

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPA) NO.1073 OF 2022 IN
CRIMINAL APPEAL NO.831 OF 2022

Kailas Namdeo Pawar Vs. State of Maharashtra

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

Court's or Judge's orders.

Shri P.B. Patil, Advocate for applicant.
Shri I.J. Damle, APP for non-applicant/State.

CORAM : ANIL L. PANSARE, J.
DATE : JANUARY 30, 2023.

This is an application under Section 389 of the Code of Criminal Procedure.

2. The applicant has been convicted for the offence punishable under Section 304 Part-I of the Indian Penal Code (IPC) and has been sentenced to suffer rigorous imprisonment for seven years and to pay fine of ₹10,000/-.

3. Learned advocate for the applicant submits that the offence has been committed on 21.10.2019 and First Information Report (FIR) has been lodged on the same day. Accordingly, the offence came to be registered vide Crime No.305/2019 with Police Station, Lonar for the offence punishable under Section 307 of the IPC.

4. The applicant has been arrested on 22.10.2019 and since then he is in jail.

5. It is the case of the prosecution, in brief, that Jyoti (wife of the appellant) has lodged FIR against one Ratan (deceased) on 22.10.2019 for committing rape. The deceased was released on bail. On the date of incident i.e. on 21.10.2019, the appellant assaulted Ratan by sickle. Due to which, he sustained bleeding injuries. Therefore, Ratan was taken to Government Hospital at Mehkar and thereafter he was shifted to Ghati Hospital, Aurangabad. During treatment Ratan died therefore charge under Sections 302, 143, 147, 148, 149 came to be added.

6. Learned Additional Sessions Judge having considered the evidence led by the prosecution came to the conclusion that the offence under question will fall under Section 304 Part-I of the IPC. The relevant findings rendered in the judgment reads thus:

“61] From the evidence, it is came on record that, prior to the incident, there was report of rape lodged by wife of accused Kailas against deceased Ratan. In that matter, deceased was on bail and wandering in village. In this back - ground, the evidence of P.W.7 show that, Kailas was running behind Ratan. So, this suggest was seen by accused Kailas, Kailas became that when Ratan annoyed and in a heat of anger assaulted to deceased, this possibility exists from the evidence on record. So, this situation comes under Exception (1) of Section 300 of Indian Penal Code and not covered by any of the proviso to said Exception (1). Now, in this situation, said incident cannot be termed as murder but

it is a culpable homicide not amounting to murder, which is punishable under Section 304 of Indian Penal Code. At this stage, it has to be considered that, the injury is on head of the deceased with muddemal sickle and considering the nature of injury and site of injury, it can be seen that, the assault was done for causing such bodily injury as is likely to cause death. This position also corroborated from the medical evidence of P.W.10 that, injury No.1 in column No.17 of post-mortem report is sufficient to cause death in its ordinary course. In this situation Section 304 - Part I is proved by prosecution against accused No.1 Kailas only.”

7. Thus, Sessions Court has come to the conclusion that offence under question is culpable homicide not amounting to murder and accordingly the applicant is sentenced to suffer rigorous imprisonment for seven years.

8. Though the learned Additional Public Prosecutor opposes the application, the fact remains that appellant is in jail. He has undergone imprisonment for more than three years. Thus, he has already undergone about half of the sentence. There is no possibility that the appeal will be taken up for final hearing in near future, considering the pendency of the cases. In these circumstances, it will be appropriate to suspend the sentence. Hence, I pass the following order:

ORDER

- (i) The application is allowed.
- (ii) The execution of sentence imposed upon the

applicant by judgment and order dated 30.09.2022 passed by learned Additional Sessions Judge, Mehkar, District Buldhana in Sessions Trial no.7 of 2020, is suspended.

(iii) Applicant-Kailash Namdeo Pawar, shall furnish P.R. bond in the sum of ₹25,000/- with one surety in the like amount before the lower Court.

(iv) The applicant shall remain present before this Court at the time of final hearing of the appeal.

The application is disposed of.

JUDGE

Wagh