

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

CRIMINAL APPLICATION NO. 5619 OF 2015

State of Maharashtra

..APPLICANT

VERSUS

Vitthal Sanjay Bakale and Others

..RESPONDENTS

Mr. S.D. Ghayal, APP for applicant.

Mr. B.N. Magar, Advocate for respondents.

CORAM : INDIRA K. JAIN, J.

DATED : 7th APRIL, 2016

ORDER :

1. By this application State of Maharashtra seeks leave to appeal against the judgment and order dated 26.06.2015 passed by the learned Additional Sessions Judge, Aurangabad in Sessions Case No. 96/2010 acquitting respondents of the offences punishable under Sections 186, 353, 504, 333 read with Section 34 of the Indian Penal Code.

2. Heard Mr. Ghayal, learned APP for State and Mr. Magar, learned Counsel for respondents. Perused record.

3. Prosecution case in brief is as under:-

Informant Madan Kisanrao Nagargoje was attached to Police Station Wadod Bazar, Taluka Sillod, District Aurangabad as Nayak Police

Constable. On 27.08.2009 he was assigned with the duty of execution of non-bailable warrant in R.C.C. No. 269/2009 which was pending before Judicial Magistrate First Class, Sillod. At around 08.50 a.m. Informant had been to serve the non-bailable warrant to Accused No.1 Vitthal Bakle. He could not find accused in shivar of village Babra, Nillod, Bhavan and so he was returning to police station.

4. On the way to police station at around 5.30 p.m. he saw Accused No.1 Vitthal present in front of Hotel Deogiri on Sillod-Aurangabad road. Informant went near Accused No.1 and informed him about the non-bailable warrant against him. He asked him to accompany to police station. It is alleged that Accused No.1 had hot exchange of words with informant and started fleeing away on his motorcycle. He was chased by informant.

5. It is alleged that accused Vitthal then pelted sharp stones on the face of informant. As informant tried to save himself by raising both the hands stone hit his right hand elbow and he sustained injury. Accused again tried to run away but he was caught. By that time other two accused persons also came there. They caught hold the waist of informant with a view to rescue Accused No.1 from his arrest. It is further alleged that Accused No.1 had torn uniform on person of informant.

Police Head Constable Tupe and Dighole were going towards police station and they saw informant and accused there. Incident was informed to A.P.I. Shelke. A.P.I. rushed to spot along with police staff and accused were brought to police station. Report was lodged on the basis of which crime was registered. Investigation was set into motion and on completing investigation charge-sheet was filed before the learned Judicial Magistrate First Class, Sillod who in turn committed the case for trial to the Court of Sessions.

6. Charge was framed against the accused. He pleaded not guilty and claimed to be tried. Accused raised specific defence that complainant had a grudge against them and so they were falsely implicated.

7. To substantiate the alleged guilt of accused prosecution examined in all seven witnesses. Accused also examined two witnesses in support of their defence. Considering evidence of prosecution witnesses Trial Court found that there was no independent corroboration to the testimony of complainant. It was observed that evidence of complainant suffers from material contradictions and omissions and reliance cannot be placed on sole testimony of informant. Medical evidence was also found insufficient to convict accused of the offences

alleged. On the overall scrutiny of evidence Trial Court held that prosecution has failed to prove the guilt of accused and acquitted them as stated above.

8. With the assistance of learned Counsel for parties this Court has gone through evidence of prosecution witnesses. At the outset it is to be stated here that P.W.2 Apparao Dadhe, P.W.3 Vasant Danke and P.W.4 Sitaram Wagh were declared hostile and they did not support prosecution. So far as P.W.5 Uttam Dighole Police Head Constable is concerned, he admitted in his evidence that he has not personally seen the evidence but he arrived on spot immediately after incident and saw informant in injured condition.

9. Despite the above drawbacks it is apparent that complainant supports the manner of incident. Medical Officer attached to GHATI Hospital, Aurangabad examined informant and noticed CLW over right elbow and contusions on right hand and right thumb.

10. In view of evidence of complainant and medical officer this Court finds that applicant-State has an arguable case against the accused and so leave to appeal has to be granted. Hence the following order:-

ORDER

- I) Leave granted.
- II) Criminal Application No. 5619 of 2015 is allowed.
- III) Admit appeal.
- IV) Notice. Mr.Magar, learned Counsel waives service of notice for respondents.
- V) Action under Section 390 of the Code of Criminal Procedure is dispensed with.

(INDIRA K. JAIN, J.)