

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

**910 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.271 OF 2019**

The State of Maharashtra,  
Through Police Station, Ashti,  
Tq. Partur, Dist. Jalna.

... **Applicant**

... **Versus** ...

Rajebhau Ashroba Kadpe,  
Age 20 yrs., Occ. Nil,  
R/o Raigavhan, Tq. Partur,  
Dist. Jalna.

... **Respondent**

...

Mrs. V.S. Choudhari, APP for the applicant

...

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

**DATE :       06<sup>th</sup> OCTOBER, 2023**

**ORDER :**

1           Present application has been filed by the prosecution seeking leave under Section 378 (1)(b) of the Code of Criminal Procedure, 1973 to file appeal challenging the Judgment of acquittal dated 03.10.2019 passed by learned Sessions Judge, Jalna in Sessions Case No.137/2018, thereby

acquitting respondent – original accused from the offence punishable under Section 302 of the Indian Penal Code, 1860.

2            Heard learned APP Mrs V.S. Choudhari for the prosecution and with her help we have gone through the record which was available before the learned trial Judge.

3            The submissions on behalf of the prosecution are mainly on the point that the learned Sessions Judge, Jalna has not appreciated the evidence properly. Though she had arrived at the conclusion that death of Krishna was homicidal in nature; yet, the other witnesses who have been examined by the prosecution have been disbelieved. No cogent reasons have been assigned for disbelieving the eye witnesses. Merely because they are the relatives they have been disbelieved. The presence of both the witnesses at the place of incident was natural. The non examination of the other eye witnesses was not fatal taking into consideration the cross-examination of PW 1 and PW 4. Under the said circumstance, appreciation of evidence is required. Learned APP, therefore, prayed for allowing the prosecution to file the appeal.

4            The prosecution story, in short, is that – PW 1 Randhavanibai lodged First Information Report with police on 03.07.2018 in respect of an incident that had taken place around 7.00 p.m. on the earlier day i.e. on

02.07.2018. She has stated in the First Information Report that around 7.00 p.m. she had gone to the grocery shop run by one Ibrahim Pathan along with her nephew. At that time, the accused called her son Krishna and raised bag, which he was carrying in his hand towards Krishna. Krishna questioned accused, as to why he is raising the bag and then thereafter there was scuffle. In the meantime, accused took out the knife from his pocket and pierced it in the stomach of Krishna. As a result of which, Krishna sustained bleeding injury and fell down, became unconscious. The informant and her relatives shifted him to Government Hospital, Ashti, thereafter shifted to Government Hospital, Partur and then to private hospital called 'Niramay Hospital' at Jalna around 10.30 p.m. However, Krishna expired around 5.00 a.m. on 03.07.2018.

5                Prosecution has examined in all 08 witnesses to bring home the guilt of the accused. From the statement of the accused under Section 313 of the Code of Criminal Procedure as well as the cross of the prosecution witnesses would make it clear that the defence of the accused is of total denial. At this stage, when we are considering the point as to whether prosecution can be allowed to file an appeal, the findings which are in favour of prosecution need not be discussed. The learned trial Judge has come to the conclusion that death of Krishna was homicidal in nature. Here, PW 1

Randhavanibai and PW 4 Datta Pote have categorically stated that they were at the shop of Ibrahim Pathan around 7.00 p.m. and even Krishna was there, accused was also present and the incident had taken place. They both have stated that accused had thrust knife in the stomach of Krishna. It is, therefore, now required to be seen, whether their evidence can be discarded only on the point that they are the near relatives of the deceased and/or they appeared to be chance witnesses. Non examination of other persons, who were admittedly present there, will not always be fatal. Further, the prosecution has proved the spot panchnama. PW 5 Rangnath Bhumbar is the panch witness to the discovery panchnama. From the cross-examination of this witness, first of all, the fact has been extracted as to what accused did and then there is denial. Therefore, whether he has proved the said discovery under Section 27 of the Indian Evidence Act needs to be re-appreciated. Therefore, taking into consideration the entire evidence that has been adduced by the prosecution case is made out to grant leave to file appeal. The evidence adduced by the prosecution witnesses needs to be re-appreciated. Hence, following order.

### **ORDER**

1                      Application stands allowed and disposed of.

2 Leave is granted to the prosecution to file Appeal.

3 Registry to register the Appeal.

4 Appeal stands **Admitted**.

5 In Appeal, issue notice to the respondent, to be made returnable  
after six weeks.

6 Call Record and Proceedings.

7 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. )

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