

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

**APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 64 OF 2021
WITH
CRIMINAL APPEAL NO. 427 OF 2021
WITH
CRIMINAL APPEAL NO. 423 OF 2021**

**THE STATE OF MAHARASHTRA
VERSUS
MASUMSHAHA DADAMINYA PATHAN**

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Mr. G.O. Wattamwar, APP for Applicant/ State
Mr. Sachin B. Munde, Advocate h/f Mr. V.d. Gunale, Advocate
for the Appellant in Cri. Appeal No.427/2021

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**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 29th SEPTEMBER, 2021

PER COURT:-

1. We have heard the learned counsel appearing for the appellant/original informant in criminal appeal no.427 of 2021. We have also heard the learned APP in the application for leave to appeal by State no.64 of 2021.

2. Learned counsel for the appellant in Criminal Appeal No.427 of 2021 and learned APP pointed to us that PW-2, PW-3 and PW-6 are the eye witnesses to the incident.

3. We have carefully perused the depositions of these three witnesses. It appears that initially, before the main incident, the respondent-accused went to the house of the informant and inquired about the deceased. Thereafter, the respondent-accused went to his house and brought a knife from the house and after giving abuses to the deceased inflicted injuries on abdomen of the deceased with the help of knife. It is pertinent that despite of these facts and the ocular evidence, the trial Court has not convicted the respondent/accused for the offence punishable under Section 302 of IPC, but converted into 304 Part II by observing that there was no intention to commit the murder.

4. In view of the above, leave to file an appeal is granted. Application No.64 of 2021 is hereby allowed in terms of prayer clause "B".

5. So far as the criminal appeal preferred by the appellant/original informant (legal heir of the victim) no leave is required in terms of the authoritative pronouncement of in the case of *Mallikarjun Kodagali Vs. State of Karnataka* reported in (2019) 2 SCC 752.

6. Issue notice to the respondent/accused in all appeals, returnable on 27.10.2021.

7. We direct the action under Section 390 of Criminal Procedure Code against the respondent/accused

[SHRIKANT D. KULKARNI]
JUDGE

[V. K. JADHAV]
JUDGE

S.P Rane