

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO.238 OF 2023

IN
CRIMINAL APPEAL NO. 131 OF 2023

Bhairav s/o Waman Dahake

Vs.

State of Maharashtra through Police Station Officer Police Station, Bhiwapur, District
Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. D. Umredkar, Counsel for appellant.
Mr. M. J. Khan, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 14/06/2023

1. By preferring this appeal, the appellant has challenged the judgment and order of sentence passed by the Additional Sessions Judge, Nagpur in Sessions Case No. 36/2019 by which the appellant is held guilty for the offence punishable under Section 304 part (2) and sentenced to suffer eight years of rigorous imprisonment and fine of Rs.25000/- in default rigorous imprisonment of two months.

2, As per the contention of the appellant, learned trial Court has not appreciated the evidence in proper perspective. In fact, the deceased has not died due to the injury sustained by him. He was discharged from the hospital and again on 05.10.2019, due to ill

health admitted to the hospital and subsequently he died. This aspect is not taken into consideration by the trial Court and erroneously convicted the present appellant by holding him guilty for the offence punishable under Section 304 part (2) of the Indian Penal Code. The appellant has every chance of success in the present appeal. However, the appeal will take its own time for final disposal. In the meanwhile, if the sentence is executed then, the appeal will become infructuous.

3. The said application is strongly opposed by the State on the ground that there is ample evidence against the present appellant to connect with the alleged offence. The trial Court has already taken the lenient view and held the appellant guilty under section 304 part (2). If the appellant is released on bail and if the appeal is decided against him, he will not be available for execution of the sentence.

4. Having heard both the sides and on perusal of the impugned judgment. The trial Court has considered the material evidence on record and observed that the assault was not intentional one however, he was having knowledge and held the appellant guilty under Section 304 part (2) of the Indian Penal Code and sentenced him to suffer rigorous imprisonment of eight years. Admittedly, the appeal will take its own time for final decision. The punishment awarded by the trial

Court is of rigorous imprisonment of eight years and not punished with the life imprisonment. The appellant was on bail during the trial. He has not misused the liberty. Considering all these aspects, the application deserves to be allowed by suspending the sentence. Accordingly, I proceed to pass following order.

(i) The execution of the sentence is hereby suspended, till conclusion of the trial.

(ii) The appellant is hereby released on bail on executing PR bond in the sum of Rs.20,000/- in the like amount.

(iii) The appellant shall remain present before the trial Court on 5th of every month and trial Court shall record his presence.

(iv) The appellant shall furnish his mobile/phone number, along with his address with address proof, before the trial Court. Additionally, the appellant shall submit the names of his two nearest relatives along with their address with address proof,

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)