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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4969/2014

The State of Maharashtra.
...Applicant..

Versus

Vithoba Raoji Chahal & others.
...Respondents...

.....

Smt.P.J. Bharad, APP for applicant / appellant.
Shri S.L. Bhapkar, Advocate for respondents.

.....

**CORAM: S.S. SHINDE &
A.M. BADAR, JJ.**

DATE: 09.01.2015

ORDER :

1] Heard learned APP for the applicant and learned counsel for the respondents – accused.

2] Learned APP submits that the evidence of PW6 as also medical evidence has not been properly considered by the trial Court. Learned counsel appearing for the respondents invited our attention to the evidence of PW6 and in particular the admission given in the cross-

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examination and also submits that there was delay in filing the FIR. According to the learned counsel appearing for the respondents, PW6 was not eye-witness to the incident and secondly delayed FIR after four days of the incident is sufficient not to interfere with the impugned judgment and order of acquittal.

3] It is submitted by the learned counsel for the respondents that even the Medical Officer has not given definite opinion that the death was homicidal and, therefore, the view taken by the trial Court is plausible. Hence, this Court may not interfere.

4] We have perused the notes of evidence and in particular the evidence of PW6 as also medical evidence. *Prima facie* it appears to this Court that the evidence of PW6 and also medical evidence has not been properly considered by the trial Court.

5] In that view of the matter, a case is established by the State for admission of the appeal. Accordingly, application is allowed in terms of prayer clauses (A), (B), (C) and (F). Application stands disposed of accordingly.

6] Admit the appeal.

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7] On admission of the appeal, learned counsel for the respondents waives service of notice for the respondents.

8] Action u/s 390 of the Code of Criminal Procedure to follow before the Sessions Court, Ahmednagar.

(A.M. BADAR, J.)

(S.S. SHINDE, J.)