

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

**CRIMINAL APPLICATION NO.6542 OF 2016
IN
CRIMINAL APPEAL NO.470 OF 2016**

Khandu s/o.Vithoba Waghmare,
Age: 28 Yrs, Occu: Business,
R/o. Istal, Tq. Kej, Dist. Beed,
At present premises of Ranjani Karkhana,
Tq. Kallam, Dist. Osmanabad. **APPLICANT**
[Orig.Complainant]

VERSUS

1. Rajabhau s/o. Chhaburao Salunke,
Age: 40 yrs, Occu: Agri & Hotel Business,
R/o. Ghargaon,
Tq. Kallam, Dist. Osmanabad.
2. Ashok @ Babu s/o. Abhiman Bhosale
Age: 21 Yrs, Occu: Panshop,
R/o. Awadshirpura,
Tq. Kallam, Dist. Osmanabad.
3. Arun s/o. Jagannath Salunke,
Age: 53 Yrs, Occu. Agri (Sarpanch),
R/o. Ghargaon,
Tq. Kallam, Dist. Osmanabad.
4. Ashok s/o. Baburao Salunke,
Age: 42 Yrs, Occu:Agri & Mukadam,
R/o. Ghargaon,
Tq. Kallam, Dist: Osmanabad.
5. The State of Maharashtra **RESPONDENTS**
[Resp.no.1 to 4
orig.accused]

**WITH
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Mr.Sanjay A. Wakure, Advocate for Applicant /
Appellant
Mr.M.M.Nerlikar, APP for the Respondent /
State

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**CORAM: S.S.SHINDE &
K.K.SONAWANE, JJ.**

Date: 05.01.2017.

ORDER: (Per S.S.Shinde, J.):

1. The present applicant/appellant filed appeal on 08.08.2016 taking recourse to Section 372 of the Criminal Procedure Code. However, the Supreme Court in the case of *Satya Pal Singh Vs. State of Madhya Pradesh and Ors.*¹ and in particular in para 13 of the said judgment held that the right of questioning the correctness of the judgment and order of acquittal by preferring an appeal to the High Court is conferred upon the victim including the legal heir and others, as defined under Section 2 (wa) of Cr.P.C., under proviso to Section 372, but only after obtaining the leave of the High Court as required under sub-section (3) to Section 378 of Cr.P.C. Therefore, the appellant has also filed application in the

1 2015 AIR SCW 6251

pending Appeal on 29.11.2016, seeking leave to appeal from the judgment and order dated 20.05.2016 passed by the Additional Sessions Judge, Osmanabad in Sessions Case No.48/2014.

2. The learned counsel appearing for the applicant/appellant submits that the trial Court has not properly considered the evidence of the prosecution witnesses and reached to the erroneous conclusion to acquit the respondents. It is submitted that, the prosecution has brought on record sufficient evidence, which would clearly demonstrate that, the death of Vithoba was homicidal. There was previous enmity between Vithoba and accused persons. He submits that, appellant and Ashruba (PW-3) and his brother have categorically deposed before the Court about earlier enmity. It is submitted that, on 24.02.2013, accused had arranged a party/dinner at cattle-shed of accused Arun and there conspiracy was hatched to commit murder

of Vithoba, and accordingly, they committed the murder of Vithoba. It is submitted that, the evidence of Khandu (PW1) and Ashruba (PW3) unequivocally indicates that, the relations between accused Arun and deceased Vithoba were strained. It is submitted that, the deceased was looking after berry garden of accused Arun Salunke on batai-basis and when there were good fruits to the said tree, accused Arun asked their father to work in the garden on wages and not on batai-basis. It is submitted that, the accused brought on record motive for commission of offence and also other circumstances which would lead to only hypothesis of guilt of the accused. Therefore, the learned counsel appearing for the applicant/appellant submits that, the application seeking leave to appeal deserves consideration and the appeal may be admitted.

3. The learned APP appearing for respondent-State adopted contention raised by

the learned counsel appearing for the applicant/appellant and submits that, the appeal filed by the victim deserves consideration.

4. We have considered the submissions of the learned counsel appearing for the applicant/appellant and the learned APP for the respondent-State. With their able assistance, we have perused the original record and proceedings so as to find out whether the findings recorded by the trial Court are in consonance with the evidence brought on record and the view taken by the trial Court is plausible view. We have carefully perused the evidence of Khandu (PW1) and Ashruba (PW3), to some extent their evidence shows the previous enmity between one of the accused Arun and their father deceased Vithoba. The prosecution did not prove by convincing evidence that, the deceased was last seen in the company of the

accused. The prosecution did examine some witnesses on that aspect. However, they turned hostile. It is admitted position that, the place of incident is not isolated and is adjacent to the hotel run by the accused persons. Though the prosecution alleged that, the accused persons hatched conspiracy to kill deceased, however no evidence was led to prove such conspiracy. The law is well settled that, in case of circumstance evidence the prosecution should prove the circumstances independently, and chain of circumstances should be so complete that, it should lead to only hypothesis of guilt of the accused.

5. Upon careful perusal of the findings recorded by the trial Court, we are of the considered view that, the view taken by the trial Court is a plausible view. In that view of the matter, no case is established for granting leave, and consequently admitting

the appeal. Hence, the application seeking leave to appeal stands rejected. Consequently, Appeal stands dismissed.

Sd/-
[K.K.SONAWANE]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE

DDC