

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

**APPLICATION FOR LEAVE TO APPEAL BY STATE
NO.231 OF 2018**

The State of Maharashtra,
Through – Police Station, Nilanga,
Tq-Nilanga, Dist-Latur.

...APPLICANT

VERSUS

Ghudusab Ajijisab Bagwan,
Age-42 years, Occu:Labour,
R/o-Kasar-Shirshi, Tq-Nilanga,
Dist-Latur.

...RESPONDENT

...
Mr. S.J. Salgare A.P.P for Applicant – State.
...

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

DATE : 15th 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 Additional Sessions Judge, Nilanga in Sessions Case No. 27 of 2014 from the offence punishable under Sections 302, 323, 504 of the Indian Penal Code, on 26th July, 2018.

2. We have heard Mr. Salgare, 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 is objecting to the acquittal of the accused – respondent from the offence punishable under Section 302 of the Indian Penal Code and bringing it down to Section 304 (II) and then sentencing the accused to undergo rigorous imprisonment for seven years. To this limited extent we have considered the case. The postmortem report, which has been proved through PW-10 Dr. Shinde, would show that the cause of death was "Cardio-respiratory arrest due to asphyxia due to stab injury over back (left side) associated with haemorrhagic shock and haemothorax". Deceased Aminabee was 65 years old lady. The prosecution story, which has been proved through PW-8 Imam Chandsab Bagwan - the informant, is that around 11.00 a.m. on 1st May 2014 he started to go to Nilanga as they were required to remove the seeds of tamarind. There was shortage of labour in their village and therefore, they decided to carry out

the said work at the house of PW-6 Nasarin situated at Nilanga. They have taken the Tamarind fruits in gunny bags and started to remove the seeds from Tamarind. PW-9 Maheboob, elder son of the accused followed them. Deceased Aminabee, mother of PW-8 Imam, also joined the said work. Around 2.30 to 3.00 p.m. accused came there. He asked Maheboob as to how long he would reside there and whether he is not going to accompany the accused. Accused thereafter rushed towards Maheboob. PW-8 Imam tried to intervene and at that moment, accused took out knife from his pocket and was about to give a blow to PW-9 Maheboob but PW-8 Imam pushed him aside and the blow of knife landed on the shoulder of PW-8 Imam. Deceased Aminabee then tried to intervene in the quarrel. Accused asked her, whether she would send his wife for cohabitation or not and by saying so, gave a blow of the knife on the back of Aminabee. The blow was such forceful that the knife got stuck into the back. Deceased fell down and then the accused left the spot. PW-8 and PW-9 made arrangement to take Aminabee to Civil Hospital, Nilanga but unfortunately she was declared dead there.

4. The evidence has been led to support this prosecution story and that story has been believed by the learned trial Judge

and held that it is proved beyond reasonable doubt. However, according to the learned trial Judge, since it is a case of single blow and the target was PW-9 Maheboob, the case would come under Section 304 (Part II) of the Indian Penal Code. Here, we could see that the said contingency has been taken into account by the learned trial Court and it is observed that it is covered under exception 4 of Section 300 of the Indian Penal Code and such case would then come under Section 304 (Part II) of the Indian Penal Code. The evidence has been rightly appreciated and therefore, we are of the opinion that there is no perversity in the Judgment. Though it appears that the target PW-9 Maheboob was own son of the accused, but then accused was annoyed with the fact that his wife i.e. mother of PW-9 and daughter of deceased Aminabee and sister of PW-8 Imam, was residing separately from him and was residing with the mother. The prosecution has also not come with the case that at any earlier point of time the accused had taken objection and had tried to take the wife back for cohabitation but it was resisted by the deceased and others. No doubt the accused might be knowing that if blow is given of the knife it will cause injury, but nobody, with perfect assertion will say that it will cause death. Definitely knife is capable of causing death but here it would depend upon

the intention of the party in causing injury and the manner in which the blow is given etc. At the cost of repetition we would say that the target was different and then PW-8 Imam tried to save PW-9 Maheboob but received injury on his neck for which purpose the accused has been convicted for the offence punishable under Section 324 of the Indian Penal Code, separately. But certainly there is no illegality committed by the learned trial Judge while arriving at a conclusion that the offence that is made out is under Section 304 (Part II) and not under Section 302 of the Indian Penal Code.

5. Further it will not be out of place to mention here that this Court had orally directed the learned APP to get the present status of the respondent – accused in respect of his conviction. The jail authority of Aurangabad Central Prison, by letter dated 14th June 2023 had informed that the accused has been given benefit of the special remission scheme, namely, “ स्वातंत्र्याचा अमृत महोत्सव विशेष माफी योजना ” (*Swatantryacha Amrut Mahotsav Vishesh Mafi Yojna*) and he has been released from the jail on 15th August 2022 holding that he has undergone the sentence awarded to him. That means remission has been given to him. Under such circumstances, when no perversity is found, this is

not a fit case where we should exercise our powers and therefore the application deserves to be rejected.

6. The Application stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/JUNE23