

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

919 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.102 OF 2022
WITH
CRIMINAL APPEAL NO.574 OF 2022

THE STATE OF MAHARASHTRA
VERSUS
RAJENDRA PRALHAD BHOSALE

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APP for Applicant-State : Mr.R.D.Sanap
Advocate for Respondent-Accused : Mr.Aniruddha B. Ghule
Advocate for Appellant-Informant : Mr.V.S.Dhotare h/f.
Mr.S.A.Deshmukh

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

DATE : 24th January, 2023

PER COURT :-

1. Heard learned APP for applicant-State.

2. It is to be noted that this Court by order dated 19-08-2022 had issued notice to the respondent and Mr.A.B.Ghule Patil, learned Advocate appeared to represent respondent - original accused, however, today he is absent.

3. Present application has been filed for leave to appeal under Section 378(1)(b) of the Code of Criminal Procedure (Cr.P.C.). It will not be out of place to mention here that even original informant has filed appeal under Section 372 of the Cr.P.C.

challenging the acquittal of respondent No.2 – original accused. In that case also notice was issued to the respondents and the same Advocate appeared for respondent No.2 – original accused and he is absent.

4. With the able assistance of learned APP, we have gone through the evidence which was before the learned trial Judge, copies of which have been produced alongwith the appeal filed by the informant. It appears from the prosecution story that, one Janardhan Bapurao Arekar was proceeding towards house at about 06:30 p.m. on 17-03-2021. When he was in front of house of one Narayan Pandurang Babar, he came across the present respondent and therefore, Janardhan greeted accused by saying “Jay Hari”. It is the prosecution story that therefore, accused started abusing Janardhan as to why he has not greeted him by saying “Ram Ram”. Thereafter, accused given slaps and fists to Janardhan. Informant’s son and other four persons intervened and when they started taking Janardhan towards house, accused brought a thick wooden stick (Balli) and gave blow of that stick on the head of Janardhan from backside causing serious injury. He was taken to hospital by name Sant Krupa Hospital, Jalna. About eighteen stitches were given to his head injury and then he was shifted to United Ciigma Hospital, Aurangabad for further

treatment. There was an attempt to take the statement of Janardhan when he was admitted in United Ciigma Hospital, but it was certified that he was not in a position to give statement and then the son appears to have lodged the FIR and at that time, it was under Sections 307, 323 and 504 of Indian Penal Code. Certain part of investigation like drawing of spot panchanama, arresting accused, seizing clothes have taken place. So also statements of witnesses were recorded. Janardhan expired at around 09:00 a.m. on 20-03-2021.

5. It appears that prosecution has examined in all ten witnesses to bring home the guilt of the accused. The post mortem report and the testimony of the Medical Officer would show that there were about eight external injuries and three internal injuries. Cause of death given in post mortem report Exhibit 49 is "Head injury". **PW7** Dr.Arvind gives the account of those injuries. Prosecution has examined **PW1** Datta - informant, **PW3** Janardhan eye witness, **PW4** Jagannath eye witness and **PW8** Narayan eye witness. Except **PW8** Narayan, all other three have supported the prosecution story and note of this support is also taken by the learned trial Judge in paragraph No.22 of his Judgment. Another piece of evidence which is in favour of the prosecution is testimony of **PW6** Sandip, who is the

pancha on the memorandum and seizure panchanama whereby the wooden log or the pole was discovered by the accused. No doubt **PW5** Ganesh - Pancha to the seizure Panchanama i.e. clothes of the accused has turned hostile but the Panchanama of the spot is proved. It appears from the cross-examination of the **PW7** Dr.Arvind, Medical Officer, who conducted autopsy, that he has observed that fracture of parietal bone is not possible if a person is assaulted from backside, which appears to have prevailed over the decision of the learned trial Judge regarding acquittal. However, it is to be noted that point that is required to be considered is that if there is controversy between the medical evidence and the ocular evidence, which should prevail. That point deserves to be gone into. When three eye witnesses have supported each other then this point assumes importance. No doubt another point that is involved is as to whether the offence under Section 302 of the Indian Penal Code is made out or any lesser offence can be said to have been made out / proved beyond reasonable doubt by the prosecution. This can be done in the appeal and therefore, taking into consideration the grounds, leave deserves to be granted to the State and the appeal filed by the informant under Section 372 of Code of Criminal Procedure deserves to be admitted. Hence, following order :

ORDER

- (i) Leave is granted to the State to file appeal.
- (ii) Both the appeals stand admitted.
- (iii) Compliance under Section 390 of the Code of Criminal Procedure be got done and the terms and the conditions for bail to be decided by the learned trial Judge.
- (iv) Call Record and Proceedings with paper book.

(**ABHAY S. WAGHWASE**)
JUDGE

(**SMT. VIBHA KANKANWADI**)
JUDGE