

Sessions Court, Greater Bombay in Sessions Case No. 39 of 2017, has been convicted and sentenced as under:-

- for the offence punishable under Section 302 of the Indian Penal Code, to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/-, in default, to suffer further rigorous imprisonment for 2 years.

4. Perused the papers. The prosecution case rests on direct evidence, in particular the evidence of PW2 – Dattaram Khetle, an eye-witness to the incident of assault. According to PW2, the applicant had purchased a TV from him, for a sum of Rs.2,200/-, however, had not returned the money as promised. He has stated that when he went to the applicant's house on 11th October 2016 at about 7:00 p.m., the applicant's wife disclosed that the applicant had lost an amount of Rs.2,000/- in gambling. According to PW2, the applicant got angry and assaulted his wife with fist blows. PW2 has further stated that he asked the applicant not to quarrel, however the applicant stated that his wife had defamed him, and saying so, he went

to the kitchen and returned with a small kitchen knife and assaulted his wife with the said knife. Pursuant to the said assault, the applicant's wife fell down. It appears from the evidence of PW5 – Karuna Kharkar, a neighbour, that when she heard the voice of the applicant, she went into the room and saw that the applicant's wife was unconscious. PW5 has stated that as the applicant had told her that his wife might have suffered an epileptic attack, she put an onion on her nose, pursuant to which she regained consciousness. PW5 has stated that the applicant's wife complained that she had stomach pain on the left side, back pain and that her legs were paining. She has further stated that she saw a small injury on the left side of her stomach and that the said injury was not bleeding and that she applied turmeric powder on the said wound. The evidence of PW7 – Dr. Shivkumar Kolle, the doctor who conducted the postmortem on the deceased shows that the deceased had sustained one injury i.e. an obliquely placed wedge, shaped stab wound of size 1.5 cm X 0.2 cm.

5. Learned counsel for the applicant states that having regard to the manner in which the incident had taken place, the applicant's case would not fall under Section 302 of the Indian Penal Code but would be a lesser offence. He submits that the applicant has been in custody for more than 7 years without remission and as such the applicant be released on bail.

6. *Prima facie*, it appears that the incident had taken place at the spur of the moment; that the applicant assaulted the deceased with a kitchen knife and that the injury was a small injury. It is not in dispute that the applicant is in custody for more than 7 years without remission. The appeal is of the year 2024 and the same is not likely to come up for hearing in the immediate near future.

7. Considering the aforesaid, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his aforesaid appeal, on the following terms and conditions:-

ORDER

- i) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.20,000/- with one or two sureties in the like amount;
- ii) The applicant shall report to the trial Court, once in four months on the day/date specified by the trial Court, till the appeal is finally disposed of;
- iii) The applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;
- iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

8. The Application is allowed in the aforesaid terms and is accordingly disposed of.

. All concerned to act on the authenticated copy of this order.

MANJUSHA DESHPANDE, J.

REVATI MOHITE DERE, J.