

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

CRIMINAL APPEAL NO.688 OF 2020

The State of Maharashtra

...APPELLANT

VERSUS

- 1) Jagdish @ Ashish @ Rihan Krushnaji
Nakade,
- 2) Chetan Madhukar Meshram,
- 3) Rajesh Suresh Sadhankar,
- 4) Vicky Anil Meshram,
- 5) Harish Ambuji Barad (Rajput)

**...RESPONDENTS
(Original Accused)**

...
Mrs.P.V. Diggikar, A.P.P. for Appellant.
...

**CORAM: SMT. VIBHA KANKANWADI AND
Y.G. KHOBRADE, JJ.**

DATE : 28th FEBRUARY, 2023

ORDER :

1. Heard learned A.P.P. at the stage of admission. The limited question before us is that the present Appeal has been filed under Section 377(1) of the Code of Criminal Procedure for

enhancement of the sentence. Present respondents have been held guilty in Sessions Case No. 84 of 2017 by the learned Additional Sessions Judge, Latur on 27th May 2020. They have been held guilty under various sections and the maximum punishment that has been awarded is 2 years 9 months and 3 days. That was the sentence they had already undergone.

2. With the able assistance of the learned APP, we have gone through the depositions of 34 witnesses which have been made available, however, suffice it to say that taking into consideration the scope of the appeal, we are not supposed to go into the aspect as to whether the findings given by the trial Judge are correct. This appeal restricts to the quantum of sentence. We can see from the impugned Judgment that after the learned trial Judge had come to the conclusion that offence under Sections 394, 395, 170, 365 and 120-B read with Section 34 of the Indian Penal Code has been proved, he went to hear the accused on the point of sentence. So also the learned APP has been heard and thereafter in Paragraph No.74 of the Judgment even the reasons have been assigned for arriving at a particular quantum of sentence. Taking into consideration the Sections, the maximum punishment that could have been awarded, was imprisonment

for life or rigorous imprisonment extended up-to ten years. Therefore, it could have been in any way between one day to ten years or even life, depending upon the manner in which the offence has been committed. When the discretion has been used, there would be less scope for exercise of our jurisdiction under Section 377 of the Code of Criminal Procedure.

3. As regards the criminal antecedents also, there is no concrete evidence. Therefore, we come to the conclusion that there are no grounds for admitting the Appeal. It might be the case where the learned trial Judge has exercised his proper discretion. We would refrain from going into that aspect further because we are not dealing with the appeal by any of the accused. When case for enhancement of punishment is not made out, the Appeal deserves to be dismissed.

4. Accordingly, the Appeal is dismissed at the threshold.

[Y.G. KHOBRADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE