

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1949 OF 2023 IN APEAL/548/2023
WITH APEAL/548/2023
WITH APPLN/1950/2023 IN APEAL/548/2023

SANTOSH UMAJI JADHAV
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Sudarshan J. Salunke
APP for Respondent/State : Ms. V. N. Patil Jadhav
Advocate for Respondents Nos.2/injured and 3/victim :
Mr. M. D.Gitte (in Application No.1950 of 2023)
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CORAM : S. G. MEHARE, J.

DATE : 07-08-2023

PER COURT :-

1. Heard the learned counsel for the applicant, the learned A.P.P. for the respondent/State and the learned counsel for the victim.
2. The applicant seeks suspension of the sentence imposed upon him to suffer rigorous imprisonment for fifteen years for the offence punishable under Section 307 of the Indian Penal Code, by the learned Additional Sessions Judge, Ambajogai, District Beed, vide his judgment and order passed in Sessions Case No.95 of 2018, dated 18.07.2022.
3. The injured was the wife of the accused, for which the

applicant has been convicted. She appeared in the Court and contended that they have the children, hence, the applicant is required for their maintenance. She has submitted before the Court that the sentence imposed upon the applicant may be suspended as they have amicably settled their dispute. The question is whether such amicable settlement is permissible. However, the submission may be considered for the limited purpose of considering the suspension of sentence.

4. The learned counsel for the applicant has raised the issue of the quantum of imprisonment. He has argued that the Court on conviction under Section 307 of the Indian Penal Code may either sentence the accused for a maximum term of ten years or the life imprisonment. However, the Court in this case has sentenced the applicant to suffer rigorous imprisonment for fifteen years. Hence, the quantum of imprisonment is apparently against the provision of law. This objection may fall for consideration during the course of appeal. The learned counsel for the applicant also submits that till date the applicant has undergone five years sentence. He also argued that considering the facts and circumstances of the case, there is scope to reduce the sentence imposed upon the applicant. The Court did not examine the intention of the applicant/accused properly. The Court also did not consider the circumstances of the case that there was matrimonial discord between the accused and his wife. Now, the accused has learnt a lesson by residing behind

the bars for around five years. Nobody is there to look after the children. The appeal may take its time to conclude. Therefore, sentence may be suspended.

5. The learned A.P.P. would submit that considering the gravity of the offence and the nature of injuries, the learned Additional Sessions Judge, Ambajogai has correctly quantified the term of imprisonment. Now, the victim/injured cannot settle the dispute amicably. The impugned judgment and order is well reasoned. The offence against the applicant was proved beyond reasonable doubt. Non-examination of the victim due to loosing the speech also does not affect the prosecution case, when the circumstances of the case have been correctly appreciated. Hence, the application deserves to be rejected.

6. Considering the point raised by the learned counsel discussed above, the applicant has a strong case on the term of imprisonment. The imprisonment already undergone for a substantial period, is not a ground for suspension of the sentence. However, another legal ground falls for consideration is, whether in the absence of the evidence of the victim, can the Court held the accused guilty? Therefore, this Court is of the view that the sentence may be suspended. Hence, the order:-

i) Criminal Application No.1949 of 2023 is allowed.

- ii) The execution, implementation, effect and operation of the sentence imposed upon the applicant to suffer rigorous imprisonment for fifteen years for the offence punishable under Section 307 of the Indian Penal Code, by the learned Additional Sessions Judge, Ambajogai, in his judgment and order passed in Sessions Case No.95 of 2018, dated 18.07.2022, has been suspended till the conclusion of the appeal.
- iii) The applicant be released on bail on executing PB and SB of Rs.50,000/- with a solvent surety of like amount on the condition that he shall not cause harm to the victim, her relatives and his children till conclusion of the appeal.
- iv) Bail before the learned Additional Sessions Judge, Ambajogai, District Beed.
- v) Criminal Application No.1950 of 2023 stands disposed of.
- vi) List the appeal in due course.

**(S. G. MEHARE)
JUDGE**

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