

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**APPLICATION FOR LEAVE TO APPEAL BY STATE NO.65 OF 2018**

The State of Maharashtra  
Through Police Station, Nanded Gramin,  
Tq. and Dist. Nanded.

**... Applicant.**

**Versus**

1. Ravi Shamsundar Bhokare,  
Age : 23 years, Occu. : Labour,  
R/o. New Kautha, Dist. Nanded.
2. Jaymala Madhav Khillare,  
Age : 26 years, Occu. : Household,  
R/o. New Kautha, Nanded.
3. Shamsundar Munjaji Bhokare,  
Age : 47 years, Occu. : Labour,  
R/o. New Kautha, Nanded.
4. Pratap Hari Dhutraaj,  
Age : 24 years, Occu. : Labour,  
R/o. Sonkhed, Tq. Loha, Dist. Nanded.

**... Respondents.**  
(Orig. Accused)

...  
Mr. S. D. Ghayal, APP for Applicant - State  
...

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

**DATED : 18<sup>th</sup> JULY, 2023**

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

1. By invoking section 378(1)(b) of the Code of Criminal Procedure Code, State has prayed for grant of leave to file appeal against judgment and order passed by learned 5<sup>th</sup> Additional Sessions Judge, Nanded in Sessions Case No. 56 of 2015, in which

present respondents were tried and charge-sheeted and finally acquitted from charges under sections 302, 201 read with section 34 of Indian Penal Code (IPC).

2. Taking us through the case of prosecution in trial court, learned APP would submit that dead body was found on 05.03.2015 lying near the spot. It was revealed to be dead body of brother of informant. As death was noticed to be homicidal one, investigation was carried out. That, investigation revealed that on 04.03.2015, deceased returned home in drunken condition and went to sleep. That, according to informant deceased receiving repeated calls on his mobile. That, investigation revealed that deceased was acquainted with respondent no.2 Jaymala. Respondent no.1 Ravi suspected illicit relations between them and therefore, accusations were raised that in above backdrop accused persons committed murder of deceased Darbarasingh and thereafter tried to dispose of the dead body and thereby committed offence under sections 302 and 201 of IPC.

3. It is next submitted by learned APP that, to establish the charges prosecution has examined as many as 16 witnesses. That, deceased had died due to multiple injuries. That, on the strength of medical and scientific evidence, death was established

to be homicidal one. There is recovery at the instance of accused persons. Learned APP took us through the testimonies of witnesses. According to him, there was ample evidence on record to bring home the charges and accept the case of prosecution as proved, however learned trial Judge failed to appreciate the available evidence in correct perspective and recorded acquittal. That, there is total non appreciation of evidence and settled law has not been taken into consideration by the learned trial Judge and hence judgment not being legal and sustainable, it is submitted that, State is keen in preferring appeal and leave is sought.

4. In the light of above submissions, we have examined the available evidence. It is revealed that though deceased suffered as many as 17 injuries and death is shown to be unnatural, it was expected of prosecution to further show that accused-respondents are the authors of the said injuries. Admittedly, FIR is against unknown person. Though, autopsy doctor is examined to prove death to be homicidal, in cross-examination medico legal expert has admitted that some of the injuries are possible in the vehicular accident.

5. From the evidence of informant, it is emerging that, she merely speaks about her brother, who was cleaner on a truck,

to be using her mobile and that he was repeatedly receiving calls being made on phone, but deceased brother was not responding. This witness and her brother seem to have deposed about illicit relations between deceased and accused no.2 and therefore it is alleged that accused-respondent no.1 was annoyed and with the help of co-accused, deceased was done to death. However, there is no reliable evidence in that direction. Case was admittedly based on circumstantial evidence. Motive about suspicion of illicit relationship has not been proved by adducing acceptable evidence. Though, it seems that theory of last seen was pressed into service, testimony of PW14 Prakash on this point is not cogently showing nexus between last seen and deceased to be found dead. The gap is immense and even time of death has not been established even by proximation. Though, there is seizure of clothes and knife, evidence on that count, i.e. of panchas also on examination fails to inspire confidence. Equally circumstance of seizure of weapon also does not inspire confidence, i.e. on examining testimony of PW5 Sunil and PW10 Anil. Allegations are of use of hammer, wooden log and blade of sickle, however mere its recovery is not sufficient, rather, it is to be established that the same was put to use by accused persons. This is precisely not proved cogently.

6. Resultantly, *prima facie*, it seems that circumstances

relied by prosecution are not proved beyond reasonable doubt. Consequently, no fault can be found in the appreciation at the hands of learned trial Judge i.e. of such evidence to record acquittal. No fruitful purpose would be served by granting leave. Therefore, in the totality of the circumstances and the caliber of evidence, in our opinion, no case being made out for grant of leave, prayers cannot be granted.

7. The application stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)