

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2019 OF 2018

IN

CRIMINAL APPEAL NO.451 OF 2013

Akil s/o Nadar Pinjari,
Age-39 years, Occu:Business,
R/o-Khadka Chowfuly, Bhusawal,
District-Jalgaon.

**...APPLICANT
(Ori. Informant)**

VERSUS

- 1) The State of Maharashtra,
Through, the Police Inspector,
Bhusawal Bazarpeth Police Station,
Bhusawal, District-Jalgaon,
- 2) Saniya d/o Sayyad Ali Kadri,
Age-28 years, Occu:Business,
R/o-'Radhakunj', Jamner Road,
Bhusawal, Dist-Jalgaon,
- 3) Sayyed Ali Mehboob Ali Kadri,
Age-40 years, Occu:-
- 4) Afsana Sayyed Ali Kadri,
Age-38 years, Occu:-
- 5) Samir Sayyed Ali Kadri,
Age-20 years, Occu:-
- 6) Jia Sayyed Ali Kadri,
Age-21 years, Occu:-
R/o-Jamner Road, "Radhakunj",
Bhusawal, Dist-Jalgaon,
- 7) Manoj Brijlal Walecha,
Age-34 years, Occu:-
R/o-Sindhi Colony, Jalgaon,

8) Amir Khan Idris Khan,
Age-23 years, Occu:-

9) Mohammad Jamal Mohammad Yonus,
Age-23 years, Occu:-

Both R/o-Muslim Colony, Idgah,
Khadka, Bhusawal, Dist-Jalgaon.

...RESPONDENTS
(Resp. Nos. 2 to 9 Ori. Accused)

...

Mr. B.R. Waramaa Advocate for Applicant.
Mr. A.M. Phule, A.P.P. for Respondent No.1 - State.
Mr. Rajendrra Deshmukh, Senior Counsel i/b. Mr. Sanket
N. Suryawanshi Advocate for Respondent Nos. 2 to 6.
Mr. N.S. Ghanekar Advocate for Respondent No.7 (Absent).
Mr. R.O. Awasarmol Advocate for Respondent No.8 (Absent).

...

CORAM: SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.

DATE OF RESERVING JUDGMENT : 1st SEPTEMBER 2023

DATE OF PRONOUNCING JUDGMENT : 17th OCTOBER 2023

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed by the original informant – appellant, who has filed Criminal Appeal No.451 of 2013 challenging the acquittal of the respondents – original accused in Sessions Case No. 192 of 2012 by the learned District Judge-3 and Additional Sessions Judge, Jalgaon on 11th September 2013

for the offence punishable under Sections 307 read with Section-34, 109 read with Section 307, 201 of the Indian Penal Code and Section 25 of the Indian Arms Act.

2. The said Criminal Appeal No.451 of 2013 came to be admitted by this Court by order dated 29th January 2014. It will not be out of place to mention here itself that even the prosecution has filed Criminal Appeal No.61 of 2014 to challenge the said acquittal. The Application for leave to appeal (Criminal Application No.6710 of 2013) filed by the State was also allowed on 29th January 2014. In short, both the Appeals came to be admitted, challenging the acquittal of the respondents – original accused, on the same date.

3. There is also one connected criminal application i.e. Criminal Application No.4811 of 2014 which challenges the order dated 22nd January 2014 passed by the Assistant Sessions Judge, Jalgaon on the application filed by original accused No.8 – Mohammad Jamal, rejecting his request to return the custody of the revolver.

4. Pending these proceedings, present Criminal Application No.2019 of 2018 has been filed by the informant- appellant for following prayers:-

"A) The respondent No.1 be directed to place all investigation papers i.e. A.D. No. 44/2017 registered with Bazar Peth Police Station, Bhusawal on the basis of death of Sameer Pinjari on 5.11.2017 in the form of additional evidence for consideration of Criminal Appeal No. 451/2013 and 61/2014.

B) To amend/alter the charge (Exh.23) framed in Sessions Case No.192/2012 and charge punishable U/s. 302 of I.P.C. be framed against accused/respondent no. 2 to 9 and to pass necessary order for recording of further evidence for final consideration of Criminal Appeal."

5. When this Application was before this Court, by order dated 18th September 2018, this Court had taken note of the fact that a statement was made on behalf of the applicant that due to the bullet injury sustained to the victim, he has expired and though death took place after so many years, he want to see that the record like postmortem report and certificate of cause of death is produced. Learned APP was directed to see that the Police collects the record and produce the same before this Court. Thereafter, by way of an affidavit-in-reply, affidavit of Assistant Police Inspector, Bhusawal Bazarpeth Police Station,

Bhusawal, District-Jalgaon, Shri Sudarshan Kashiram Waghmare has been filed and along with his affidavit, he has filed the copy of the inquest panchnama, application by the Police to be sent along with the dead body at the time of postmortem, postmortem report, histopathology report and final cause of death certificate. Under the said circumstance, prayer clause (A) appears to be fully addressed regarding placing all investigation papers i.e. A.D. No. 44 of 2017 registered with Bazarpeth Police Station, Bhusawal, which was in respect of death of victim Sameer Pinjari on 5th November 2017.

6. Heard learned Advocate Mr. Waramaa appearing for the applicant, learned APP Mr. Phule appearing for State and learned Senior Counsel Mr. Rajendrra Deshmukh instructed by learned Advocate Mr. Suryawanshi appearing for respondent Nos. 2 to 8, in respect of prayer clause (B), above said.

7. Learned Advocate Mr. Waramaa appearing for the applicant has taken us through the charge and the evidence that was recorded by the learned trial Judge. It is to be noted that the charge was for the offence punishable under Sections 307 read with Section 34 of the Indian Penal Code, Section 109 read with

Section 307 of the Indian Penal Code, Section 201 read with Section 34 of the Indian Penal Code and Section 3 punishable under Section 25 of the Indian Arms Act. In order to prove the guilt of the accused, it appears that prosecution has examined in all twenty three witnesses and it also appears that in all four witnesses were examined in defence. After considering the entire evidence and hearing both sides, all the accused came to be acquitted of the offence punishable under Section 307 read with Section 34 of the Indian Penal Code. Accused Nos. 2 to 6 came to be acquitted of the offence punishable under Section 109 read with Section 307 of the Indian Penal Code, accused No.6 and 8 came to be acquitted of the offence punishable under Section 201 of the Indian Penal Code and accused Nos.1, 6 and 8 came to be acquitted of the offence punishable under Section 25 of the Indian Arms Act.

8. The learned Advocate for the applicant vehemently submitted that as per the prosecution story, PW-22 Iqbal Pinjari is the nephew of the informant - PW-5 Akil Pinjari i.e. present applicant. Injured (now deceased) Sameer was also nephew of the informant. Accused No.1 Sania stated to have purchased some batteries worth Rs.2,21,000/- on credit from the shop of

PW-22 Iqbal by name and style, 'Raj Battery and Auto Electricians', at Bhusawal. A cheque of the said amount came to be issued in the name of shop. Accused No.1 Sania had paid amount of Rs.1,00,000/- in cash from time to time to PW-22 Iqbal and then it is stated that she had taken back her cheque and issued new cheque for the remaining amount of Rs.1,21,000/-. The said cheque was dishonoured and PW-22 Iqbal had issued demand notice. Upon the non-compliance, Iqbal had filed complaint under Section 138 of the Negotiable Instruments Act against accused No.1 Sania, in which process was issued against her. A news item to that effect came to be published in local Newspaper on 5th January 2012 and it is stated that accused No.1 Sania got annoyed with the said news. Accused No.1 Sania along with her mother - accused No.3 Afsana and two bodyguards i.e. accused No.7 Amir and accused No.8 Jamal, went to the shop of Iqbal and threatened him to withdraw the complaint. They all started assaulting Iqbal with wooden sticks, fists and kick blows. Accused No.1 Sania took out revolver from her bodyguard and assaulted PW-22 Iqbal with the butt of revolver on his chest and back. Accused No.1 Sania and PW-22 Iqbal, both lodged report against each other with the Police. It is the further prosecution story that when informant

Akil came to know about the incident, he along with injured Sameer started proceeding to Bazarpeth Police Station. On the way, accused No.1 Sania came in opposite direction in four wheeler vehicle with other accused persons and by saying that, Akil and Sameer should also be killed, accused No.1 Sania got down from the car and started abusing informant and Sameer and aiming to fire towards them from the revolver, while they were on the motorcycle, came in front. The bullet was fired towards the forehead of Sameer and he sustained bleeding head injury and fell down. Some persons pelted stones towards the car of the accused and then they left from the spot. Informant managed Sameer to be taken to Global Hospital, Bhusawal and then lodged the report.

9. Learned Advocate Mr. Waramaa for the applicant would state that since the date of admission in Global Hospital, Bhusawal, Sameer was unconscious, he went in coma. On the next day, Sameer was taken to Seven Hills Hospital, Mumbai for surgery. From 6th January 2012 to 5th April 2012 Sameer was admitted there. Therefore, when the evidence was led before the trial Court, Sameer was alive but was in coma. The charge-sheet came to be filed on 22nd March 2012 and therefore, the further

medical treatment details were not given or brought before the trial Court. As aforesaid, the Judgment of acquittal has been pronounced on 11th September 2013. In the meantime also the treatment to Sameer continued and till death treatment was given but Sameer was in coma. Sameer ultimately succumbed to the injury on 5th November 2017. When the postmortem was conducted and the histopathology report was taken, the final cause of death that has been stated is, " As per chemical analysis and HP report, death due to chronic pyelonephritis associated with fatty liver due to chronic debility condition, due to gun shot injury." Therefore, there is nexus between the injury that was caused on 5th January 2012 and the death that has been taken place on 5th November 2017. This fact is required to be brought on record and therefore, charge for the offence under Section 302 of the Indian Penal Code is required to be framed. *De novo* trial is required to be directed.

10. Learned Advocate Mr. Waramaa has taken us through the evidence of the informant and also the medical evidence i.e. PW-16 Dr. Kishor Chaudhari, who treated Sameer at Seven Hills Hospital, Andheri, Mumbai. He has categorically stated that at the time of discharge, Sameer was in coma. Prosecution has also

examined PW-20 Dr. Kunal Nikam who had examined Sameer on 5th January 2012 at Global Hospital, Bhusawal and he has stated that Sameer was in unconscious state when he was brought to the hospital. When there is nexus between the injury and the cause of death which shows that Sameer never came out of coma, then it is necessary to frame charge for the offence punishable under Section 302 of the Indian Penal Code. Learned Advocate also submitted that in the interest of justice, it is necessary to exercise the powers of this Court under Section 391 of the Code of Criminal Procedure. The informant is having documents to show the treatment given to Sameer. The medical certificate issued by Orchid Multi Superspeciality Hospital, Jalgaon dated 10th November 2017 would show that Sameer was admitted to that Hospital on 14th October 2017 and expired there on 5th November 2017. At the time he was admitted, it was for 'Septicemia with septicemic shock with mods in case of coma due to past history of gunshot injury'. The learned Advocate, therefore, prayed for grant of prayer clause (B) of the Application.

11. Learned APP Mr. Phule also supported the Application, as the prosecution has also filed the Appeal challenging the acquittal.

12. Per contra, learned Senior Counsel Mr. Rajendra Deshmukh instructed by learned Advocate Mr. Sanket N. Suryawanshi for respondent Nos. 2 to 6 objected to the Application and submitted that when after giving every opportunity, the accused persons have been acquitted, there is no question of ordering retrial. Further, at the time when the evidence was adduced and till the Judgment was pronounced by the learned trial Judge, the deceased was alive. He was alive till 5th November 2017. Under the said circumstance, it cannot be said that there is any kind of nexus between the injuries and the cause of death.

13. The facts of the prosecution story are already reproduced and therefore, the same are not repeated. The position that stood before the trial Court was that Sameer was alive. Though it was stated that he was in coma, it was the position prior to the charge-sheet and there was no attempt by the prosecution before the trial Court to get the update in respect of health of Sameer till pronouncement of the Judgment. We had permitted the learned Advocate Mr. Waramaa to give a chart / synopsis showing what was the period of admission of Sameer and in which hospital. Mr. Waramaa has given following synopsis:-

“ Incident took place at Bhusawal in front of Bus Stand on 05/01/2012. Injured Samir Pinjari was admitted in the Hospital. Details of Hospitalization of injured Sameer are as under:-

Sr. No.	Hospital	Date of Admission	Date of Discharge
1.	Global Hospital, Bhusawal	05/01/2012	On 5/1/2012 for shifting to Seven Hills Hospital, Mumbai for Surgery
2.	Seven Hills Hospital, Mumbai	At Early Hours on 6/1/2012	05/04/2012
	Charge sheet was filed on 22/3/2012. Therefore, further medical treatment details not brought before the learned trial Court by police.		
3.	Global Hospital, Bhusawal	Date of certificate 31/07/2012	
4.	Kokilaben Dhirubhai Ambani Hospital, Mumbai	27/08/2012	09/10/2012
5.	Sai Lee Hospital, Mumbai	10/10/2012	29/11/2012
6.	Thunga Hospital, Thane	30/11/2012	08/02/2013 again operated on 01/12/2012
7.	Gajare Hospital, Jalgaon	07/04/2013	15/04/2013
8.	Seven Hills Hospital, Jalgaon	01/10/2013	04/10/2013
9.	The Patient Samir was taken to the Punarnava Center for Advanced Ayurveda & Research Cochin Kerla	03/11/2013	20/11/2013
10.	Konark Hospital, Bhusawal	12/07/2014	22/07/2014
11.	Dr. Bhirud, Bhusawal	26/11/2014 for right upper limb venous doppler	
12.	Orchid Hospital, Jalgaon	23/07/2014	12/08/2014
13.	During the period of 2015 to 2016 The Financial Position of the family is tarnished, therefore the family members have developed ICU room in the house itself and the care of the injured Samir has been taken under the supervision Dr. Prashant Borole and the staff has been appointed for care and medicines. The names of the Staff are as under		

	1. Lijo Edapally of Cochin Kerla 2. Majish Methew Cochin Kerla 3. Rohan Kulkarni of Bhusawal 4. Sagar Sonawane of Bhusawal		
14.	Neurogen Hospital of Mumbai	05/02/2017	11/02/2017
15.	Konark Hospital, Bhusawal	31/07/2017	01/08/2017
16.	Orchid Hospital, Jalgaon	22/08/2017	28/08/2017
17.	Konark Hospital, Jalgaon	03/10/2017	14/10/2017 refer to Higher Center
18.	Orchid Hospital, Jalgaon	14/10/2017	Died on 05/11/2017
19.	Supplementary charge sheet has filed by police on 24/9/2018 after death of Sameer. Same is registered RCC No.309/2018. Statement of Akhtar Pinjari discloses history of Hospitalization till death of injured. Page no. 63 of the supplementary charge sheet. Page no.67 certificate of Orchid Hospital also discloses multiple hospitalization."		

14. This exercise of synopsis was to see whether there was continuous hospitalization and Sameer was never discharged. But the above details would show that there are intermittent discharges, which are for months together and point at Sr. No.13 of the above chart cannot be considered without documents, which, at this stage, are not accompanied with the Application. When on many occasions Sameer was discharged from the hospital, it may give an indication that his health would have been improved. When the evidence was adduced before the trial Court, PW-20 Dr. Kunal Nikam was the medical officer who had examined Sameer immediately, in Global Hospital, Bhusawal. His evidence would show that Sameer was in a critical condition and

Sameer was not responding to verbal command and deep painful stimuli. After certain investigations, Sameer was referred to Higher Center for further management. Then PW-16 Dr. Kishor Chaudhari has examined Sameer on 6th January 2012 in Seven Hills Hospital, Andheri, Mumbai. He has given the account of the health status and treatment given to Sameer in his hospital till discharge of Sameer. Further, in his examination-in-chief Dr. Kishor Chaudhari had opined that due to the injuries sustained to Sameer, there was possibility of his death at any point of time and such injuries were sufficient, in ordinary course of nature, to cause death. In his cross-examination question was asked to him, whether the injury he has described can be said to be grievous injury. He answered that it is fatal injury, but then he says that he cannot say whether this injury can be fatal. Prior to that, he also admitted that on account of medical aid, Sameer has survived. Thus, what was tried to be brought on record by the prosecution was, whether the injury suffered by Sameer was sufficient to cause death. At this stage, we will not make any comment in respect of the testimony of Dr. Kishor Chaudhari, but at the same time, we may take note of the discharge card Exhibit-201 by this witness, wherein it has been stated, "at the time of discharge, Sameer remains unconscious, is able to open

eyes spontaneously but unable to respond or have any meaningful interaction with surrounding. He move all limbs but is (See ori) and has developed some contractures. He is also noticed to have decarebrate posturing. His wounds have healed well. Plognosis remains guarded.” Thus, at this stage, the application is not supported by documents.

15. We cannot forget here that the accused persons had faced charge and trial and then they have been acquitted and at that time Sameer was alive. Sameer was alive for about five years. At the same time, now we would like to consider the legal position also. Learned Advocate Mr. Waramaa has relied on ***Brig. Sukhjeet Singh (Retd.) MVC vs. State of Uttar Pradesh and others, 2019(2) JT 18 : 2019 Legal Eagle (SC) 73***, wherein it has been held that, the key words in Section 391(1) are “if it thinks additional evidence to be necessary”. The word “necessary” used in Section 391(1) is to mean necessary for deciding the appeal. After taking note of decision in ***Rambhau and another vs. State of Maharashtra, (2001) 4 SCC 759***, it has been observed that, it is clear that there are no fetters on the power under Section 391 of the Code of Criminal Procedure of the Appellate Court. All powers are conferred on the Court to

secure ends of justice. The ultimate object of judicial administration is to secure ends of justice. Court exists for rendering justice to the people.

16. Learned Advocate Mr. Waramaa further relied on ***State of NCT of Delhi vs. Shiv Charan Bansal and others, 2019(4) Crimes 298 : 2019 Legal Eagle (SC) 1296***, wherein on the basis of ***Issac alias Kishore vs. Ronald Cheriyan and others, (2018) 2 SCC 278***, it was held that:-

“ S.386 Cr.P.C. defines the powers of the appellate court in dealing with appeals. Clause (a) of S.386 Cr.P.C. is restricted to the powers of the High Court since an appeal against an Order of acquittal lies to the High Court. The appellate court may direct the accused to be re-tried, not only when it deals with an appeal against acquittal, but also when it deals with an appeal against conviction. Under clause (a) the High Court may reverse the Order of acquittal and direct that further enquiry be made, or the accused may be re-tried, or may find him guilty and pass sentence thereon. ”

17. It is to be noted that in ***Brig. Sukhjeet Singh (Retd.) MVC vs. State of Uttar Pradesh and others***, (supra), the facts indicate that it was in respect of permitting production of a document i.e. trust deed. It was noted that photo copy of the trust deed was available on record. Hon'ble Allahabad High Court

had dismissed the application filed by the appellant under Section 482 of the Code of Criminal Procedure rejecting two applications filed by the appellant under Section 391 of the Code of Criminal Procedure and in that connection those observations have been made. Here, the question is not only of permitting additional evidence but as per prayer clause (B), the applicant / appellant wants the charge to be framed i.e. additional charge or now the main charge for the offence punishable under Section 302 of the Indian Penal Code and want the respondents to be re-tried. That means the trial to be *de-novo*, which cannot come only under Section 391 of the Code of Criminal Procedure.

18. Further, in ***State of NCT of Delhi vs. Shiv Charan Bansal and others***, (supra), the facts would reveal that the Hon'ble High Court of Delhi had quashed some charges and then the Hon'ble Apex Court found it to be wrong. The matter reached to the Apex Court in the appeals filed by the State to challenge the order of discharge and taking into consideration the evidence that was collected, the powers of the Court were considered. That means, in this case there was no trial when the matter had reached to the Hon'ble Apex Court.

19. We would like to take help of certain decisions of the Apex Court, though basically those may be on a different point. In ***S. Guin and others vs. Grindlays Bank Ltd., AIR 1986 SC 289***, wherein trial Court has acquitted the appellants, the appeal was preferred before the High Court. The High Court then allowed the appeal after a period of six years and remanded the case for retrial. It was observed in Para-3 as under:-

“ 3. After going through the judgment of the magistrate and of the High Court we feel that whatever might have been the error committed by the Magistrate, in the circumstances of the case, it was not just and proper for the High Court to have remanded the case for fresh trial, when the order of acquittal had been passed nearly six years before the judgment of the High Court. The pendency of the criminal appeal for six years before the High Court is itself a regrettable feature of this case. In addition to it, the order directing retrial has resulted in serious prejudice to the appellants. We are of the view that having regard to the nature of the acts alleged to have been committed by the appellants and other attendant circumstances, this was a case in which the High Court should have directed the dropping of the proceedings in exercise of its inherent powers under Section 482, Code of Criminal Procedure even if for some reason it came to the conclusion that the acquittal was wrong. A fresh trial nearly seven years after the alleged incident is bound to result in harassment and abuse of judicial process”

20. In ***Mohd. Hussain @ Julfikar Ali vs. The State (Govt. of NCT) Delhi, (2012) AIR (SC) 3860 : (2012) 9 SCC 408***, it has been observed that the appellate Court is having power

under Section 386 of the Code of Criminal Procedure, to order the retrial of the accused, but certainly such power cannot be exercised in a routine manner. A *de novo* trial or retrial of the accused should be ordered by the appellate Court in exceptional and rare cases and only when in the opinion of the appellate Court such course becomes indispensable to avert a failure of justice.

21. In ***Mohd. Hussain @ Julfikar Ali vs. The State (Govt. of NCT) Delhi***, (supra), it has been further observed that:-

“ Surely this power cannot be used to allow the prosecution to improve upon its case or fill up the lacuna. A retrial is not the second trial; it is continuation of the same trial and same prosecution. The guiding factor for retrial must always be demand of justice. Obviously, the exercise of power of retrial under Section 386(b) of the Code, will depend on the facts and circumstances of each case for which no straitjacket formula can be formulated but the appeal court must closely keep in view that while protecting the right of an accused to fair trial and due process, the people who seek protection of law do not lose hope in legal system and the interests of the society are not altogether overlooked. ”

22. In ***Issac @ Kishor vs. Ronald Cheriyan*** (supra), following are the observations:-

“ 11. Normally, retrial should not be ordered when there is some infirmity rendering the trial defective. A retrial may be

ordered when the original trial has not been satisfactory for particular reasons like..., appropriate charge not framed, evidence wrongly rejected which could have been admitted or evidence admitted which could have been rejected etc. Retrial cannot be ordered when there is a mere irregularity or where it does not cause any prejudice, the Appellate Court may not direct retrial. The power to order retrial should be exercised only in exceptional cases. ”

23. On the point of *de novo* trial, we may also refer to comparatively recent Judgment of three Judge Bench of the Hon’ble Supreme Court in ***Nasib Singh vs. The State of Punjab and another, (2021) AIR (SC) 5175***. The Hon’ble Supreme Court had taken the principles reiterated in ***Issac @ Kishor vs. Ronald Cheriyan*** (supra) and ***Mary Pappa Jebamani vs. Ganesan, 2014(14) SCC 477*** and then proceeded to lay down the principles on retrial, as follows:-

“ 28. The principles that emerge from the decisions of this Court on retrial can be formulated as under:

(i) The Appellate Court may direct a retrial only in ‘exceptional’ circumstances to avert a miscarriage of justice;

(ii) Mere lapses in the investigation are not sufficient to warrant a direction for retrial. Only if the lapses are so grave so as to prejudice the rights of the parties, can a retrial be directed;

(iii) A determination of whether a ‘shoddy’ investigation/trial has prejudiced the party, must be based on the facts of each case pursuant to a thorough reading of the evidence;

(iv) It is not sufficient if the accused/ prosecution makes a facial argument that there has been a miscarriage of justice warranting

a retrial. It is incumbent on the Appellant Court directing a retrial to provide a reasoned order on the nature of the miscarriage of justice caused with reference to the evidence and investigatory process;

(v) If a matter is directed for re-trial, the evidence and record of the previous trial is completely wiped out; and

(vi) The following are some instances, not intended to be exhaustive, of when the Court could order a retrial on the ground of miscarriage of justice :

a) The trial court has proceeded with the trial in the absence of jurisdiction;

b) The trial has been vitiated by an illegality or irregularity based on a misconception of the nature of the proceedings; and

c) The prosecutor has been disabled or prevented from adducing evidence as regards the nature of the charge, resulting in the trial being rendered a farce, sham or charade. "

24. Thus, what is emerging from these decisions is that the power of this Court to order retrial since beginning i.e. even from the stage of framing charge is required to be exercised in exceptional circumstances, unless the facts show that it is imperative.

25. Again reverting to the facts of the case, the accused were prosecuted for the offence punishable under Section 307 of the Indian Penal Code and rest of the Sections. The basic ingredients of Section 307 of the Indian Penal Code requires an intention to kill. That is required to be proved in the case of murder also. The testimony of PW-16 Dr. Kishor Chaudhari would show that the

prosecution had tried to bring it on record, as to what could have been the effect of the injuries sustained by Sameer, in respect of his life. The learned trial Court acquitted the original accused on 11th September 2013. Appeal challenging the acquittal of the respondents - accused is pending since 2013 and present Application was filed in the year 2018. As aforesaid, the incident took place on 5th January, 2012 and injured Sameer expired on 5th November 2017. The injured lived five years after the incident and approximately four years after the acquittal of the accused persons. As aforesaid, there was intermittent discharge of injured Sameer from the hospital and therefore, we are of the opinion that this is not a fit case where retrial or *de novo* trial is required to be ordered after about ten years of the acquittal of the accused persons and therefore the Application deserves to be rejected. Hence we pass following order:-

ORDER

(I) The Application stands rejected.

(II) We clarify that Criminal Appeal No.451 of 2013 and Criminal Appeal No.61 of 2014 with Criminal Application No. 4811 of 2014 would proceed as per law.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE