



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

**APPLN. FOR LEAVE TO APPEAL BY STATE NO. 70 OF 2025**

The State Of Maharashtra

....Appellant

**VERSUS**

Sukhdev Sarjuba Gawande And Others

.....Respondents

.....

Mr. N.S. Tekale, APP for appellant-State

Mr. P.P. More, Advocate for respondent No. 2

.....

**CORAM : NITIN B. SURYAWANSHI AND  
SANDIPKUMAR C. MORE, JJ.**

**DATE : 11<sup>th</sup> AUGUST, 2025**

**ORDER :**

1. By this application filed under Section 378 (1)(b) of Code of Criminal Procedure, State seeks leave to file appeal against judgment and order of acquittal dated 10.03.2022 passed by learned Sessions Judge, Jalna, in Sessions Case No. 106 of 2021.

2. Accused were charged under Section 302 read with 34 of Indian Penal Code for commission of murder of Kautikrao Ananda Gawande on 09.01.2021. FIR of the incident was lodged by deceased (Exhibit-95). On the basis of FIR, Crime No. 8 of 2021 for offences punishable under Sections 323, 324, 504, 506,

327 r/w 34 of IPC was registered. During the treatment Kautikrao Gawande expired at GHATI, Hospital, Aurangabad and thereafter Section 302 was added.

3. In support of its case, prosecution has examined 13 witnesses. Trial Court on appreciation of evidence has acquitted the accused. Hence, the application for leave to file appeal.

4. Heard learned APP for State and learned advocate for respondents/accused. Perused the record.

5. Admittedly, this is a case of circumstantial evidence and circumstances relied upon by the prosecution are that, FIR (Exhibit-95) was lodged by the deceased, blood stains found on the clothes of Accused No. 1, murder weapon i.e. spade recovered from the accused, FIR of the same incident lodged by Accused No. 1 against deceased, which is registered at C.R. No. 11 of 2021 under Sections 326, 323, 504, 506 of IPC.

6. Perusal of record shows that there is difference in time, role attributed to the accused and injuries suffered by the deceased as alleged in the FIR. In the FIR it is not mentioned that treatment was taken by the deceased at Sillod and Bhokardan Hospital. The injuries suffered by Accused No. 1 are

also not mentioned in the FIR lodged by the deceased. There are contradictions about the role attributed to the accused by deceased and two witnesses i.e. PW5- Suraj Gawande and PW6- Gajanan Gawande. Therefore, the Trial Court is justified in coming to the conclusion that FIR (Exhibit-95) is not showing true and correct picture of the incident.

7. Reports of Chemical Analyzer indicate that blood group of blood stains found on the clothes of accused are inconclusive. No blood stains were found on spade, the alleged murder weapon. Though, blood of group 'A' was found on the clothes of accused No. 1, blood group of deceased as well as accused is 'A'. Therefore, it cannot be said to be a circumstance against the accused.

8. It is therefore clear that prosecution has failed to prove complete chain of circumstances in the present case. The Trial Court has rightly acquitted the accused by giving cogent reasons. The view taken by the Trial Court is the only view and no case is made out by the prosecution to grant leave to file appeal against the impugned judgment and order of acquittal. Application being devoid of merit is dismissed.

**(SANDIPKUMAR C. MORE, J.)**

**(NITIN B. SURYAWANSHI, J.)**