

**GJSK180001112017**



**Order below Ex.6 an application under section 391 of Cr.P.C. to lead additional evidence in Criminal Appeal No.4/2017:**

**1.** This application has been preferred by the witness Lalitaben Lalshankar Raval i. e. mother of the injured Sunilkumar U/s.391 of Code of the Criminal Procedure to lead additional evidence in respect of the concern doctor in whose custody the P.M.Note of the deceased is lying.

**2.** Heard learned advocate for the original complainant as well as learned advocate for respondent No. 2 to 5 i.e original accused.

**3.** The learned advocate for the original complainant i.e. appellant has argued that the written statement of the respondent No. 2 to 5 is dark and very indicative and the deceased case is a medico-legal case, however the P.M.Note is not produced though the much effort has been put and separate representation has been made to the police, which is totally unattended. If the death occurred in natural course, then what needs to be done the P.M.? etc. important matters have been overlooked. If the P.M. is produced, those doctors will get a chance to be examined and nexus between injury and death can be proved as well as "suffocated truth" can be added to the surface.

**3.1** He has relied upon the judgment of Hon'ble Gujarat High

Court rendered in Special Criminal Application (Quashing) No.10076 of 2017 in case of Lavjibhai Amarsibhai Bhalodiya Vs. Mehmoodaben Sic Rajabsha @ Rajubhai Abdulsha Rathod & others on 23/01/2018, wherein it is held that :

" (b) in the event, the victim prefers an appeal to the Court of Sessions in terms of the proviso to Section 372 of the Code of Criminal procedure, no leave is required to be granted by the High Court in terms of sub-section (3) of Section 378 of the Cr.P.C. as amended by Act 25 of 2005 which restricts such leave only to appeals preferred before the High Court and not before any other forum."

**3.2** Further facts remains that deceased expired, because of the injury caused to him in the aforesaid incident, in Civil Hospital, Himmatnagar itself on 30/12/2013. The present appellant did her level best to get the P.M.Note of the deceased through one Aniruddh Raheshyambhai Patel and to bring on record the P.M.Note to prosecute the accused persons for the offence punishable under Section 302,34,114 and 120B of I.P.C. The learned advocate for the original complainant has requested to admit and allow this application and requested to call for the record and proceedings of Cri.Case No.80/2014 from the Court of the learned Additional Chief Judicial Magistrate, Idar and after perusing the same be requested to allow to the present appellant to lead the additional evidence to prove the offences punishable under Section 302, 34, 120(B) and 114 of I.P.C. against the original accused persons in this appeal proceedings or the accused persons may be retried before this Hon'ble Court for the offences punishable under sections 325,323,504,506(2) and 114 of I.P.C. and section 135 of G.P.Act and

simultaneously by leading additional evidence the original accused may be tried also under Section 302,34,120(b) and 114 of I.P.C. for committing murder of deceased Sunilbhai in the interest of justice.

**4.** The learned advocate for the respondent No. 2 to 5 i.e. original accused has produced written statement vide Ex.19, wherein stated that the appellant has filed the present application with an intention to harass the respondent No. 2 to 5, which is liable to be rejected. The appellant was filed C.C.No.80/2014 u/s. 325,323,504,506(2) & 114 of I.P.C. as well as u/s. 135 of G.P.Act against them and the learned Additional Chief Judicial Magistrate, Idar has acquitted to them by its judgment dated : 31/12/2016. In this matter, the complaint was filed on 11/12/2013 and charge-sheet has been filed in the year 2014 after completion of investigation in this regard and they have acquitted by the learned Additional Chief Judicial Magistrate, Idar by announcing the judgment on dated : 31-12-2016. During this period, no action has been taken by the complainant to produce any special evidence even though the case has been pending in the learned trial court for a long time and this application has been submitted only with an intention of harassing to them due to two split in their village. Therefore this application on behalf of the appellant is liable to rejected. As per the facts stated in the application of appellant, Sunil Lalshankar was died on 30/12/2013, but deceased-Sunilkumr Lalshankar Raval passed away on 30/12/2013 after he was discharged from the hospital on dated : 24-12-2013. The fact that Sunilkumar Lalshankar Raval passed away on 30-12-2013 has nothing do with previous injuries. Moreover, there is no come on record medical evidence with regard to he passed away due to sustain injuries. The injury certificate of

Sunilkumar Lalshankar is given on 10-12-2013, wherein in history column it is mentioned that men have beaten sticks and wood, where no names of any person has been mentioned. Moreover, the testimony of appellant has been recorded and there is no come on record evidence of appellant's application or Sunilbhai's death. Therefore, present application of the appellant is not maintainable as per the law and it is liable to be rejected.

**5.** Here I would like to go through the provision of Section 391 of Cr.P.C., which is reproduced as under :

**391. Appellate Court may take further evidence or direct it to be taken.-** (1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Sessions or a Magistrate.

(2) When the additional evidence is taken by the Court of Sessions or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.

**6.** My learned Predecessor has called for R & P of the learned trial court. I have carefully gone through the R & P of learned trial court. Looking to the medical evidence produced before the learned trial court, it transpires that the injured-Sunilkumar had given primary treatment in C.H.C, Idar and then he had referred to

Sir Pratap General Hospital, Himmatnagar on 10/12/2013, where he was taken as an indoor patient treatment till 24/12/2013 and he was discharged on 24/12/2013 at 11-00 a.m. and medical certificate has been issued to him vide MLC Case No.5411/2013 dated : 02/01/2014. But as per the say of the appellant that facts remains that deceased expired, because of the injury caused to him in the aforesaid incident, in Civil Hospital, Himmatnagar itself on 30/12/2013. The present appellant did her level best to get the P.M.Note of the deceased through one Aniruddh Raheshyambhai Patel and to bring on record the P.M.Note to prosecute the accused persons for the offence punishable under Section 302,34,114 and 120B of I.P.C.

**7.** It is important to note that the right and dispute of the parties is required to be decided on merits after affording and opportunity of produced additional evidence rather than haste manner. It is a prime duty of a court to give the substantial justice to the parties. In dealing with any appeal, the Appellate Court, if it thinks additional evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Sessions or a Magistrate. It is important to note that the powers are vested to the appellate court to lead additional evidence by examining any of the witnesses to bring the truth on record, which will have to court for arriving just, proper and correct decision. It is prime duty of a court to find out truth and to render justice, but that cannot be enable unless and until giving fair opportunity to parties to bring their case on record. It is the duty of a court to give fair and proper opportunity to present his/her case.

**8.** So looking to the above facts and circumstances of the

case, if the P.M. note is produced, those doctors will get a chance to be examined and nexus between injury and death can be proved as well as "suffocated truth" can be added to the surface. Therefore, in the interest of justice and fair decision if an opportunity to lead additional medical evidence to the appellant would not be granted then she will prejudice her case and cannot present her case as well as real facts before this court on record. Therefore, considering the entire facts and circumstances of the present case, I am of the view that if the right to lead additional medical evidence of appellant would not be granted then it amounts to denial of opportunity to examine the witnesses. Therefore, in the interest of justice and to avoid injustice as well as right and dispute of the parties is to be decided on merits by giving opportunity. I have also carefully gone through the citation produced by the learned advocate for the appellant, the principles of citation are helpful to the some extent to the facts on hand. Therefore, looking to the facts and circumstances of the case, present application is required to be allowed. Hence, I pass the following order.

### **ORDER**

This application is hereby partly allowed.

The witness summons to be issued to the Civil Surgeon, Sir Pratap General Hospital, Himmatnagar with regard to if the Post Mortem of deceased- Sunilkumar Labhshankar Raval, Resi. of : Chandap, Taluka : Idar, District : Sabarkantha is to be performed on 30-12-2013 by any of the doctor of Sir Pratap General Hospital, Himmatnagar for production of P.M.Note of deceased- Sunilkumar

Labhshankar Raval through the respective doctor along with copy of injury certificate of deceased vide MLC Case No.5411/2013 dated : 02/01/2014 within fifteen days.

Pronounced in Open Court today on this 05<sup>th</sup> July, 2022.

**(Sawaisingh Mohansingh Rajpurohit)**

GJ00544

2<sup>nd</sup> Additional Sessions Judge

Sabarkantha @Idar.

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