

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

11 CRIMINAL APPEAL NO.463 OF 2021

THE STATE OF MAHARASHTRA

VERSUS

AJAY @ PINTU SOMNATH JANRAO AND ANOTHER

...

Mr. A.V. Deshmukh, APP for applicant

Mr. Joydeep Chatterji, Advocate for respondent Nos.1 and 2

...

WITH

APPLICATION FOR LEAVE TO APPEAL BY PRIVATE PARTY NO.138 OF 2019

RANJANA W/O AMBADAS SAPKAL

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. Shomit Salunke, Advocate h/f Mr. S.S. Choudhary, Advocate for applicant

Mr. A.V. Deshmukh, APP for respondent No.1

Mr. Joydeep Chatterji, Advocate for respondent Nos.2 and 3

...

WITH

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.69 OF 2021

THE STATE OF MAHARASHTRA

VERSUS

AJAY @ PINTU SOMNATH JANRAO AND OTHERS

...

Mr. A.V. Deshmukh, APP for applicant

Mr. Joydeep Chatterji, Advocate for respondent Nos.1 and 2

Mr. A.B. Kharosekar, Advocate for respondent Nos.3 and 4

...

**CORAM : SMT. VIBHA KANKANWADI AND
Y.G. KHOBRADE, JJ.**

DATE : 06th MARCH, 2023

ORDER :

1 Both the applications i.e. Application for Leave to Appeal by Private Party No.138 of 2019 and Application for Leave to Appeal by State No.69 of 2021 challenges the same Judgment and order and, therefore, considered together. A.L.P No.138 of 2019 is filed by the original informant/victim (wife of deceased), whereas A.L.S. No.69 of 2021 is filed by the State. In fact, A.L.P. No.138 of 2019 is stated to have been filed under Section 378(3), 372 of the Code of Criminal Procedure. When victim has substantive rights under proviso to Section 372 of the Code of Criminal Procedure to file an appeal, there need not be any application under Section 378 by such victim and this has been so held in **Mallikarjun Kodagali (dead) through legal representatives vs. State of Karnataka** reported in **AIR 2018 SC 5206**. Therefore, it is considered as appeal under proviso to Section 372 of the Code

of Criminal Procedure. Registry would be directed to register it as an appeal.

2 Heard learned APP Mr. A.V. Deshmukh for State, learned Advocate Mr. Shomit Salunke holding for learned Advocate Mr. S.S. Choudhary for original complainant, learned Advocate Mr. Joydeep Chatterji for original accused Nos.1 and 2 and learned Advocate Mr. A.B. Kharosekar for original accused Nos.3 and 4. With the help of learned Advocates for all the parties we have considered the testimony of 21 witnesses, who were examined before the learned Additional Sessions Judge, Osmanabad. It will not be out of place to mention here that the original accused persons, four in number, faced trial in Sessions Court No.177/2013 before learned Additional Sessions Judge, Osmanabad for the offence punishable under Section 302, 307, 450, 498-A, 504 read with Section 34 of the Indian Penal Code, 1860. Original accused Nos.1 and 2 were convicted for the offence punishable under Section 304 II, 307 read with Section 34 of the Indian Penal Code. The maximum sentence that has been awarded is rigorous imprisonment for seven years for the offence under Section 307 of the Indian Penal Code. However, accused Nos.3 and 4 are totally acquitted from all the charges and accused Nos.1 and 2 were acquitted of the offence under Section 450, 498-A and 504 read with Section 34 of the Indian Penal Code. It will not be out of place to mention here that under Section 302 of the Indian Penal Code there

is no specific mention, but then the learned Additional Sessions Judge, Osmanabad found out that the evidence does not prove the offence under Section 302 of the Indian Penal Code and lesser offence appears to have been considered i.e. offence under Section 304 II of the Indian Penal Code. In A.L.P No.138 of 2019 only original accused Nos.1 and 2 are respondent Nos.2 and 3 and it appears that the original informant is not taking any action against the acquittal of original accused Nos.3 and 4. However, the State has filed the application for leave to appeal against all the accused for those sections from which they have been acquitted.

3 Deceased Ambadas was the husband of original informant Ranjana and father of PW 3 Pradnya. PW 3 Pradnya is the wife of accused No.2 Dhananjay. For the limited scope, we have considered the evidence that as per learned Advocate Mr. Joydeep Chatterji the original accused Nos.1 and 2 have already served the sentence for the offences for which they were held guilty. Here, it is to be noted that the Trial Court has come to the conclusion that Ambadas died due to stab injuries. PW 1 Dr. Vivek Angadrao Hole had conducted the autopsy on 16.03.2013. He had found stab injury over anterior lateral aspect of chest on left side at the level of fifth inter-coastal space along the anterior axillary line, vertically elliptical in shape and of 2 x 1.2 cm into cavity deep. He had also found penetrating wound on left side of

pleura corresponding to the external injury mentioned in column No.17. The probable cause of death has been given as “haemorrhagic shock due to stab injury”. Therefore, there appears to be prima facie evidence about homicidal death. We could further gather from the evidence of PW 2 Ranjana, PW 3 Pradnya, who are the eye witnesses that the incident had taken place in the house of Ambadas. Though PW 3 Pradnya was married to accused No.2 prior to 10-11 years of the incident, she was not residing with the husband. The incident has taken place at about 10.00 p.m. and accused Nos.1 and 2 were stated to have come along with the knives and they had inflicted blows on Pradnya as well as Ambadas. As regards Pradnya is concerned, she had sustained two stab injuries, for which the original accused Nos.1 and 2 have been held guilty for having committed offence punishable under Section 307 of the Indian Penal Code. It is also to be noted that the knives have been recovered at the behest of the accused and in order to prove the said memorandum panchnama PW 17 Babasaheb Gaikwad has been examined. Therefore, it is required to be re-appreciated, as to whether accused Nos.1 and 2 had come with premeditated mind and preparation and whether the case would then fall under Section 302 of the Indian Penal Code or under Section 304 II of the Indian Penal Code. It does not appear to be the case prima facie that the incident had taken place due to all of a sudden quarrel. Further, it is then also required to be seen that when that house trespass was

with an intention to kill, then, the acquittal of the accused Nos.1 and 2 from the offence punishable under Section 450 of the Indian Penal Code was justified. Therefore, the appeal filed by the informant under Section 372 of the Code of Criminal Procedure deserves to be admitted.

4 As regards the State is concerned, apart from A.L.S. No.69 of 2021 a separate Criminal Appeal No.463 of 2021 under Section 377 of the Code of Criminal Procedure has been filed for the enhancement of the punishment, that can be considered along with the other two proceedings, however, as regards A.L.S. No.69 of 2021 is concerned, leave cannot be granted to file appeal against the acquittal of original accused Nos.3 and 4. They are not the relatives of the husband, so that they can be covered under Section 498-A of the Indian Penal Code. Further, the evidence that has come is that they had come along with the original accused Nos.1 and 2. There is no evidence to show that they had the knowledge for what purpose the original accused Nos.1 and 2 had come to the house of the informant. Therefore, the reasons for the acquittal of original accused Nos.3 and 4 appears to be perfect.

5 For the above said reasons following order is passed.

ORDER

1 Application for Leave to Appeal by Private Party. No.138 of 2019 stands allowed. The same is considered under proviso to Section 372 of the Code of Criminal Procedure and, therefore, registry is directed to register it under appeal category. The said appeal stands **admitted**.

2 Application for Leave to Appeal by State No.69 of 2021 stands allowed. Leave is granted to the prosecution to file appeal against original accused Nos.1 and 2 for the offence punishable under Section 302, 450, 498-A, 504 read with Section 34 of the Indian Penal Code and registry to register the appeal. The said appeal stands **admitted**.

3 Compliance under Section 390 of the Code of Criminal Procedure be made against the original accused Nos.1 and 2 to the satisfaction of the learned Trial Judge i.e. Additional Sessions Judge, Osmanabad.

4 Criminal Appeal No.463 of 2021 stands **admitted**.

5 Call Record and Proceedings with paper book.

(Y.G. Khobragade, J.)

(Smt. Vibha Kankanwadi, J.)

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