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

**CRIMINAL APPLICATION FOR LEAVE TO APPEAL (STATE)
NO. 119 OF 2019**

The State of Maharashtra

... Appellant/Applicant

V/s.

Rohit @ Maale Govind
Dingam and ors.

... Respondents

Mr. Y.M. Nakhwa, APP for the Appellant/Applicant.
Ms Tanaya D. Goswami for Respondent Nos.1 to 4.

**CORAM : S.S. SHINDE &
N.R. BORKAR, JJ.**
DATE : JANUARY 11, 2022.

P.C.

1] Heard Mr. Y.M. Nakhwa, learned APP appearing for the appellant/State. He submits that the prosecution case rests upon evidence of eye-witnesses and also on recovery and report of ballistic expert. It is submitted that the trial Court has not properly appreciated evidence of eye-witnesses and other evidence brought on record. Therefore, he submits that the application for seeking leave to appeal may be allowed.

2] On the other hand, Ms. Tanaya D. Goswami, learned counsel appearing for the respondents, invites attention of this Court to the findings recorded by the trial Court and submits that the evidence of eye-witnesses have been rightly disbelieved by the trial Court as the alleged eye-witnesses had not made any attempt to save the victim if they were really present on the spot of occurrence. It is submitted that the alleged eye-witnesses have come on the spot after the incident was over. Therefore, the learned counsel for the respondents relying upon the findings recorded by the trial Court submits that the application seeking leave to appeal may be rejected.

3] Upon hearing the learned APP appearing for the applicant/ State and the learned counsel appearing for the respondents and upon perusal of the evidence on record, we are of the *prima facie* opinion that the evidence of eye-witnesses and also other evidence including evidence of ballistic expert needs appreciation. In that view of matter, we are of the opinion that the application seeking leave to appeal deserves to be allowed and the same is accordingly, allowed.

4] Leave to appeal is granted. The Registry to register the appeal. The counsel appearing for the respondents waives service.

5] Action under Section 390 of Code of Criminal Procedure shall be taken against the respondents.

(N.R. BORKAR, J.)

(S.S. SHINDE, J.)