



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 214 OF 2019

State of Maharashtra

..APPLICANT

VERSUS

Santosh Sadashiv Gawade

..RESPONDENT

Mr. S.D. Ghayal, A.P.P. for applicant - State

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CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ
DATE : 02nd JANUARY, 2024

PER COURT :

1. Heard.

2. This application has been filed for leave to appeal by State against order of trial Court dated 06th July, 2019 thereby acquitting the respondent of offence punishable under Section 302 of the Indian Penal Code. The respondent has however been convicted for the offence punishable under Section 304, Part II of the Indian Penal Code.

3. We have perused the reasons given by the trial Court in paragraph no.21 onward of its judgment. What can be gathered therefrom is that there was no enmity between the two. The respondent was under influence of alcohol. The respondent made a demand of money. The deceased refused to

pay it. The respondent, thereafter became furious. The deceased asked respondent to go home. The trial Court found that there was exchange of words between the two. It was the deceased, who was asking the respondent to go home. The respondent got enraged thereby. He picked up a stone lying nearby and hit on the scalp (near right ear) of the deceased. A single blow found to be fatal. The incident took place all of a sudden. It is reiterated that there was no enmity between the two. The respondent was not carrying any weapon with him. It is in a spur of moment he picked up a stone lying nearby and hit on the scalp of the deceased. As such, there is nothing to indicate the respondent to have had intended to commit murder of deceased – Ajinath. The trial Court has convicted him for the offence punishable under Section 304, Part II of the Indian Penal Code and sentenced to suffer five years rigorous imprisonment. We do not find any reason to even issue notice in this matter.

4. In view of above, application stands dismissed.

SSD (NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)