

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.142 OF 2018

The State of Maharashtra
Through Police Station Badnapur,
Tq. Badnapur, Dist. Jalna

... Applicant

Versus

1. Jagdish Ekanath Kuber,
Age : 19 years,
2. Lalabhau Punjaram Lahane,
Age : 65 years,
3. Radhabai Lalabhau Lahane,
Age : 60 years,
4. Sangita Ekanath Kuber,
Age : 36 years,
5. Santosh Lala Lahane,
Age : 40 years,

All R/o. Village Gevrai [Bazar]
Tq. Badnapur, Dist. Jalna.

... Respondents
(Orig. Accused)

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

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

DATED : 12th JULY, 2023

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

1. Aggrieved by the judgment and order of acquittal
passed by Additional Sessions Judge-2, Jalna in Sessions Case No.

250 of 2014, dated 09.02.2018 and thereby acquitting respondents from charges under section 302 read with sections 149, 143, 147, 148, 504 read with section 149 of Indian Penal Code (IPC), as State intends to prefer appeal against said judgment and order, instant leave application has been pressed into service.

2. Taking us through the FIR at (Exh.46) at the instance of PW1 Nandkishor, learned APP would submit that it has come on record that there was dispute between siblings and previous report was lodged by one of the brother, namely Shivaji. It is pointed out that, on 19.07.2014, he got news about Shivaji being beaten and so he went to the spot. It is pointed out that this witness has seen his brother Shivaji being assaulted by fist and kick blows. One of the accused, namely Santosh had hit a stone on the head of his brother Shivaji, accused Jagdish had inflicted knife blows in the stomach, as a result of which his brother Shivaji suffered injuries and was required to be shifted to MGM hospital, Aurangabad, but he was examined and declared dead. It is next submitted that, alleged occurrence was witnessed by persons namely Digamber (PW2), Ramu and Babasaheb. Therefore, there is ample direct evidence available on record. It is submitted that, it has come on record that one year prior to the above incident there was quarrel between deceased Shivaji and accused no.4 Sangita and her brother accused

no.5 Santosh. Deceased Shivaji had lodged report in that regard. Therefore, there was motive behind the occurrence. It is submitted that there is recovery and discovery during investigation. Autopsy doctor had noticed 8 injuries over person of Shivaji. That, there was grievous stab injury on the anterior aspect of right ventricle heart, which turned down to be fatal and doctor had attributed death due to "hemorrhage and shock due to stab injury to heart". It is submitted that, in spite of overwhelming evidence, learned trial Judge has unfortunately acquitted accused no.1 Jagdish, accused No. 2 Lalabhau, accused no.3 Radhabai, accused no.4 Sangita and accused no.5 Santosh from all the charges. That, the acquittal being only due to non appreciation of available evidence in proper perspective and settled legal position, the judgment passed by learned trial Judge is perverse and not maintainable. It is thus submitted that, as State intends to question the above judgment of acquittal, and there being strong case in appeal, it is prayed that leave is sought to be granted.

3. In the light of above submissions, we have examined the evidence adduced by prosecution in the trial court. It seems that, PW1 Nandkishor is the informant and brother of deceased Shivaji. His evidence is about previous enmity and lodgement of report by deceased Shivaji against some of the accused. PW2 Digambar seems to be an acquaintance of PW1 Nandkishor and

resident of same village and he has also deposed the narrated incident. PW3 Babasaheb seems to be a panch to spot. PW4 Sakil, panch to the memorandum of disclosure, who does seem to be supported prosecution. PW5 Sandu also seems to be examined as a direct witness. PW6 Dr. Ramesh, autopsy doctor, who opined about death due to "hemorrhage and shock due to stab injury to heart". Even PW7 Pankaj and PW8 Sk. Kayyum seem to be police personnels.

4. On going through the judgment under challenge, learned trial Judge has disbelieved the prosecution version holding that prosecution has not cogently proved formation of unlawful assembly, accused indulging in rioting with deadly weapon. It seems that learned trial Judge has viewed the occurrence as self defence and section 100 of IPC seems have been taken recourse to. Failure to explain delay also seems to have prevailed over the learned trial Judge in disbelieving the prosecution version and evidence.

5. In our opinion, here, death of Shivaji has been shown to be on account of stab injury to heart. Therefore, *prima facie*, death is definitely unnatural. Previous dispute has been brought on record and thereby motive is also attributed to the occurrence of assault. Whether the case is of right of private defence and as to

who was the aggressor, need to be carefully gone into and analyzed. On going through the impugned judgment, though some view has been taken by learned trial Judge, *prima facie*, we are convinced that said exercise of analyzing prosecution case with such angle has not been done as required under law. Therefore, the case for preferring appeal, wherein there would be re-appreciation and reanalysis of evidence, is made out. Thus, prosecution does deserve opportunity to prefer appeal. Consequently, we proceed to pass following order:-

ORDER

- (i) Application stands allowed.
- (ii) Leave is granted to the prosecution to file Appeal.
- (iii) Registry to register the Appeal.
- (iv) Appeal stands **admitted**.
- (v) Call record and proceedings.
- (vi) Action under section 390 of the Code of Criminal Procedure be taken against the respondents to the satisfaction of the trial court.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)