

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

CRIMINAL APPLICATION NO. 1664 OF 2015

THE STATE OF MAHARASHTRA
VERSUS
GOVIND BABULAL SONAWANE AND OTHERS

.....
APP for Applicant/State : Mr. S. P. Deshmukh
.....

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATED : 2nd DECEMBER, 2015

PER COURT :-

1. This is an application seeking leave to file appeal against the order of Additional Sessions Judge, Ahmednagar in Sessions Case No. 61 of 2012, whereby, the learned Additional Sessions Judge has acquitted the accused for offence punishable under Section 302 r/w 34 of I.P.C.

2. Mr. Deshmukh, the learned APP submits that the case is based on the evidence of eye witnesses P.W. 1 and P.W. 2 who had been on the spot. The said evidence is discarded without any proper reasons. P.W.1 Vitthal Gore, in his examination-in-chief, has stated that when deceased Anil Shende tried to outrage modesty of one of the women sitting in the cabin of truck and after shouts made by that lady, Anil Shende climbed on the roof of the cabin in the running truck. P.W.1 and P.W.2 have given details of scuffle between the accused persons and

the deceased. The same is improperly discarded.

3. With the assistance of learned APP, we have gone through the judgment, depositions and record and proceedings. The prosecution case was that deceased Anil Shende was trying to outrage modesty of one of the female workers sitting in the truck and the accused persons assaulted Anil Shende by kicks and fist blows and are responsible for death of Anil Shende.

4. The postmortem report shows the injuries sustained by deceased Anil Shende as "abrasion on right arm lateral aspect". There was no injury on the skull or head. Right lung was congested. Apart from this, there were no other injuries. The cause of death is mentioned as "pulmonary hemorrhage due to lung rupture". It is observed that though there were six (06) female workers and also male workers in the truck, none of them had been examined by the prosecution. The incident is said to have taken place at a petrol pump. None of the employees of the petrol pump had been examined. The accused were not known to P.W.1 and P.W.2. No identification parade was held. The homicidal death itself was doubtful. P.W.1 has specifically stated that deceased Anil Shende tried to outrage modesty of one of the female workers sitting in the cabin and after shouts made by that lady, deceased Anil Shende tried to climb on the roof of the cabin in the running truck. The possibility of his falling down on the back side of the truck cannot be

ruled out. P.W.2 is also said to be an eye witness, but his name has not been disclosed by the informant P.W.1 at the time of lodging F.I.R. At the time of incident the deceased Anil Shende has consumed liquor which is brought on record and as such, the possibility of his falling down on the backside of the truck on face as he was trying to climb on the roof of that running truck is also brought on record. The learned Sessions Judge has arrived at a plausible view.

5. In light of above, criminal application is rejected.

(V.K. JADHAV, J.)

(S V GANGAPURWALA, J.)

vre/-