

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 178 OF 2018

The State of Maharashtra
Through Police Station, Bhokardan
District Jalna

... **Applicant**

VERSUS

1. Shrimant s/o Sampat Lokhande
Age 65 years, Occu: Agri
2. Nivrutti s/o Shriman Lokhande
Age 30 years, Occu: Agri.
3. Mangal s/o Shrimant Lokhande
Age 35 years, Occu: Agri
4. Narayan s/o Raghunath Lokhande
Age 35 years, Occu: Agri.
5. Kalabai w/o Shrimant Lokhande
Age 55 years, Occu: Agri.
6. Vandana w/o Mangal Lokhande
Age 30 years, Occu: Agri.
7. Ashabai w/o Nivrutti Lokhande,
Age 25 years, Occu: Agri.

... **Respondents**

All R/o Baranjala Lokhande Shivara,
Tq. Bhokardan Dist. Jalna

Shri A. V. Deshmukh, APP for the applicant-State
Mr. Pratik A. Bhosale, Advocate for the respondents

WITH
APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 125 OF 2018

Ramesh s/o Pandurang Lokhande, ... **Appellant**
 Ae 28 years, Occu: Agril.
 R/o Baranjala-Lokhande
 Tq. Bhokardan Dist. Jalna

VERSUS

- | | | |
|----|---|-----------------|
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Age 55 years, Occu: Agri. | |
| 7. | Vandana w/o Mangal Lokhande
Age 30 years,Occu: Agri. | |
| 8. | Ashabai w/o Nivrutti Lokhande,
Age 25 years,Occu: Agri. | ... Respondents |

All R/o Baranjala Lokhande Shivara,
Tq. Bhokardan Dist. Jalna

Shri G. V. Deshpande, Advocate for the appellant
Shri A. V. Deshmukh, APP for the applicant-State
Shri Pratik A. Bhosale, Advocate for the respondents 2 to 8

CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.

DATE : 10.03.2023

ORDER (Per Y. G. Khobragade, J.):

1. The prosecution-State has filed ALS No. 178 of 2018 seeking leave under section 378 (1)(b) of the Criminal Procedure Code to file appeal whereas the informant has filed ALP No. 125 of 2018 seeking leave to file appeal under section 372 of the Cr.P.C. to challenge the judgment and order of acquittal dated 09.04.2018 in Sessions Case No. 183 of 2015 by the learned Additional Sessions Judge-2, Jalna, thereby acquitting the respondents/accused Nos. 1 to 7 for the offences punishable under sections 302, 143, 147, 148-B, 323, 504, 506 read with section 149 of the Indian Penal Code and Section 135 of the Bombay Police Act.

2. We would like to take into consideration the story of prosecution as stated in the FIR. The informant Ramesh Pandurang Lokhande lodged a FIR with Police Station Bhokardan on 04.09.2015 alleging that, on 03.09.2015, at about 11. a.m., his brother Ganesh Lokhande took his vehicle Chota Magic and parked on the road facing towards village Javkheda Thombre and took his motorcycle and went to visit his sister-in-law alongwith his wife Meerabai and returned at about 09.00 p.m, near the place where vehicle chota magic was parked and had called the informant over phone asking him to bring key of

chota magic vehicle. The informant Ramesh and his younger brother Balaji carried key of vehicle and visited at the place where the vehicle chota magic was parked and handed over the key to his brother Ganesh. Thereafter, his brother Ganesh, his wife Meerabai and two children proceeded towards his house in Chota magic vehicle. The informant Ramesh and his brother Balaji followed them on the motorcycle and when his brother Ganesh reached on the road in front of house of accused no.1- Shrimant Lokhande, at that time accused Shrimant obstructed them on old issue in respect of road. At that time, accused No.1 Shrimant was insisting Ganesh to take his vehicle back and other accused i.e. accused No.2 Nivrutti, accused No.3 Mangal, accused No.4 Narayan, accused No.5 Kalabai, accused No. 6 Vandana and accused No. 7 Ashabai were also present there. Accused Nos.6 Vandana and accused No.7 Ashabai were holding stones, accused No.2 Nivrutti was carrying axe and accused No. 3 Mangal & accused No. 4 Narayan were holding sticks. All the accused persons started abusing and threatening the informant Ramesh, his brothers Ganesh and Balaji. At that time, victim Meerabai was sitting inside the vehicle Chota magic but the accused no.7 Ashabai, accused No.6 Vandana and accused No.2 Nivrutti went towards the vehicle and dragged Meerabai out of the vehicle. Accused No.7 Ashabai and accused No. 6 Vandana pelted stones on Meerabai and accused No.2 Nivrutti gave axe blow on the

head of Meerabai, due to which Meerabai sustained grievous injury and fell down. At that time, accused No.3 Mangal and accused No.4 Narayan assaulted them with stick and accused No.1 Shrimant, his wife- accused No.5 Kalabai assaulted with kick and fist blows to Ganesh, Balaji and the informant-Ramesh. Therefore, they sustained injuries. The informant and his brothers shouted and upon hearing shouts, their father Pandurang Bhagwant Lokhande, neighbour Kautik Lokhande rushed towards them and they rescued them. At that time, they noticed that the victim Meerabai was seriously injured and was lying in a pool of blood and died on the spot. Therefore, the informant Ramesh, his brothers Ganesh and Balaji took Meerabai to Rural Hospital, Bhokardan.

3. On the basis of the said report, Crime No. 137 of 2015 was registered against the respondents- accused 1 to 7 for the offences punishable under sections 302, 143, 147, 148-B, 323, 504, 506 read with section 149 of the Indian Penal Code and Section 135 of the Bombay Police Act.

4. Investigating officer recorded statements of the witnesses, drawn panchanama and dead body of Meerabai was referred for autopsy. During the course of investigation, the investigating officer seized weapon like sticks, stones and axe under seizure panchanama and referred those articles for chemical analysis.

5. In order to bring home the guilt of the accused/respondent Nos. 2 to 8, the prosecution examined in all 10 witnesses and proved documentary evidence including Exh. 38- inquest panchanama, Exh. 39- spot panchanama, Exh.40-seizure panchanama of clothes of deceased, Exh.41 PM report, Exh. 46 FIR, statements recorded under section 166 Cr.P.C. and memorandum panchanama in respect of seizure of axe and memorandum panchanama of sticks, injury certificates in respect of injured Ramesh, his brother Ganesh, Balaji and injury certificates of accused No.2 Nivrutti, accused No.1 Shrimant, accused No.3 Mangal, accused No.4 Narayan and DNA report, chemical analysis report etc.

6. Evidence of prosecution witness, PW1 Ramesh, PW-3 Bhagwan and PW-6 Balaji attributed specific role to each and every accused. Accused Nos.1 and 5 assaulted to the injured by fist and kick, accused Nos.3 and 4 assaulted to the injured by means of wooden sticks. So also, when deceased Meerabai was sitting in Chota magic vehicle, at that time, accused Nos. 6 Vandana and accused No. 7 Ashabai rushed towards chota magic vehicle and pulled out Meerabai from the vehicle and accused No. 2 Nivrutti assaulted Meerabai by giving Axe blow on her head, so also, accused Nos. 6 and 7 assaulted Meerabai on face by stones. From the evidence of prosecution, it appears that deceased Meerabai fell down in the pool of blood and she died on the spot. So also, the informant Ramesh and his brothers

Ganesh and Balaji also sustained injuries. The injury certificates issued by medical officer are in corroboration with the evidence of the injured.

7. PW7 Dr. Wankhede who conducted postmortem on dead body of Meerabai found (1) CLW 4x2x2 cm forehead right side oblique, (2) CLW 3 x 2 x 1 cm bone deep center of bridge of nose, (3) Dipressed fracture of right orbital bone, (4) CLW 7 x 2 cm bone deep over left temporal region, (5) cut laceration to left ear pinna, (6) Laceration 3(1) cm behind left ear pinna, (7) Fracture of left temporal bone and opined about causing of injuries due to assault by sharp weapon like Article-A Axe. So also, injury No.3 was possible due to assault by stone. However, 09.04.2018, the learned trial court passed the impugned order and acquitted respondent Nos.2 to 8, original accused Nos. 1 to 7 holding that the incident of homicidal death of Meerabai is caused but the prosecution failed to bring cogent evidence on record to prove that respondents / accused Nos. 1 to 7 are the persons who have committed the alleged act, though record apparently speaks about bringing substantial evidence about homicidal death of Meerabai due to assault at the hands of respondent Nos. 2 to 8/accused Nos.1 to 7.

8. On the face of record, it appears that the prosecution has brought substantial evidence on record against the respondents accused for the alleged offences and arguable points are set out for re-

appreciation and security of evidence. Therefore, in our judicious view, it will be just and proper to grant leave to the State-prosecution to file appeal against acquittal of the accused.

9. In ALP No. 125, the informant/victim within the meaning of section 2(wa) of Cr.P.C., prayed for leave to file appeal against the order of acquittal of accused nos. 1 to 7. However, as per the ratio laid down in the case of **Satyapal Sing Vs. State, reported in 1015 AIR SCW 6251**, no leave is required to be obtained for filing appeal under the provisions of section 372 Cr.P.C. and it is substantive right of the victim which is independently conferred upon the victim. Therefore, as per substantive right, the victim can file the appeal

10. In view of above discussion, we proceed to pass following order:

O R D E R

(i) Both, Application for leave to Appeal by the State No. 178 of 2018 and Application-ALP No.125 of 2018 filed by the appellant/victim for Leave to Appeal stand allowed. Leave is granted to file appeals and registry to register both the appeals.

(ii) Both the Appeals are **admitted**.

(iii) In both the appeals, issue notice to the respondents. Learned APP waives notice for the State in the appeal filed by private party.

Notice of the respondents/original accused in both the appeals is made returnable on 28.04.2023.

(iv) Action under section 390 of the Code of Criminal Procedure be taken against the original accused in Appeal filed by the State and that should be to the satisfaction of the trial court.

(v) Call record and proceedings with paper book.

(Y. G. KHOBRAGADE, J.)

(SMT. VIBHA KANKANWADI, J.)

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