

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.44 OF 2020

The State of Maharashtra,
Through Police Station Murum,
Tq.Omerga, Dist.Osmanabad.

..Applicant
(Ori. Complainant)

Versus

Tukaram Shantappa Kognur
Age: 25 years, R/o. Nellor,
Tq.Aland, Dist.Gulbarga
(Karnataka State).

..Respondent
(Ori. Accused)

...
APP for Applicant : Mr.A.V.Deshmukh

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

DATE : 6th June, 2023

ORDER :-

1. Present application has been filed by prosecution seeking leave under Section 378(1)(b) of the Code of Criminal Procedure to file appeal to challenge the Judgment and Order passed by learned Additional Sessions Judge, Omerga, Dist.Osmanabad in Sessions Case No.18 of 2016 on 28-01-2020, thereby acquitting the respondent from the offence punishable under Sections 302 and 201 of the Indian Penal Code (IPC).
2. Heard at the stage of admission and with the able assistance of learned APP, we have gone through the record

which was before the learned trial Judge.

3. It appears that deceased Natraj Baburao Atur went missing and his dead body was found on 14-07-2016. However, the missing report has been lodged on 15-07-2016 within jurisdiction of another Police Station. The dead body was found near a Percolation Tank situated near the land of one Shivilal Govindrao Wadgave. Police Constable attached to Murum Police Station was given the information and when he saw the spot and the position of the dead body, he found that the said dead body was of a 25 years old person, there was stab injury to the stomach due to which intestine has come out. The hands of the body was tied by green colour nylon rope at the back side. It appears that on behalf of the State, the FIR was lodged against unknown person. Then taking into consideration the missing report, the DNA test was conducted from the parents' sample and the identity was established.

4. The prosecution case is based on circumstantial evidence and therefore, basic rule of circumstantial evidence ought to have been proved by the prosecution beyond reasonable doubt. Before we proceed to go through the testimony of the Medical Officer, who conducted autopsy, it is certain that it was murder but then to connect the same with the accused, a chain of

circumstances were required. The prosecution examined **PW5** Yallaling Babalkar and he has stated that he saw deceased and accused in a Tea Stall near Siddharth Chowk at 03:30 p.m. on 12-07-2016. As aforesaid, the dead body was found on 14-07-2016. But from the testimony of the Medical Officer, it could not be gathered as to when the death would have been caused. No doubt he has stated that the injuries were ante-mortem but in order to establish the said link, the approximate time of death ought to have been stated. Surprisingly in his examination-in-chief no such question was also asked. Taking into consideration the time gap, even if we consider the testimony of **PW5** Yellaling Babalkar as it is, it cannot not be said that he is proper witness on the point of last seen theory. Further it appears that the motive is also not proved.

5. A detailed judgment has been written with elaborated reasons. Under such circumstances, we do not find this to be a fit case where leave can be granted to file appeal.

6. Application stands rejected.

(**ABHAY S. WAGHWASE**)
JUDGE

(**SMT. VIBHA KANKANWADI**)
JUDGE