



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

CRIMINAL WRIT PETITION NO. 1258 OF 2024

Sangita w/o. Gautam Chouthmal
Age 40 years, Occu. Household
R/o. Nakshatra Park, Rangin Building
Plot No.3, Paithan Road, Aurangabad .. Petitioner

Versus

1. The State of Maharashtra
through Satara Police Station
Aurangabad
2. Ritesh s/o. Arun Suradkar
Age 24 years, Occupation Labour
R/o. Nakshatra Park, Magmalhar Society,
Plot No.11, Nakshatrawadi, Aurangabad .. Respondents

Mr. Shaikh Afreen R. Advocate for Petitioner;
Ms. R. R. Tandale, A.P.P. for Respondent No.1;
Mr. Nagesh J. Sonune, Advocate for Respondent No.2

CORAM : SACHIN S. DESHMUKH, J.

DATE : 12-02-2026

PER COURT:-

1. The petitioner seeks setting aside and quashing of the order rendered by the learned Additional Sessions Judge, Aurangabad, below application Exhibit-18, in Sessions Case No.244 of 2021, dated 21.02.2024, rejecting to frame additional charge under Section 302 of the Indian Penal Code.

2. The petitioner lodged a First Information Report (FIR) against Respondent No. 2 on 20.02.2021. The incident occurred during a Haldi ceremony for Swapnil Katkure, a resident of Nakshatra Park Society. At approximately 9:30 p.m., the petitioner's son, Nitin, was conversing with a friend near their building when Respondent No. 2 (the accused) approached and pressured him to dance at the function. Nitin declined, leading Respondent No. 2 to use force and initiate a quarrel. Nitin subsequently returned home and informed his parents and sister of the confrontation. When the petitioner, accompanied by Nitin and her daughter, went to the parking area to address the matter, they found Respondent No. 2 standing with his sister and mother. Despite the petitioner's attempt to resolve the issue through dialogue, Respondent No. 2 began hurling abuses.

3. The petitioner's husband, Gautam Chouthmal, then arrived and also attempted to pacify the accused. However, Respondent No. 2 refused to listen, picked up a brick, and struck Gautam on the head. Gautam sustained grievous injuries and was initially admitted to M.G.M. Hospital, Aurangabad, before being transferred to the Government Medical College and Hospital, Aurangabad. Following the assault, the petitioner filed a complaint at the Satara Police Station under Sections 326 and 504 of the Indian Penal Code.

4. Subsequently, on 25.02.2021, Gautam Chouthmal succumbed to his injuries during the course of his medical treatment. Consequently, a charge sheet was filed against Respondent No. 2 for offences punishable under Sections 304 (Part II), 326, and 504 of the Indian Penal Code. The trial court eventually framed charges against Respondent No. 2 under these same sections.

5. Thereafter, on 21.02.2024, the prosecution moved an application to add a charge under Section 302 of the Indian Penal Code against Respondent No. 2. The application contended that, as per the FIR, Respondent No. 2 intentionally assaulted the deceased with the intent to cause death. It was further submitted that both the medical evidence and the testimony of eyewitnesses corroborate the informant's version of the event. In response, Respondent No. 2 filed a reply (say) stating that the Court had already adjudicated the matter while framing charge.

6. The learned Sessions Judge rejected the application vide the order under challenge. Aggrieved by the order, the petitioner has preferred the present petition seeking to quash and set aside the impugned order and to direct the framing of an additional charge under Section 302 of the Indian Penal Code against the accused/Respondent No. 2.

7. In light of the aforesaid backdrop, the learned counsel for the petitioner/informant submits that the trial court erred in passing the order under challenge, rendering it unjust, improper, and illegal. It is contended that the trial court failed to appreciate that Respondent No. 2 intentionally weaponized a brick to strike the deceased on the head, which ultimately resulted in his death. Counsel further submits that this aspect of intentional assault is squarely corroborated by both the medical evidence and the testimonies of eyewitnesses. Consequently, the trial court ought to have exercised its jurisdiction to frame an additional charge under Section 302 of the Indian Penal Code.

8. The learned APP has assisted the Court by placing the relevant records and the medical certificate of the deceased. The learned APP submitted that the Court may consider the material on record and pass an appropriate order as it deems fit in the facts and circumstances of the case.

9. Per contra, Learned counsel for Respondent No. 2/accused supported the order under challenge, submitting that the trial court passed an appropriate and well-reasoned order. It is contended that the essential ingredient of mens rea, necessary to constitute an offence under Section 302 of the Indian Penal Code, is entirely absent. Counsel further submits that even if the allegations in the FIR are accepted in their entirety, they do not

satisfy the legal requirements of Section 302. There is no evidence of an intention to kill, nor any knowledge that the alleged act was sufficient in the ordinary course of nature to cause death. Given that charges have already been framed, it is argued that there is no requirement to add a charge under Section 302. Consequently, prayed to dismissed the petition.

10. Having considered the submissions from both sides and upon perusal of the record, it is evident that the accused, in the heat of the moment, picked up a brick and struck the deceased on the head. Furthermore, the FIR and the investigating papers do not disclose any allegations of premeditation or intent to kill on the part of the applicant. While the husband of the informant succumbed to his injuries during the course of treatment, there is no material on record to infer motive, knowledge, or intent to commit murder. Consequently, the case squarely falls within the scope of the charges already framed by the trial court.

11. Resultantly, no error is noted in the well reasoned order passed by the learned Sessions Judge, Aurangabad.

12. Accordingly, the criminal writ petition is dismissed.

[SACHIN S. DESHMUKH]
JUDGE