

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

11 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.119 OF 2019

The State of Maharashtra
Through Police Station,
Bodwad, Tq. Bodwad,
Dist. Jalgaon.

... Applicant

... Versus ...

Sanjay Ramrao Patil,
Age 40 yrs., R/o Golegaon (Kh),
Tq. Bodwad, Dist. Jalgaon.

... Respondent

...

Mr. S.D. Ghayal, APP for applicant

...

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

DATE : 03rd JULY, 2023

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed by the prosecution seeking leave under Section 378 (1)(b) of the Code of Criminal Procedure, 1973 to file appeal challenging the Judgment of acquittal dated 01.03.2019 passed by

learned Additional Sessions Judge, Bhusawal, Dist. Jalgaon in Sessions Case No.87/2015, thereby acquitting respondent – original accused from the offence punishable under Section 302 of the Indian Penal Code, 1860.

2 Heard learned APP Mr. S.D. Ghayal for the prosecution and with his able assistance we have gone through the record which was available before the learned Trial Judge.

3 The prosecution story, in short, is that – the informant PW 5 Harshal Patil is the son of accused and deceased Vaibhav was another son of the accused. The incident is stated to have taken place on 06.10.2015 at about 3.00 a.m. PW 5 Harshal has filed First Information Report stating that his father i.e. accused is addicted to liquor and he has sold agricultural land. Therefore, the remaining land was transferred in the name of deceased Vaibhav, who was at that time a minor. After Vaibhav attained majority, he purchased tractor and he was giving it on hire to other farmers for cultivating. The tractor was standing in the name of accused, but Vaibhav was possessing the documents. Accused used to recover the hire charges directly from the concerned customers and he was spending that amount for purchasing liquor. Accused was insisting that Vaibhav should transfer the agricultural land in his name and used to give threat that if he fails to do so,

he would kill Vaibhav. On the earlier day i.e. on 05.10.2015 there was quarrel between Vaibhav and accused and thereafter Vaibhav had put the apprise of his father in a lane. Thereafter, all of them had dinner around 10.00 p.m. and went asleep. The door of the house was open usually and the father went asleep on the roof (dhaba). Around 3.00 a.m. Harshal heard cries of Vaibhav and, therefore, he got up, he saw that the father was having axe in his hand, which was stained with blood and the father was going out of the room. Vaibhav was on the cot and had sustained bleeding injury on his head near right eye. Vaibhav was not in a position to talk anything. Thereafter, Harshal called other relatives and shifted Vaibhav to hospital, however, he was declared dead. After the postmortem was carried out, Harshal lodged First Information Report.

4 It appears that the panch witnesses have turned hostile but the police witnesses have stated about the arrest of the accused and the investigation. PW 5 Harshal has supported the prosecution story. In a way, he is an eye witness, but PW 7 Ashabai Patil, who is the wife of the accused has turned hostile. She accepts the position that Vaibhav was sleeping inside the house and nearby she as well as PW 5 Harshal were sleeping and when she woke up around 4.00 a.m., she saw that Vaibhav was lying in a pool of blood, but then claims ignorance as to how he had received the injuries. She

accepts that her husband is addicted to liquor. It is to be noted from the medical evidence that the death is homicidal in nature. PW 9 Rajendra has halfheartedly supported the prosecution, but turned hostile on the point that there was dispute between deceased and accused. The fact remains is, whether the Trial Court has appreciated the evidence properly when the informant – eye witness has supported the prosecution. Merely because mother has turned hostile, whether we can discard the entire testimony of PW 5 Harshal, is a question, when the prosecution has admittedly proved the homicidal death of Vaibhav. Under the said circumstance, re-appreciation is required. Application, therefore, deserves to be allowed. Hence, the following order.

ORDER

- 1 Application stands allowed and disposed of.
- 2 Leave is granted to the prosecution to file Appeal.
- 3 Registry to register the Appeal.
- 4 Appeal stands **Admitted**.
- 5 In Appeal, issue notice to the respondent, to be made returnable

on 18.08.2023.

6 Call Record and Proceedings.

7 Action under Section 390 of the Code of Criminal Procedure be
taken against the respondent to the satisfaction of the trial Court.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

agd