



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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.96 OF 2020

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

..Applicant
(Ori. Prosecution)

Versus

1. Ramdas s/o Uttamrao Jadhav
Age: 33 years, R/o. Kajala,
Taluka : Badnapur, Dist.Jalna.
2. Kailas s/o Keshavrao Jadhav
Age: 22 years, R/o. Antarwala,
Taluka and Dist.Jalna.

..Respondents
(Ori. Accused)

...
APP for Applicant : Mr.A.M.Phule
...

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

**RESERVED ON : 20 SEPTEMBER, 2023
PRONOUNCED ON : 3 OCTOBER, 2023**

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

1. This application for leave to file appeal is directed against judgment and order passed by the learned Additional Sessions Judge-4, Jalna in Sessions Case No.77 of 2017 dated 09-01-2020 thereby acquitting the respondents from charge under Sections 302, 504, 506 read with 34 of the Indian Penal Code (IPC).

2. Learned APP for the applicant took us through the FIR lodged by PW1 Ankush Tulshiram Jadhav and would submit that through this witness actual occurrence was brought on record. That informant had received information about assault on deceased Dashrath and therefore, he had rushed there with one Raju Jadhav. When they reached at spot, they saw deceased lying in pool of blood and both the accused - respondents seen fleeing from the spot of incident. That Death is shown to be homicidal one. It is further pointed out that apart from informant, prosecution had examined as many as nine witnesses including witness PW5 Raju Narayan Jadhav. That there was slight mistake in naming accused by informant in report i.e. instead of naming present respondent no.2 as "Kailash Keshavrao Jadhav", wrongly and inadvertently it is typed as "Ramesh Sheshrao Jadhav". That even said mistake was promptly rectified by giving supplementary statement. Therefore, it is his submission that merely on such count, case of prosecution, having strong and reliable evidence, has been disbelieved by the learned trial Court and therefore, it is his submission that there is total non-application of mind and improper appreciation of evidence necessitating interference at the hands of this Court. Hence, he prayed for grant of leave to file appeal.

3. Here record shows that present respondent nos.1 and 2 were arrested for the offence punishable under Sections 302, 504, 506 read with 34 of the IPC. Here it is emerging that on 28-02-2017 there were two instances;

one taking place at around 10:00 a.m. and another in the afternoon. In the morning instance, which was fall out as a result of removal of tin roof from the house. Deceased Dashrath allegedly questioned accused Ramdas for stealing his he-goat. It is in this backdrop the second instance seems to have been taken place. However, on going through the evidence of informant, it appears that there is apparent mistake in naming accused / respondent no.2 and his name is mentioned as “Ramesh Sheshrao Jadhav” instead of “Kailash Keshavrao Jadhav”. However, on going through the answers given by informant in cross-examination, it is apparently doubtful whether he has seen assault as claimed by him. Even the person allegedly accompanying him namely Raju Jadhav is not found to be completely supporting PW1 Ankush. Except these two witnesses, there is no other witness on occurrence or actual assault. It is seen that even there is no prompt lodgement of FIR by PW1 Ankush. Communication at Exh.100, which is the information received about occurrence is clear that there is ambiguity and incomplete information. All this is happening even at the instance of Police Officer. There is also ambiguity and inconsistency about presence of PW5 Raju Narayan Jadhav at the spot of incident. Therefore, evidence of very informant and said witness i.e. so called eye witness has come under shadow of doubt. Entire story of prosecution comes under cloud. Except these two witnesses, rest of the witnesses do not seem to have any role except stating about some quarrel taking place in the morning session on 28-02-2017.

4. Therefore, when there is already animosity between complainant party and accused party, the above quality of evidence cannot be said to be itself sufficient to hold accused persons guilty. Prosecution does not seem to have proved its case beyond reasonable doubt. Therefore, learned trial Judge, in our considered opinion, has committed no error in rejecting case of prosecution. We are not satisfied with the grounds raised before us to grant leave to file appeal. In our opinion, no purpose would be served by granting leave with such quality of evidence on record. Resultantly, we proceed to pass following order :

ORDER

Application for leave to file appeal by State is rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

SPT