

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 65 OF 2019

The State of Maharashtra
Through Police Station Officer,
Bhagyanagar Police Station, Nanded,
Dist. Nanded

... Applicant.

Versus

1. Raju S/o. Sambhaji Paikrao
Age : 34 years,
Occupation : Medical Practitioner,
2. Vijay S/o. Sambhaji Paikrao,
Age : 31 years;
Occupation : Education,

R/o. Govind Colony, Taroda (Bk.),
Nanded, Dist. Nanded

... Respondents.
(Orig. Accused)

...
Smt. V. S. Choudhari, APP for Applicant - State
...

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

DATED : 07th JULY, 2023

ORDER (PER ABHAY S. WAGHWASE, J.) :

1. Being aggrieved by the judgment and order of acquittal passed by learned Additional Sessions Judge-2, Nanded in Criminal Appeal No.37 of 2011, dated 19.12.2018 arising out of judgment and order passed by learned Judicial Magistrate First Class, Nanded in Regular Criminal Case No. 919 of 2006, dated

11.04.2011, State has preferred instant application praying to grant leave to file appeal under Section 378(1) of the Code of Criminal Procedure.

2. Bhagyanagar Police Station, Nanded charge-sheeted present respondents for commission of offence under sections 326, 324 and 504 read with section 34 of Indian Penal Code, in the backdrop of FIR, wherein it was alleged that, on 01.07.2006 respondents assaulted informant by means of stick and rod, causing him grievous injury. At trial before learned Judicial Magistrate First Class, Nanded prosecution adduced evidence of in all 08 witnesses. On appreciating the oral and documentary evidence, learned Judicial Magistrate First Class accepted the case of prosecution as proved and thereby vide judgment and order dated 11.04.2011 held respondents Raju and Vijay guilty of committing offences under sections 326, 324 and 504 read with 34 of IPC and sentenced them to suffer simple imprisonment for two years and to pay fine.

3. Such judgment and order of conviction was taken exception to by present respondents by filing Criminal Appeal No. 37 of 2011 before the learned Additional Sessions Judge-2, Nanded, who on hearing both sides and on appreciating the

evidence, reached to a finding that on scrutiny of entire evidence of prosecution, it was apparent that prosecution had not proved its case beyond reasonable doubt. That, evidence of witnesses which was interested one, was without independent corroboration; that medical evidence did not support ocular account and for the reasons stated in the judgment, more particularly in para 27 and 28, allowed the appeal by setting aside the judgment and order passed by learned Judicial Magistrate First Class.

Feeling aggrieved by the above, now State intends to question the said judgment and order passed by learned Additional Sessions Judge, Nanded, hence the instant application praying for leave to do so.

4. Learned APP appraised us about nature of charge and the case of prosecution in the trial court. She would strenuously submits that informant (PW-1) is himself injured. That, in his evidence at Exhibit-37, he has narrated that on 01.07.2006, when he went to enquire with the accused for abusing his younger brother, that time respondents assaulted him by stick on head resulting into bleeding injury. That, informant had defined the role of accused persons. His evidence has not been disturbed or rendered doubtful in spite of lengthy cross. That, informant's

evidence was also supported by PW-2 Santosh and PW-3 Vaishali and both have also narrated what they saw about assault on PW-1 by accused persons. It is submitted that there is overwhelming direct evidence on record. That, medical expert who examined and treated the injured was also examined by prosecution. Panchanamas were proved. That, there was recovery of article at the instance of accused persons and therefore prosecution had established their case by leading cogent and reliable evidence. However, according to learned APP, such evidence has not been appreciated by learned trial Judge. That, in fact learned JMFC had correctly appreciated the available evidence and had recorded the guilt of accused in spite of so the Appellate Court had misconstrued and not properly appreciated the available evidence and has reached to erroneous conclusion. Therefore, learned APP submits that State has good case for appeal and hence the leave.

5. In the light of above submissions, we have visited the evidence available on record. PW-1 Sunil is the informant, who lodged FIR (Exh.38). PW-2 Santosh seems to be the brother of PW-1 Sunil and PW-3 Vaishali seems to be wife of PW-2 Santosh. All these three witnesses have stated in the witness box that alleged incident took place on 01.07.2006 at around between 7:00 to 7:30 p.m. According to PW-1 Sunil, due to assault by stick on the

head, there was bleeding injury and also he suffered injuries on both legs. When his brother PW-2 Santosh came, he was also beaten by accused on head. PW-2 Santosh stated that on being questioned for lifting wooden logs, his brother PW-1 Sunil was abused and thereafter beaten with stick on the head. Accused Shrirang gave fist and kick blows and dragged his brother PW-1 Sunil and again beat him. According to him, accused persons assaulted his brother by means of rod on the forehead. PW-3 Vaishali, who is wife of PW-2 Santosh also stated that accused Shrirang was abusing her husband. That time, when her brother-in-law PW-1 Sunil came and questioned the accused, that time accused initially gave him fist and kick blows and then they took her husband and brother-in-law towards their house and beat them with sticks and iron rod on head and forehead resulting into bleeding injuries.

6. As noted above, in trial court prosecution has adduced evidence of treating doctor PW-8 Dilip who had occasion to examine injured in Civil Hospital, Nanded. Medical expert in his evidence at Exhibit-58 stated that he noticed CLW and two contusions on both the legs of PW-1 Sunil, whereas on examining PW-2 Santosh, he came across CLW over forehead and contusions over both legs. PW-1 Sunil, PW-2 Santosh and PW-3 Vaishali are all deposing about assault by iron rod. However, in the FIR on the

strength of which law was set into motion i.e. Exh.38, aspect of use of iron rod is conspicuously missing and even Investigating Officer seems to have admitted to that extent. We have noticed that occurrence is of 01.07.2006, respondents as per charge-sheet was arrested on 05.07.2006 at around 12:30 p.m. However, Exh.51 which is said to be seizure memo of iron rod, time is noted that seizure was at around 12:00 noon. Therefore, if above evidence is taken into account it is emerging that seizure is shown to be done even prior to arrest.

7. Defence raised by respondents herein was that injured persons PW-1 Sunil and PW-2 Santosh were both under influence of liquor and they have suffered injuries due to fall. PW-8 Dilip, Medical Officer seems to have confirmed that injured were under influence of liquor when he examined them. Doctor has agreed that injuries noticed by him are possible on account of fall on hard surface, whereas it was the case of PW-1 Sunil being dragged, they ought to have grazing injuries, but no such injuries are noticed by PW-8 Dilip and hence not stated by him to that extent. It is also important to note that all witnesses i.e. PW-1 Sunil, PW-2 Santosh and PW-3 Vaishali are unequivocal about PW-1 Sunil suffering bleeding injury, then PW-8 Dilip ought to have noticed bleeding injury to that extent and if at all it was so.

8. Therefore, admittedly there is previous enmity between injured party and original convict, possibility of false implication cannot be ruled out or possibility of false and afterthought exaggerated version given cannot be ruled out. Medical evidence suggests injuries to be also on account of fall under influence of liquor. Therefore, defence has succeeded in creating doubt over the prosecution story. However, learned Judicial Magistrate First Class does not seem to have appreciated the evidence of so called witnesses who were close relatives cautiously. Medical evidence had not confirmed the nature of injuries narrated in substantive evidence. Therefore, learned Appellate Court seems to have extended benefit of doubt. We have gone through the judgment under challenge. In our opinion, testimonies of PW-1 Sunil, PW-2 Santosh and PW-3 Vaishali, answers given by them in cross-examination and the evidence of medico legal expert available on record has been correctly appreciated. Therefore, we too agree with the findings reached at the learned trial court that case of prosecution has not been proved beyond reasonable doubt and therefore respondents were rightly acquitted. No case is made out for grant of leave and hence we proceed to pass following order:-

ORDER

(i) Application for leave to file appeal by State stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)