

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders

Court's or Judge's orders

CRIMINAL APPLICATION NO. 5275 OF 2015

THE STATE OF MAHARASHTRA
VERSUS
NANA S/O SHANKAR HARKAL AND ORS.

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APP for the applicant : Mr. A.M. Phule
Advocate for Respondent nos. 1 to 4: Mr. S.P.
Kakade

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CORAM: S.S.SHINDE & K.K.SONAWANE, JJ.
Dated: December 08, 2016

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Heard the learned A.P.P. appearing
for the applicant/State and the learned
counsel appearing for respondent nos. 1
to 4.

2. The learned A.P.P. appearing for the
Respondent/State invites our attention to
the evidence of the prosecution
witnesses, and in particular, the
evidence of PW-2-Laxmibai Bhivsan Harkal
and PW-5-Kasturabai Jagannath Harkal, and
submits that as a matter of fact PW-5-

Kasturabai is injured witness, and therefore, her evidence ought to have been believed by the trial Court. He submits that the medical evidence also supports the prosecution case.

3. On the other hand the learned counsel appearing for respondent nos. 1 to 4 submits that so as to attract the ingredients of section 324 of I.P. code, there should be use of dangerous weapon and grievous hurt. It is submitted that, the prosecution has not brought on record any evidence regarding use of deadly/dangerous weapons in the alleged commission of offence. She submits that, the Medical Officer, who was examined did not express his opinion that the injuries are caused due to use of the deadly weapons since he himself had no occasion to examine the injured.

4. We have heard the learned A.P.P. appearing for the applicant/State and the learned counsel appearing for Respondent Nos. 1 to 4. With their able assistance, we have perused the notes of evidence and in particular, the evidence of PW-5 Kasturabai and also the medical evidence. In our prima facie opinion, the findings

recorded by the trial Court need to be scrutinized after re-appreciation of the evidence. In that view of the matter, the case is made out for allowing the application seeking leave to file appeal. Accordingly, the application is allowed and the same stands disposed of.

5. **Appeal is admitted.** Mr.S.P. Kakade, the learned counsel waives service on behalf of respondent nos. 1 to 4.

6. Action under Section 390 of Cr.P.C. to follow against respondent nos. 1 to 4 before the Sessions Court at Aurangabad.

(K.K.SONAWANE, J)

(S.S. SHINDE, J)