

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 8 OF 2018

THE STATE OF MAHARASHTRA
VERSUS
YOGESH ASHOK KOLI AND OTHERS

...
Advocate for Appellant/State : Mr. R.V. Dasalkar
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**CORAM : SMT. VIBHA KANKANWADI &
Y.G. KHOBRADE, JJ.**
DATE : 21st March, 2023

ORDER :- (Per: Y.G. Khobragade, J.)

1. By the present application under Section 378 (1) (b) of Cr.P.C., the prosecution seeks leave to file appeal against the order of acquittal of the respondents-accused nos.1 to 9 passed on 29.09.2017 by the learned Additional Sessions Judge, Jalgaon in Sessions Case No.329/2014 for the offence punishable under Section 302, 504, 506 read with Section 149 of the I.P.C. after investigating Crime No. 73/2013 registered on 16.06.2013 with Warangaon Police Station, Tq. Bhusawal, District Jalgaon.

2. With the able assistance of Mr. R.V. Dasalkar the learned APP, we have perused the record.

3. In nutshell, it is the case of prosecution that the informant Nitin Koli lodged a report on 06.06.2013 with Warangaon Police Station alleging

that all the accused persons had formed an unlawful assembly on that day, between 6.00 to 7.00 p.m., in front of pan stall of Rajaram Koli. Accused no.1-Yogesh Koli was abusing the villagers in filthy language by standing on the road, which was objected by Prakash Koli. He warned Yogesh not to abuse the villagers in filthy language. On this count there were dispute between the accused no.1-Yogesh Koli and Prakash Koli. Deepak Kashinath Koli (deceased) had then intervened in said quarrel and tried to pacify them, however, all the accused persons who were the members of the unlawful assembly, assaulted Deepak Kashinath Koli. Accused no.2-Deelip Dhondur Koli and Pradeep Deelip Koli stabbed on abdomen and arms of Deepak by knife and gupti, so also other accused persons assaulted him with stick and fist blows, due to which Deepak Kashinath Koli sustained injuries and died. On the basis of said report a Crime No.73/2013 was registered with Warangal Police Station against the accused persons for the offence punishable under Section 302, 504, 506 read with Section 149 of the I.P.C. Since one accused was juvenile, therefore, he was produced before the Juvenile Justice Board.

4. The Investigating Officer, PW12- Dy.S.P. Shri Sahebrao Kashinath Chavan carried out investigation in the form of spot panchanama, inquest panchanama. The dead body was referred for autopsy. After the autopsy was done by the Medical Officer, he issued post mortem report. During the course of investigation clothes of accused persons and deceased are seized under

separate seizure panchanamas. So also, the weapons gupti and knife were seized under Section 27 of the Evidence Act at the instance of the accused persons. The Investigating Officer collected simple and blood mixed soil from the spot of the incident including stone containing blood stains, two sticks. All seized articles were referred for chemical examination to the Forensic Science Laboratory and recorded statements of the witnesses and also collected autopsy report. The Investigating Officer arrested accused persons. The sketch map of spot of incident was prepared through the Revenue Officer and on completion of investigation the charge-sheet came to be filed against the accused persons before the J.M.F.C., Bhusawal.

5. On compliance of Section 207 of the Cr.P.C., the learned Magistrate passed an order under Section 209 of the Cr.P.C. and committed the trial to the Sessions Court as the offences are triable by the Court of Sessions. Accordingly, the learned trial Court framed charge against the respondents-accused persons. The plea of the respondents-accused persons is recorded. They pleaded not guilty and claimed for trial. In order to bring home the guilt of the respondents-accused persons, the prosecution examined in all 12 witnesses and after conclusion of trial the statements under Section 313 of the Cr.P.C. came to be recorded. The defence of respondents-accused persons is that they have not committed any such crime, and, they have been falsely implicated in the crime.

6. The learned trial Court acquitted the respondents-accused persons of the offence punishable under Section 302, 504, 506 read with Section 149 of the I.P.C. on 29.09.2017.

7. Learned APP canvassed that all the prosecution witnesses except PW6-Pramod and PW8-Ramesh have supported the case of the prosecution and testimony of PW1-Nitin and PW11-Rajendra, who are eye witnesses is in corroboration with the injured-PW7-Prakash who sustained injury in the incident of assault. The prosecution had discharged its burden to prove the accused guilty of the said offences. The learned trial Court has failed to consider the testimony of eye witnesses and injured in positive manner.

8. The learned APP further canvassed that the prosecution proved inquest panchanama (Exh.63) and post mortem report (Exh.95) which proves that the death of deceased is homicidal in nature. Post mortem report (Exh.95) and evidence of Medical Officer-PW9 proves that the deceased had sustained multiple injuries. Though the learned trial Court held that the death of deceased is homicidal, yet discarded the evidence on the ground that in post mortem examination report, name of the deceased is mentioned as Deepak Kashiram Tayade and case of the prosecution is about homicidal death of Deepak Kashinath Koli. It has been observed that the prosecution has failed to produce CA report. There was sufficient evidence to show that the dead

body which was referred for postmortem was that of Deepak Kashinath Koli. Therefore, findings recorded by the learned trial Court in respect of discarding case of the prosecution is perverse, illegal and bad in law. Therefore there is need to re-appreciate the evidence, hence he prayed for leave to appeal.

9. It can be gathered from the evidence of PW1-Nitin Koli, PW3-Sunil Koli, PW5-Ganesh Koli and PW7-Prakash Koli, that the accused persons assaulted Deepak with gupti, knife and sticks. The injuries were so serious that he succumbed to them instantaneously. Inquest panchanama (Exh.63) shows that, dead body of Deepak Kashinath Koli was identified by PW3-Sunil Koli and another witness Nivrutti Koli. The evidence of all the witnesses appears about causing death of Deepak Kashinath Koli and not death of Deepak Kashiram Tayade. On the face of record, it appears that the dead body of Deepak Kashinath Koli was referred for autopsy under requisition letter issued by the Investigating Officer and the Medical Officer-Dr. Girish Patil conducted post mortem on dead body of deceased Deepak Kashinath Koli, however, the Medical Officer-Girish Patil issued post mortem report (Exh.95) in the name of Deepak Kashiram Tayade instead of Deepak Kashinath Koli. Therefore, it appears that while mentioning name of dead person as Deepak Kashiram Tayade on the post mortem report (Exh.95), there was apparent mistake on part of the Medical Officer. It is not the case of the respondents-accused that the death of deceased-Deepak Kashinath Koli was

not caused and some other person by name Deepak Kashiram Tayade would have been murdered. However, the learned trial Court discarded the case of the prosecution, on sole ground that the post mortem report (Exh.95) mentioned the name of deceased as Deepak Kashiram Tayade. The said discrepancy in the name mentioned on postmortem report has been considered as material discrepancy.

10. Prosecution had also led the evidence on the point of seizure of weapons under Section 27 of the Evidence Act. The disclosure statements of the accused-persons as well as seizure of clothes containing blood stains of accused persons has been stated by the panch witnesses and the investigating officer, however, the learned trial Court discarded testimony of the witnesses. So also, the learned trial Court held that the prosecution failed to prove spot of incident. Whether the learned Trial Court had adopted technical approached and discarded the evidence on trifle grounds is required to be considered. Re-appreciation of evidence is necessary in this case. Therefore, it would be appropriate to grant leave to file appeal against acquittal under Section 378 (1) (b) of the Cr.P.C.

11. In view of the above discussion, leave is granted to the prosecution to file appeal against the acquittal of respondent nos.1 to 9-

accused for the offence punishable under Section 302, 504, 506 read with Section 149 of the I.P.C.

12. The compliance under Section 390 of the Cr.P.C., be made against the respondents-accused nos.1 to 9 to the satisfaction of the learned trial Court i.e. the Additional Sessions Judge, Bhusawal, District Jalgaon.

13. The Registry of this Court is directed to register the appeal of the prosecution. Appeal stands **admitted**. Issue notice to the respondents, made returnable on 05-06-2023.

14. Call R & P with paper book.

[Y.G. KHOBRAGADE, J.]

[SMT. VIBHA KANKANWADI, J.]