



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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.132 OF 2020

The State of Maharashtra,
Through Police Station Officer,
Police Station Georai,
Tq.Georai, Dist.Beed.

..Applicant

Versus

Radhakisan Eknath Borade
Age: 54 years, Occu.: Agriculture,
R/o. Bangali Pimpla, Tq.Georai,
Dist.Beed.

..Respondent
(Original Accused)

...

APP for Applicant : Mr.S.D.Ghayal

...

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

**RESERVED ON : 26 SEPTEMBER, 2023
PRONOUNCED ON : 3 OCTOBER, 2023**

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

1. Vide instant application for leave to file appeal State is taking exception to the judgment and order passed by the learned Additional Sessions Judge, Beed in Sessions Case No.128 of 2016 dated 07-08-2020 by which respondent has been acquitted from charge under Sections 302 of the Indian Penal Code (IPC).

2. Learned APP for the applicant took us through the entire evidence and

would submit that here there is direct eye witness account. That PW1 Savita Sunil Borade, wife of deceased as well as PW2 Kalyan Radhakisan Chaudhary had seen the occurrence of assault on deceased. That the assault was made by sickle. That there are multiple injuries. That deceased succumbed to multiple injuries. That dying declaration of deceased was recorded. Therefore, apart from direct evidence, there is evidence of very deceased, who was injured at that time. There is recovery at the instance of accused. Therefore, there is overwhelming evidence in support of the prosecution case. Further it is pointed out that the learned trial Court has refused to accept the case of prosecution as proved by assigning improper reasons. Direct evidence has not been appreciated properly and has been discarded on flimsy ground. Thus, it is pointed out that there is total non-application of mind and hence, leave to file appeal is prayed for.

3. In the light of above submission, we have gone through the record before us. It transpires that in support of its case, prosecution has examined in all 13 witnesses including PW1 Savita, wife of deceased, who is eye witness and PW2 Kalyan, another eye witness, PW6 Pandharinath Kisanrao Sasane, Police Officer who recorded dying declaration, PW12 Dr.Poonam Rameshwarsingh Lodh, who certified fitness followed by Panchas and Police Officers.

4. We have *prima facie* gone through the evidence on record, more particularly, evidence of PW1 Savita and PW2 Kalyan. PW1 Savita, wife of deceased claims that on hearing commotion, she came out of house and saw husband lying on ground and accused respondent sitting on him. She narrated whatever she saw about use of sickle for inflicting injuries. PW2 Kalyan also claims that he saw assault on deceased. They both claim that deceased gave oral dying declaration about he being injured by respondent after questioning visit of son of informant and deceased to their area. Son has not been unfortunately examined however, evidence of PW1 Savita and PW2 Kalyan is found to be consistent about seeing occurrence. Learned trial Judge has discussed the evidence of these two witnesses in respect of who reached after whom i.e. whether PW1 Savita reached subsequently or PW2 Kalyan reached subsequently. Here PW6 Pandharinath, Police Officer, who has recorded dying declaration is also examined. PW7 Dr.Ganesh Dhondiraj Niturkar, Autopsy Doctor attributed death to homicidal injury. Learned trial Court has also accepted death of Sunil as homicidal one.

5. Consequently, it is a fit case for re-examination, re-analysis and re-appreciation of evidence. Therefore, in our view, prosecution deserves a chance to come in appeal. Resultantly, we proceed to pass the following order :

ORDER

- (I) Application stands allowed.
- (II) Leave is granted to the prosecution to file Appeal.
- (III) Registry to register the Appeal.
- (IV) Appeal stands **admitted**.
- (V) Call Record and Proceedings.
- (VI) Action under Section 390 of the Code of Criminal Procedure be taken against the respondent to the satisfaction of the trial Court.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

SPT