

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 40 OF 2019

The State of Maharashtra,
Through : Police Inspector,
Newasa Police Station, Taluka Newasa,
District Ahmednagar

.... Applicant
(Ori. Complainant)

Versus

1. Shyamrao Balaji Kardile
Age : 60 years, Occ: Agriculture,
R/o : Jeur-Haibati, Tal. Newasa,
Dist. Ahmednagar.
2. Hirabai Shyamrao Kardile
Age : 55 years, Occ : Agriculture,
R/o : Jeur-Haibati, Tal. Newasa,
Dist. Ahmednagar.

... Non-applicants
(Original accused Nos. 2 and 3)

.....
Mr. A. M. Phule, APP for Applicant-State
.....

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 3rd January, 2023

ORDER (PER ABHAY S. WAGHWASE, J.) :

. By invoking provisions under Section 378(1)(b) of the Code of Criminal Procedure (for short 'Cr.P.C.') applicant State is desirous of challenging Judgment and order passed by learned Additional Sessions Judge, Newasa dated 11-01-2019 by which learned trial Judge has acquitted respondents (original accused Nos.2 and 3) from commission of offence under

Sections 307, 326, 504 and 506 of Indian Penal Code (IPC).

2. Learned APP on behalf of applicant State submits that the respondents herein are accused Nos.2 and 3 in above Sessions case. They are parents of main accused No.1. FIR has been lodged against them by injured informant alleging assault at the hands of main accused No.1 as well as accused Nos.2 and 3 i.e. present respondent Nos.1 and 2. That, there are allegations of use of sickles in the assault. Therefore, they are party to the occurrence. Prosecution had adduced evidence of none other than injured witness i.e. informant, his brother and on the point of injuries medical expert has also been examined. Therefore, there was sufficient and cogent material regarding involvement of present respondents in the above occurrence dated 08-10-2014. However, learned trial Court, after appreciating evidence, had given clean chit to present respondents even when they are named and even when their overt act is spelt out by informant injured. Learned trial Court has erred in properly appreciating the evidence and failed to apply settled legal position and has thereby acquitted respondents from all the charges. Therefore, State intends to challenge their acquittal and hence, in the instant application, it is prayed that leave be granted to file appeal.

3. At the admission stage, we have heard learned APP for the applicant. We have perused the evidence before the trial Court, more particularly, that of

injured as well as evidence of medical expert, who has examined the injured. We have come across the allegations of use of sickles by main accused No.1 as well as present respondents, who are his parents. Investigating machinery is succeeded in recovery of single sickle from accused No.1 even when there are allegations of use of sickle by both the present respondents. Finding no cogent material regarding involvement of present respondents and taking into account that there is previous enmity, trial Court had acquitted respondents. We have re-appreciated available evidence before us. We do not find that learned trial Court has committed any error in acquitting respondents for want of evidence. No purpose would be served by granting leave to file appeal against their acquittal. Therefore, for the above reasons, we refuse leave to file appeal. Hence, the following order :

ORDER

- (i) Application for leave to appeal by State No.40 of 2019 is rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

SPT