

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

APPLN. FOR LEAVE TO APPEAL BY STATE NO.24 OF 2021

THE STATE OF MAHARASHTRA

VERSUS

PRABHAKAR @ RANA SHIVAJI PAITHANE

...

Advocate for Appellant :Mr. S.J. Salgare, APP

APP for RespoAPPLN. FOR LEAVE TO APPEAL BY STATE NO.24 OF 2021

THE STATE OF MAHARASHTRA

VERSUS

PRABHAKAR @ RANA SHIVAJI PAITHANE

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Advocate for Appellant : Public Prosecutor

**CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.**

DATE : 5TH JULY, 2023

P.C.:-

Present application has been filed seeking leave to appeal under Section 378(1)(b) of the Code of Criminal Procedure to file appeal challenging the judgment and order of acquittal of respondent by learned Sessions Judge, Parbhani in Sessions Case No. 122 of 2018 for the offence punishable under Section 302 of IPC on 20.1.2021.

2. Heard learned APP Mr. Salgare. With his able assistance we have gone through the entire material which was before the trial court.

3. The prosecution story in short is that, one Rahul Budge,

Santosh Budge, Akash Kamble, Harshwardhan Hattiambire, Balaji Pundge, Buddhabhushan Hattiambire were proceeding towards the country liquor shp. The accused demanded money to Santosh Budge for purchasing liquor. However, Santosh said that he is not having money. The accused abused him and started giving fists and blows. Others were about to separate them, but the accused took out a knife from his waist and gave a blow of the same on the right side of the chest of Santosh and thereafter, taking the knife the accused fled away from the spot. The other persons took Santosh to Government Hospital but as his condition was serious, he was shifted to Spandan Hospital. After some time he was declared dead.

4. Rahul Budge lodged the FIR and investigation was undertaken. The incident is stated to have taken place on 26.6.2015 around 9.00 p.m. However, record shows that he accused was absconding and came to be arrested on 13.11.2018. Thereafter, he discovered the knife and after completion of the investigation, the charge sheet was filed.

5. The prosecution has examined in all 8 witnesses to bring home the guilt of the accused. After considering the evidence and hearing both the sides, the learned Sessions Judge, Parbhani has acquitted the accused. Hence, the present application.

6. The submissions in nut-shell on behalf of the prosecution are, that the learned trial Judge has not appreciated the evidence properly. The prosecution story was supported by two witnesses. PW-1 Rahul and PW-4 Buddhabhuan. However, the learned Sessions Judge

has unnecessarily given importance to the testimony of PW-3 Narayan on the pretext that he is an independent witness and has turned hostile, so also, it is stated that the discovery is doubtful as it is after a period of 3 years.

7. It can be seen from the testimony of PW-1 Rahul and PW-4 Buddhabhushan that they have supported the prosecution. Their presence is stated since beginning. PW-1 Rahul is the person who had admitted deceased to hospital. It is therefore required to be seen as to whether on the basis of that since he, as well as PW-4 Buddhabhushan are the friends of PW-1 Rahul being relatives; whether their evidence can be so discarded and the testimony on PW-3 can be given importance.

8. The death is due to stab injury, that means, it is homicidal in nature. The facts appear to have been overlooked which can be taken note of, at this stage also, that the accused was absconding for 3 years and on that count whether discovery can be doubted, is also required to be re-appreciated. Definitely, case is made out for grant of leave to file appeal.

9. Hence, the order :-

ORDER

The application is allowed. Leave is granted to file appeal.

Registry to verify and register the appeal.

The appeal is admitted.

Issue notice to respondents.

Call for R. & P. with paper book.

{4}

915 sr.no..odt

Notice as well as paper book are made returnable on
22.8.2023.

Compliance under Section 390 of Cr.PC. be made.

[S.G. CHAPALAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

grt/-