

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1566 OF 2015

THE STATE OF MAHARASHTRA
VERSUS
BABURAO SHRIMANT PATIL AND

...

Advocate for Applicant : Mr. A.M.Phule
Advocate for Respondents 1, 3 and 4: Mr. Joydeep Chatterji
Advocate for Respondent No.2 : Mr. M.S.Kulkarni

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

DATED: 21st NOVEMBER, 2016

P.C. :-

1. Heard learned A.P.P. for the applicant State and the learned counsel for the respective respondents.

2. Learned A.P.P. invited our attention to the evidence of P.W.1, who is injured witness and P.W.2, who is wife of P.W.1 and submits that their evidence is not properly appreciated by the trial court in the light of medical evidence and other evidence brought on record by the prosecution. Therefore, he submits that this application seeking leave to prefer appeal be allowed.

3. On the other hand, learned counsel for the respective respondents, relying upon the findings recorded by trial court, submit that the trial court, on appreciation of evidence of eye witnesses found that their evidence is not trustworthy. Even the medical evidence is not useful for the reason

that the weapon used by the accused, though stated by the prosecution witness is knife, but there is no corresponding injury caused by the said weapon. He further submits that the trial court has rightly given benefit of doubt to the respondents. Therefore, this court may not entertain this application seeking leave to prefer appeal.

4. Upon hearing learned A.P.P. for the applicant and learned counsel for the respondents and upon perusal of evidence of the prosecution witnesses and other evidence brought on record by the prosecution and in particular evidence of P.W.1 and P.W.2, coupled with medical evidence, we are of *prima facie* opinion that, trial court has not properly appreciated the evidence brought on record by the prosecution. In that view of matter, case is established for allowing the application seeking leave to prefer appeal. Accordingly application is allowed and the same stands disposed of.

5. Appeal is admitted.

6. Learned counsel waive notice for respective respondents.

7. Action under Section 390 of Cr.P.C. to be followed before the Sessions Court, Osmanabad.

(V. K. JADHAV, J.)

(S. S. SHINDE, J.)

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