

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

CRIMINAL WRIT PETITION NO. 851 OF 2015

Laxman S/o Digambar Kadam

Age : 40 Yrs., Occ. Agriculture,

R/o : Sangvi, Tq. : Nayegaon,

Dist. Nanded.

.... PETITIONER

V E R S U S

1. The State of Maharashtra
Through Police Station Kuntur,
Tq. Nayegaon, Dist. Nanded.

2. Satish @ Babalu Bhagwan Pawar
Age : 27 Yrs., Occ. Agriculture,
R/o : Hotala, Tq. : Nayegaon,
Dist. Nanded.

3. Sujit @ Bhiya Bhagwan Pawar
Age : 23 Yrs., Occ. Agriculture,
R/o : Hotala, Tq. : Nayegaon,
Dist. Nanded.

4. Sudhir @ Balu Bhagwan Pawar
Age : 25 Yrs., Occ. Agriculture,
R/o : Hotala, Tq. : Nayegaon,
Dist. Nanded.

.... RESPONDENTS

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Mr. Ravi M.Giri, Advocate for Petitioner.

Mrs. Pratibha Bharad, A.P.P. for R.No.1 - State.

Mr. S.B.Bhapkar, Advocate for R.Nos. 2 to 4.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 27th JULY, 2015

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ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally by the consent of the learned counsel for the parties.

2. Heard Mr. Ravi M.Giri, learned counsel for the Petitioner, Mrs. Pratibha Bharad, learned A.P.P. for Respondent No.1 – State and Mr. S.B.Bhapkar, learned counsel for Respondent Nos. 2 to 4.

3. The challenge in the present Writ Petition is the rejection to the Order below Exh. 61 in Sessions Case No. 23/2013 dated 10/06/2015 passed by the learned Additional

Sessions Judge, Biloli, Dist. Nanded, by which the application u/s 311 of the Code of Criminal Procedure is rejected.

4. Trial of the Sessions Case No. 23/2013 was in progress before the learned trial Court. During the trial, prosecution has examined in all 18 witnesses, including the eye witnesses. On 02/05/2015, learned A.P.P. filed an application for permission to adduce the evidence of one witness Vishwambhar Shankar Hambarde. Said application is rejected by the impugned order.

After the rejection of the said application, State has not challenged the said order. Said order is challenged by the petitioner, who is the complainant in Sessions Case No. 23/2013.

5. I have gone through the impugned order. Order shows that the witness, to whom the prosecution intends to examine, is not an eye witness. Learned trial Court has noticed that in the evidence of the Investigating Officer, he has stated that after 12 days of the incident, wife of the deceased came in the police station along with Vishwambhar Shankar Hambarde and one Vithal. Their statements were

recorded and after investigation, Investigating Officer noticed that these two witnesses are not the eye witnesses to the incident. During the course of investigation, it is confirmed even from the data collected from BSNL office that these two persons were present at the spot of incidence. Investigating Officer has not appended their statements to the charge sheet.

6. Merely because application u/s 311 of the Code of Criminal Procedure is moved before the trial Court, it can not be granted mechanically. Court below has to consider the necessity and the relevance for examining the proposed witnesses as prosecution witnesses. These two persons were not eye witnesses at all. Further, other eye witnesses are already examined by the prosecution. Their testimonies will have to be evaluated by the trial court on their own merit.

7. Order impugned shows no infirmity. It is passed by the trial court by recording cogent reasons. No case is made out for interference.

8. Present Criminal Writ Petition is dismissed.

Rule is discharged.

[V.M.DESHPANDE, J.]

KNP/Cr. W.P. 851.2015 - [J]