

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.31 OF 2019
(For leave to Appeal)**

The State of Maharashtra	: Applicant.
Versus	
Ashish Rajendra Jaiswal	: Respondent

Ms. P P Shinde, APP, for the Applicant.

**CORAM : A.S.OKA &
A.S.GADKARI, JJ
DATE : 21st January 2019**

P.C.

1 This is an application under Section 378(3) of the Criminal Procedure Code for leave to file an Appeal against the Judgment and Order dated 22nd February 2016 passed by the learned 3rd Additional Sessions Judge, Thane in Sessions Case N o.315 of 2010 acquitting the Respondent from the offence punishable under Section 302 of the Indian Penal Code.

2 By the same impugned Judgment and Order, the Trial Court has convicted the Respondent for an offence punishable under Section 304(II) of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for five years and pay fine of Rs.1000/-, in default of payment of fine to further undergo the stipulated in default sentence.

3 Heard the learned APP appearing for the Applicant/State. Perused the record including the notes of evidence.

4 The record clearly indicates that the Respondent did not come to the scene of offence with pre-intention and with any traditional weapon to commit murder of deceased Harnish. The evidence on record further indicates that the incident in question took place at a spur of moment and it is due to sudden provocation that the Respondent inflicted blows with a kitchen knife on the person of deceased Harnish at his residence. In view thereof, the Trial Court has convicted the Respondent for the offence punishable under Section 304 (II) of the Indian Penal Code.

5 After perusing the entire evidence available on record, we are of the considered opinion that, the view adopted by the Trial Court is a reasonable and probable view in the facts and circumstances of the present case.

6 We find no merits in the Criminal Application.

7 The Criminal Application is accordingly rejected.

[A.S.GADKARI, J]

[A.S.OKA, J]