

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 41 OF 2019

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

.... Applicant
(Orig. Complainant)

Versus

Vilas Shyamrao Kardile
Age : 32 years, Occ : Agriculture,
R/o : Jeur-Haibati, Tal. Newasa,
Dist. Ahmednagar.

... Respondent
(Ori. Accused No.1)

.....
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.) :

. This application is filed by State by invoking provisions under Section 378(1)(b) of Code of Criminal Procedure (for short 'Cr.PC.') seeking leave to file appeal against Judgment and order passed by learned Additional Sessions Judge, Newasa dated 11-01-2019 by which learned trial Judge has acquitted respondent - accused No.1 from commission of offence under Sections 307, 504 and 506 of Indian Penal Code (IPC).

2. Learned APP for applicant State apprised us about prosecution case in the trial Court and the charges for which respondent was tried. He pointed out that after investigation, charge-sheet was filed for commission of offence under Sections 307, 326, 324, 504 and 506 read with Section 34 of IPC. On 08-10-2014, there was assault on victim by means of deadly weapon like sickle that too on petty ground. Blows were given on vital parts of body i.e. head, neck and other parts. Accused No.1 - respondent was apprehended. There is seizure of sickle at his instance. Medical expert was examined by prosecution and thereby prosecution had full proof case against respondent for commission of offence under Sections 307, 504 and 506. It is pointed out that however, learned trial Court did not consider and appreciate the crucial evidence i.e. of informant as well as medical expert and acquitted respondent from charges of offence under Sections 307, 504 and 506. Therefore, State intends to challenge the said Judgment and order and hence, prayed for grant of leave to file appeal.

3. Matter was heard at admission stage. We have ourselves gone through the Judgment and order under challenge. We have also examined oral and documentary evidence. Now, it seems that State intends to prefer appeal as the State is aggrieved on account of acquittal of respondent from charge under Sections 307, 504 and 506 of IPC. We have carefully scrutinized oral testimony i.e. evidence of informant injured and we have also compared

medical evidence submitted on behalf of State in the trial Court. We have come across ambiguity in such evidence. We are convinced, as like learned trial Court, that essential ingredients for attracting offence under Sections 307, 504 and 506 of IPC are not available on record. Therefore, we do not consider it a fit case to grant leave to file appeal and / or grant leave to State to question Judgment and order passed by the learned Additional Sessions Judge, Newasa. Hence, following order :

ORDER

- (i) Application for leave to appeal by State No.41 of 2019 is rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

SPT