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

**CRIMINAL APPLICATION (APPA) NO.5 OF 2016
IN
CRIMINAL APPEAL NO.449 OF 2015**

Ganesh s/o Baliram Tayade,
Aged about 31 years, Occ. Labour,
R/o Amrut Nagar, Khamgaon, Tah.
Khamgaon, Dist. Buldhana

..APPLICANT

VERSUS

1. State of Maharashtra,
Through PSO of Police Station,
Khamgaon (City),
Tq. Khamgaon, Dist. Buldana

2. Rameshwar Abhimanu Date,
Age : 47 years, Occu. Service
(Postman),
R/o Warkhed, Tq. Malkapur,
Dist. Buldana

3. Sau. Swati Ganesh Tayade,
Aged 23 yrs. Occu. Household,
R/o Kothali, Tq. Motala,
Dist. Buldana

..RESPONDENTS

Mr C.A. Fule, Advocate holding for Mr S.V. Sirpurkar, Advocate for
applicant;

Mr V.P. Gangane, Addl. Public Prosecutor for respondent no.1

CORAM : N.W. SAMBRE, J.

DATE : 22nd March, 2017

ORAL ORDER

Heard Mr Fule, learned Counsel appearing on behalf of the
applicant-complainant and the learned Addl. Public Prosecutor on behalf of
respondent no.1.

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2. By judgment and order dated 3rd September, 2015, learned Additional Sessions Judge, Khamgaon, passed in Sessions Trial No.52 of 2013, acquitted respondents no.2 & 3 – accused of an offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

3. By the present application, the applicant – complainant seeks leave to file appeal for challenging the aforesaid judgment and order of acquittal.

4. It is the case of the prosecution that the deceased was father of complainant Ganesh and a day before his death, accused no.1 Rameshwar had tried to assault the deceased in view of the differences. Accused no.2 Swati is daughter-in-law of deceased and wife of the complainant.

5. Mr Fule, learned Counsel appearing on behalf of the applicant would strenuously urge that the evidence of P.W.1 Suman is ignored by the learned Sessions Judge, particularly in the backdrop of the incident that had occurred a day before the death of Baliram. In order to rely upon the theory of corroboration, he would also invite my attention to the evidence of P.W.3 Ganesh, son of the deceased. According to him, it was the overt act of accused no.1, which had prompted Baliram to commit suicide and as such acquittal cannot be sustained. He would also invite attention of this Court to Exhs. 19 and 20, i.e. suicide note and report of the Handwriting Expert, so as to submit that the same has to be read in corroboration with the evidence of P.Ws. 1 and 4.

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5. Learned Addl. Public Prosecutor supports the claim of the applicant – complainant.

6. With the assistance, I have scanned the evidence of P.W.1 Suman, wife of deceased Baliram, evidence of P.W.4 Ganesh, son of the deceased and other material available on record.

7. Exhs.19 and 20, i.e. suicide note and the opinion tendered thereon by the Handwriting Expert is also appreciated. The Handwriting Expert, in his report Exh.20 has in categorical terms opined that it cannot be inferred that the suicide note was in the handwriting of deceased Baliram and he was the author of the same for want of sufficient admitted handwriting of the deceased. In view thereof, the learned Sessions Judge has rightly discarded the said piece of evidence, i.e. suicide note Exh.19.

8. The same takes me to the next submission of Mr Fule, particularly as regards the evidence of P.W.1 Suman and P.W.4 Ganesh. Though both these witnesses in categorical terms have stated about the alleged incident of quarrel between accused no.1 and that of deceased Baliram, still it is not brought on record that such act on the part of the accused persons has abetted commission of the suicide by deceased Baliram. It is then to be noted that in the evidence of both these witnesses, it is brought on record that deceased Baliram was in financial distress and even on earlier occasion he had tried to commit suicide. In view thereof, the

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learned Sessions Judge has rightly appreciated and discarded the evidence of P.Ws. 1 and 2, so as to infer the conviction of respondents no. 2 & 3 – accused.

9. In the light of what has been stated above, in my opinion, no case for grant of leave to appeal against acquittal is made out. Leave refused. Criminal Application stands dismissed. Consequently, Criminal Appeal does not survive and stands disposed of accordingly.

(N.W. SAMBRE, J.)

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