

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

**APPLICATION FOR LEAVE TO APPEAL BY STATE
NO.260 OF 2018**

The State of Maharashtra,
Through the Muktainagar Police-Station,
Tq-Muktainagar, District-Jalgaon.

...APPLICANT

VERSUS

Surekha Harlal Barela,
Age-30 years, R/o-Pimpri Kerhala,
Tq-Raver, District-Jalgaon.

...RESPONDENT

...
Mr. A.M. Phule 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 Additional Sessions Judge, Bhusawal, District-Jalgaon in Sessions Case No. 80 of 2016 from the offence

punishable under Section 302 of the Indian Penal Code, on 28th September 2018.

2. We have heard learned APP and with his able assistance we have gone through the entire record which was before the learned trial Judge.

3. The prosecution story, in short, is that the accused is the widow of deceased Harlal Bisan Barela. Informant Vinod is the brother of deceased. The incident has taken place around 1.00 a.m. on 15th April 2016 in the *Wada* of one Pandurang Dutte. The deceased was in the habit of drinking liquor and used to cause physical as well as mental torture to the accused. Even on the said night before going to sleep, deceased had beaten accused with stick and abused her. Vinod – informant claims that he was woke up by accused saying that deceased is not moving. It was then found that face and head of the deceased was crushed by the blow of the stone. Vinod says that as accused got annoyed with the behaviour meted to her by the deceased, she has eliminated him.

4. The prosecution has examined in all nine witnesses to bring home the guilt of the accused. The learned trial Judge has

positively held that the prosecution has proved death of Harlal as homicidal. The question is only regarding who is the author of the crime. As per the testimony of PW-8 informant – Vinod and his First Information Report, he was at the house of one Dilersingh in Anturli around 10.00 p.m. of 14th June 2016. Son of Pandurang Dutte, by name, Narendra came there and told him that Harlal has consumed much amount of liquor and he should be taken to home. Accordingly, Vinod took Harlal to home. The outside gate of *Wada* was then closed. Harlal thereafter started quarreling with accused Surekha. He abused and assaulted her, raised doubt over her character. Though Vinod had tried to convince him, he was not ready to listen. Then Surekha stated that she would kill Harlal. Vinod then went in tin shed where there was bullock cart, and went to sleep there. There was a wooden cot in the courtyard. The children had gone to sleep near that cot and near those children, there was quilt for deceased. Around 5.30 a.m. the accused woke up Vinod and then he found that his brother had died due to injuries.

5. The learned trial Judge has not believed PW-8 Vinod though he appears to be eye witness to the incident. The distance between the place where Vinod was sleeping and the

accused, has come on record but only on the ground that though Vinod was at a near distance how he could not have awoken, his testimony is discarded. It appears that PW-8 Vinod is illiterate and therefore he had put thumb impression twice. Even prima facie it can be said that no such consideration would tilt in favour of the accused. It appears that as the stone was weighing 15 to 20 kg., it was considered that accused was not in a physical position to lift the said stone. Thus the probability has been considered. It is submitted by learned APP that the acquittal is based only on the basis of surmises and conjunctures of the trial Court and therefore, the evidence needs to be re-appreciated. We agree to the same. When it has not been suggested that Vinod would have committed the murder, the only grown up person who would remain is the accused and therefore, that re-appreciation deserves to be made. Hence 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]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/JUNE23