

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

**APPLICATION FOR LEAVE TO APPEAL BY STATE
NO.191 OF 2018**

The State of Maharashtra,
Police Station Hadgaon,
Tq-Hadgaon, Dist-Nanded.

...APPLICANT

VERSUS

Balu @ Jalba Jaiwantrao Solanke,
Age-36 years, Occu:Agri.,
R/o-Borgaon, Tq-Hadgaon,
Dist-Nanded.

...RESPONDENT

...
Mr. A.V. Deshmukh, A.P.P for Applicant – State.
...

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

DATE : 12th JUNE, 2023

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed by the prosecution seeking leave to appeal under Section 378(1)(b) of the Code of Criminal Procedure challenging the acquittal of the respondent by the learned Sessions Judge, Nanded in Sessions Case No. 3 of

2016 from the offence punishable under Section 302 of the Indian Penal Code, on 10th May 2018.

2. We have heard Mr. Deshmukh, learned APP appearing for the State. The learned APP has taken us through the evidence which was before the learned trial Judge.

3. The prosecution has examined in all eleven witnesses to bring home the guilt of the accused. Evidence of PW-1 Dr. Vaishali Dhage, the medical officer, would show that she has conducted the autopsy and the cause of death has been given as "terminal cardio respiratory arrest due to shock due to injury to cervical spinal cord with fracture of cervical vertebra". In the cross-examination, she has stated that there was no injury to the skull. Further, as regards weapon is concerned, she has stated that the size of injury No.1 found in this case can be inflicted by weapon having similar size i.e. 20 cm. The portion of the blade of the axe on the side of handle was broken and the continuous edge ad-measures 5 cm. Then PW-1 Dr. Vaishali says that injury No.1 was possible with the weapon like sword. The blade of the muddemal article axe was uneven. Thus, a possibility has been created that the weapon used might be different. But it is certain that the prosecution had proved that

death of Sangita Jalba Solanke was homicidal. The learned trial Judge has also held the said fact.

4. Deceased Sangita was the wife of present respondent and it has come on record that she has two sons, namely Prashant and Sushant, who appears to be aged 12 and 10 years, respectively. They have not been examined in this case for the reasons best known to the prosecution.

5. The prosecution has come with the case that the incident was witnessed by PW-4 Radhika, who is the co-sister of deceased (wife of brother of the accused), PW-5 Savita, second co-sister of deceased, PW-7 Jaiwantrao, who is the father-in-law of the deceased. All of them have turned hostile. The learned APP has sought permission of the trial Court to put questions in the nature of cross-examination to all these three witnesses but nothing favourable to the prosecution has transpired. No doubt, the statements of those witnesses were recorded under Section 164 of the Code of Criminal Procedure, in which they have stated that they had seen the incident and then the prosecution has also examined PW-10 Mahesh Verma, the Civil Judge Junior Division and Judicial Magistrate First Class, who has recorded those statements under Section 164 of the Code of Criminal

Procedure. The procedure might have been completed but still the fact remains that the alleged eye witnesses have turned hostile. From the spot panchnama, it has come on record that there was a cot just near to the wall and the deceased was lying down on the said cot. It has not come in concrete evidence, what was her position at that time when allegedly the first person saw the deceased in pool of blood. There is no witness who had stated that he had seen the accused going in room or remaining there and then going out of the room. We cannot presume that he should be inside the house. The incident has occurred at 10.00 to 10.30 a.m. on 13th October 2015. The learned trial Judge, therefore, rightly observed that when all these basic facts are not been proved, we cannot invoke provisions of Section 106 of the Indian Evidence Act. Further, the prosecution has not examined any witness to prove the motive. When the case is resting on circumstantial evidence, then proof of motive is mandatory.

6. If we consider the medical evidence, then there were injuries to the vertebra and cervical spinal cord. For what purpose the deceased was lying on the cot, and as aforesaid in which position i.e. supine or prone, has not come on record. For such injuries, she should be in prone condition. Further, the

position of the cot was just near to the wall and in the oral evidence it is stated that there were blood stains on the wall. But it appears from the testimony of the witnesses i.e. panch and investigating officer that samples of the blood stains have not been taken from the wall.

7. The learned trial Judge has considered the evidence properly and appreciated it. The prosecution has not shown any perversity and therefore, no case is made out to grant leave to appeal and the Application deserves to be rejected.

8. The Application stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE