

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

21 CRIMINAL APPLICATION FOR LEAVE TO APPEAL BY STATE
NO. 274 OF 2019
WITH
CRIMINAL APPEAL NO. 1125 OF 2019

THE STATE OF MAHARASHTRA
VERSUS
MACHINDRA TUKARAM NATH

.....
APP for the Applicant-State : Mr. R. D. Sanap
Advocate for the Appellant : Mr. Rohit Patwardhan h/f Mr. Satej S.
Jadhav
.....

**CORAM : SARANG V. KOTWAL AND
BHARAT P. DESHPANDE, JJ.
DATED : 18th JULY 2022**

PER COURT:-

1. This is an application for leave to file an appeal challenging the judgment and order of acquittal passed in favour of original accused No.2, who is respondent in this application, in Sessions Case No. 60 of 2018 on the file of learned Additional sessions Judge, Jalgaon. There were three accused. Accused no.1 Pyare Mohan alias Mohan, accused no.2 i.e. the present respondent and accused no.3 Guddu alias Kansha Wahab Shaikh. The other two accused were convicted for commission of offence punishable under Section 302 r.w. 34 of I.P.C. and were sentenced to suffer rigorous imprisonment for life as major punishment. However, present respondent i.e. accused No.2 was acquitted. The discussion is found in para 38, wherein it is mentioned that there was one witness who has stated that at about

4.30 p.m. on the previous date of finding of the dead body, he had seen all accused and deceased proceeding towards Shivaji garden.

2. We have perused the evidence annexed to the connected appeal. The said witness is P.W.5 Jaising Patil. Therefore, this circumstance is against the accused-respondent. Though learned Judge has acquitted him, the reason given by the learned Judge is only that no blood stains were found on his shirt. However, presence of the present respondent regarding the theory of 'last seen together' is not discussed in depth. Hence, the matter requires consideration. Hence, the following order:-

O R D E R

- I. Leave granted.
- II. The appeal is admitted.
- III. Action under Section 390 of Cr.P.C. be taken.

(BHARAT P. DESHPANDE, J.)

(SARANG V. KOTWAL, J.)

rlj/