

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

45 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.12 OF 2022
WITH APPEAL/359/2019
WITH APPLN/2334/2019 IN APPEAL/359/2019

THE STATE OF MAHARASHTRA

VERSUS

NARAYAN APPASAHEB CHALGE AND OTHERS

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Mr. S.J. Salgare, APP for the applicant

Mr. Joydeep Chatterji, Advocate for respondent No.1

Mr. S.E. Siddiqui, Advocate for respondent Nos.2 and 4

Mr. P.P. More, Advocate for respondent No.3

Mr. Kuldeep Patil, Advocate h/f Mr. S.S. Choudhary, Advocate for applicant in
Appeal/359/2019 and Appln/2334/2019

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CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.

DATE : 25th JULY, 2022

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 At the outset, it is to be noted that Criminal Appeal No.359 of 2019 has been filed by the original informant under Section 372 of the Code of Criminal Procedure, 1973 challenging the acquittal of the respondents by learned Additional Sessions Judge, Jalna on 26.02.2019 in Sessions Case

No.34/2015, for the offence punishable under Sections 302, 120-B read with Section 34 of the Indian Penal Code, 1860 and under Section 4/25 of the Indian Arms Act, 1959. The learned Advocate appearing for the appellant with the signature of the applicant has filed pursis, which is taken on record by marking Exh."X" has stated that the applicant-appellant does not want to prosecute the said criminal appeal and, therefore, he be granted leave to withdraw. It is also to be noted that the said appeal is yet not admitted. Under such circumstance, if the appellant, who has filed the appeal under Section 372 of the Code of Criminal Procedure, wants to withdraw the appeal, he can be allowed to do so.

2 Another point also to be noted is that Application for Leave to Appeal by State No.12 of 2022 has been filed by the State under Section 378(1)(b) of the Code of Criminal Procedure to challenge the acquittal of the respondents in the same case. It would be separately considered. Under such circumstance, the fact remains is that to challenge the same acquittal of the respondent, as aforesaid, the original informant tried to invoke Section 372 of the Code of Criminal Procedure and now he wants to withdraw the said appeal, whereas the application has been filed by the prosecution seeking leave to appeal. Criminal Application No.2334 of 2019 was filed in Criminal Appeal No.359 of 2019 with a prayer that it should be dismissed as

against non applicant No.1 i.e. original accused No.1, as the compromise had taken place between them. However, in view of decision by the original informant to withdraw the criminal appeal itself, that application will have to be disposed of.

3 As regards the leave to appeal filed by the State is concerned, this Court has heard learned APP Mr. S.J. Salgare for the applicant, learned Advocate Mr. Joydeep Chatterji for respondent No.1, learned Advocate Mr. S.E. Siddiqui for respondent Nos.2 and 4 and learned Advocate Mr. P.P. More for respondent No.3.

4 Respondent Nos.1 to 4 stood prosecuted for the offence punishable under Section 302, 120-B read with Section 34 of the Indian Penal Code and Section 4 punishable under Section 25 of the Indian Arms Act.

5 The prosecution story in short was that on 11.02.2014 complainant Akash approached to Taluka Police Station, Jalna and lodged the First Information Report alleging that he along with his father Gopal (deceased) had been to Hanuman temple to perform puja on motorcycle. Hanuman temple is situated near Bhokardan square, Jalna. After performing puja, he returned his house to keep material of puja. Within 10 minutes he

again returned to Hanuman temple. At that time, he noticed that his father Gopal was lying on the ground in injured condition. His landlord Gopal Avdhut was standing there holding sword in his hand. After seeing him, Gopal Avdhut ran away in a white car, in which other 3-4 persons were sitting by hiding their faces by black cloth. It is further alleged that since long there is dispute between informant and his landlord Gopal Avdhut, on account of vacating the premises, in which family of informant was residing. So also, Paras Nand, Bhaiyyalal Nand, Santosh Arya @ Tandale had also threatened the deceased Gopal with assault at the instance of landlord Gopal Avdhut. Therefore, according to the informant, above named persons might have committed murder of his father Gopal Sharma. On the basis of informant First Information Report registered against the accused persons bearing Crime No.53/2014, for the offence punishable under Section 302, 143, 147, 148 read with Section 149 of the Indian Penal Code and under Section 4 punishable under Section 25 of the Arms Act. Police investigated the crime and after completion of investigation submitted charge sheet against the accused.

6 After framing of the charge the prosecution had examined in all 18 witnesses to prove the charge and after considering the evidence as well as hearing both sides the learned Additional Sessions Judge had acquitted all

the accused persons. It was admitted that the case of the prosecution was resting on circumstantial evidence. The medical evidence Exh.117 in the form of Postmortem Report as well as oral evidence showed that the cause of death of deceased Gopal Sharma was, "Death due to Haemorrhagic shock due to injury to vital organs liver, spleen, intestine caused by stab injury by sharp weapon". Under such circumstance, definitely the death was homicidal in nature, but the prosecution was supposed to prove that the present respondents are the author of the crime and the degree of proof that was required was beyond reasonable doubt. It appears that PW 2 Rupchand, PW 4 Raju, PW 5 Manoj, PW 6 Rajkumar, PW 9 Rambhau, PW 10 Rahul all have turned hostile. Thus, the panchas on the point of memorandum and discovery have turned hostile. PW 1 Akash, PW 7 Arjun, PW 11 Shivani are the sons and daughter of deceased Gopal Sharma, but they are not the eye witnesses. It appears that First Information Report Exh.96 given by PW 1 Akash, rather posed himself as eye witness in a sense that when he and his father had gone for the puja of Lord Hanuman at Bhokardan Chaufuli and after the puja was over he alone went to home, kept the articles of puja and returned to the temple within 10 minutes, and he saw his father lying in injured condition and he has specifically stated that the landlord of their house by name Gopal Naryan Avdhut was standing there holding sword. After he saw Akash, he fled from a white colour car, in which 3-4 persons

were already occupying, whose faces were covered. He then gave name of said Gopal Avdhut, Paras Nand, Bhaiyyalal Nand and one Santosh Arya @ Tandale on suspicion. It appears that the investigation was also started in that direction but then it was revealed in the supplementary statement of Akash that he then again expressed doubt against applicant No.1 Narayan Chalge and his son Vaibhav and then it is stated that the Investigating Officer thereafter started investigation in that direction. Thus, the main accused, who had then alleged to have seen Gopal Avdhut along with sword near Gopal Sharma who was in injured condition, has given a different version in the supplementary statement.

7 It has been stated in the evidence of PW 18 Police Inspector Mr. A.M. Kulkarni that accused Nos.2 to 4 were arrested and they had given confessional statement regarding the involvement of accused No.1 and the fact that accused No.1 had given them amount of Rs.2,00,000/- for contract killing of Gopal Sharma. Mr. Kulkarni had stated that he has not made confessional statement recorded by PW 2 to 4 in writing and even if he had written it, it could not have been admissible in evidence. There was no evidence to show involvement of accused Nos.2 to 4, much less accused No.1, who had allegedly given contract to kill deceased.

8 Taking into consideration the entire evidence and the reasons
given by learned Additional Sessions Judge, Jalna we do not find any
illegality or error, which needs to be corrected at the hands of this Court.
Hence, Leave to Appeal deserves to be rejected. Hence, following order.

ORDER

1 Application for Leave to Appeal by State No.12 of 2022 stands
rejected.

2 Criminal Appeal No.359 of 2019 stands disposed of as
withdrawn.

3 Criminal Application No.2334 of 2019 stands disposed of in view
of withdrawal of Criminal Appeal No.359 of 2019.

(Rajesh S. Patil, J)

(Smt. Vibha Kankanwadi, J.)