop of the applicant/appellant was down, they could not get water. They, therefore, set on fire the applicant's shop and his motorcycle. The said fact was immediately learnt by the applicant. He soon rushed to his shop. He then chased the deceased and assaulted him with a sickle. It is true that the facts and circumstances of the case suggest that the applicant was not justified in assaulting the deceased with sickle when there was time gap between the incident of setting his shop on fire and the assault.

5. The State has admittedly not preferred an appeal against acquittal of the applicant for offence under Section 302 of Indian Penal Code. The applicant has been behind the bars for a total period of nine months. The appeal is not likely to come up for hearing by its turn in near future.

6. The offence is punishable with either life imprisonment or

for a term which may extend to 10 years. Since the shop and the motorcycle of the applicant was burnt just before the incident and the same is said to be a fall-out of the incident, this Court is inclined to allow the application.

7. During pendency of the appeal, the substantive sentence of imprisonment to stand suspended. The applicant be released on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

8. The applicant/appellant shall not enter village Pohner, Tq. Parli, Dist. Beed, for next two years.

9. The application stands disposed of.

[R.G. AVACHAT, J.]

KBP