

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

CRIMINAL APPLICATION NO.7226 OF 2017

The State of Maharashtra,
Through Police Inspector,
Jamkhed Police Station,
Tq-Jamkhed, Dist-Ahmednagar.

...APPLICANT

VERSUS

- 1) Sachin @ Aba Hausrao Golekar,
Age-21 years, Occu:Agri.,
- 2) Sheshrao Raosaheb Yeole,
Age-42 years, Occu:Agri.,
- 3) Nilesh Mahadeo Golekar,
Age-23 years, Occu:Agri.,
- 4) Vinod Abhimanyu Gatkai,
Age-23 years, Occu:Agri.,
- 5) Rajkumar Sheshrao Golekar,
Age-24 years, Occu:Agri.,
- 6) Bhujang Suryabhan Golekar,
Age-40 years, Occu:Agri.,
- 7) Siddheshwar Vilas Golekar,
Age-23 years, Occu:Agri.,
- 8) Sandip Tukaram Shikare,
Age-24 years, Occu:Agri.,
- 9) Vishal @ Vikas Haribhau Dhage,
Age-19 years, Occu:Agri.,

All R/o-Kharda, Tq-Jamkhed,
Dist-Ahmednagar.

...RESPONDENTS

...
Mr.B.V. Virdhe, A.P.P. for Applicant.
...

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

DATE : 26th SEPTEMBER, 2022

ORDER :

1. Present Application has been filed by the State for according leave under Section 378(1)(b) of the Code of Criminal Procedure to file an Appeal against the Judgment of acquittal dated 23rd November 2017 by the learned Additional Sessions Judge, Ahmednagar in Sessions Case No.225 of 2014, for the offence punishable under Sections 143, 147, 148, 149, 323, 324, 302, 365, 201, 504, 506 of the Indian Penal Code, under Section 3(1)(s), 3(2)(v), 3(2)(va), 3(2)(vi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, and under Section 7(1)(d) of the Protection of Civil Rights Act.

2. Heard learned APP Mr. Virdhe for the applicant – State and perused the record and proceedings.

3. The respondents faced serious charges including the charge under Section 302 of the Indian Penal Code and it is

stated that they have committed murder of deceased Nitin Raju Aage, who belongs to Hindu Mahar caste. PW-11 Raju Aage is the father of the deceased, who had made complaint that the accused – respondents were having grudge against his son on the ground of love affair in between deceased Nitin and sister of accused No.1. It was complained that the accused were knowing that Nitin belongs to scheduled caste and the accused persons are from upper class. They had committed murder by throttling with the help of rope and thereafter partly hanging dead body of Nitin to a Neem tree.

4. It appears from the record as well as depositions of medical officers and the postmortem report that the cause of death is "Asphyxia due to strangulation". That means, it was a homicidal death. It appears that the learned trial Judge had considered that many witnesses have turned hostile. Merely because witnesses have turned hostile, it cannot result in acquittal, but then still the evidence will have to be scanned. Whatever would be the admissible portion, would have to be considered and it has been demonstrated by the learned APP, as to what could have been accepted from the evidence of such witnesses. These submissions are then required to be considered at the time of final hearing. Further, those witnesses who have

turned hostile, their statements have also been recorded under Section 164 of the Code of Criminal Procedure. Even the said Special Judicial Magistrate has been examined to prove those statements. Under such circumstance, the matter requires to be revisited in view of the serious charges and also the points those have been raised in the Memo. Therefore, the application deserves to be allowed and leave to file appeal deserves to be granted. Accordingly, following order is passed:-

ORDER

- (I) Application stands allowed.
- (II) Leave is granted to the prosecution to file Appeal.
- (III) Registry to register the Appeal.
- (IV) Appeal stands admitted.
- (V) Compliance under Section 390 of the Code of Criminal Procedure be made before the learned Additional Sessions Judge, Ahmednagar. Respondents be released on bail till the conclusion of present Appeal upon such terms and conditions as be deemed fit by the concerned Trial Judge.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE