

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

**APPLICATION FOR LEAVE TO APPEAL BY STATE
NO.1 OF 2021**

The State of Maharashtra,
(Through Police Station Marwad,
Tq-Amalner, Dist-Jalgaon).

...APPELLANT

VERSUS

- 1) Dagadu Chiman Patil,
Age-67 years, Occu:Agriculture,
- 2) Tukaram Chiman Patil,
Age-58 years, Occu:Agriculture,
- 3) Samadhan Tukaram Patil,
Age-25 years, Occu:Agriculture,
- 4) Sadanand Dagadu Patil,
Age-29 years, Occu:Agriculture,
- 5) Gajanan Dagadu Patil,
Age-39 years, Occu:Agriculture,
- 6) Avantabai Tukaram Patil,
Age-50 years, Occu:Agriculture,
- 7) Jijabai Dagadu Patil (Dead),

Respondent Nos.1 to 6 are R/o-
Padalsare, Tq-Amalner, Dist-Jalgaon.

...RESPONDENTS

...
Mr. A.M. Phule, A.P.P. for Appellant.
...

**CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 4th JULY, 2023

ORDER :

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 respondents by the learned District Judge-2 and Additional Sessions Judge, Amalner in Sessions Case No. 5 of 2014 from the offence punishable under Sections 143, 147, 148, 302, 323, 324 read with Section 149 of the Indian Penal Code and under Section 37(1)(3)/135 of the Maharashtra Police Act, on 18th March 2020.

2. We have heard Mr. Phule, learned APP appearing for the State. With the able assistance of the learned APP, we have gone through the entire record which was before the learned trial Judge.

3. The prosecution story, in short, is that First Information Report lodged by Ramesh Kashinath Patil on 12th June 2013 in respect of the incident that has taken place around 8.30 a.m. on that day which had occurred in the field. He states that he

resides with his parents, wife, son and his brothers reside separately. They are the agriculturist and accused, who are the near relatives, are having dispute in respect of the agricultural land. The dispute is on account of partition. A day before the incident, another incident had taken place i.e. on 11th June 2013, in respect of which cross complaints were lodged. However, at 8.30 a.m. on 12th June 2013 when informant, his father and brother had gone to field for agriculture operations, at that time accused persons came there and objected them. It is stated that the accused persons were armed with wooden logs and sticks. Informant, his brother and father were assaulted and in the said assault the father received severe injuries and he died because of the said injuries.

4. The prosecution has examined in all ten witnesses, whereas the defence has examined one witness. After considering the evidence on record and hearing both the sides, the learned trial Judge has acquitted all the accused. Perusal of the impugned Judgment would show that the learned trial Judge has given benefit of doubt. That means, it is not a clear acquittal, which itself gives rise to re-appreciation of the evidence. Whether the benefit of doubt that has been granted, is judicially granted or not, is definitely required to be scrutinized.

5. The another fact is that PW-1 Dnyaneshwar, PW-3 Yashodabai, PW-4 Manohar, PW-5 Vasudev are the eye witnesses to the incident and they are also the injured. The autopsy report gives probable cause of death as " Cardio-respiratory Arrest due to Haemorrhagic shock due to Splenic and Intestinal Rupture". No doubt the viscera was preserved. In his testimony PW-6 Dr. Govind Patil has given the details about the internal injuries but then he appears to have been disbelieved by the learned trial Judge as there was no visible injury on the person of the deceased. Even at this stage we may observe that the said observation or reason given by the learned trial Court requires to be re-appreciated on the ground that when the concerned trial Judge was armed with Section 165 of the Indian Evidence Act and he could have asked the medical expert about the possibilities and that has not been done, then at the time of Judgment whether probabilities can be considered against the prosecution. Secondly the injuries on the person of the injured witnesses have also been got proved through PW-6 Dr. Patil. Under such circumstance, case is made out for grant of leave and re-appreciation of the evidence is required. Hence 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) In Appeal, issue notice to respondent Nos. 1 to 6, to be made returnable on 22nd August 2023.
- (VI) Call Record and proceedings with paper-book.
- (VII) Action under Section 390 of the Code of Criminal Procedure be taken against the respondent Nos. 1 to 6 to the satisfaction of the trial Court.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/JULE23