

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (APPA) NO.629/2019

IN

CRIMINAL APPEAL NO...../2021

State of Mah., thr. PSO PS Akot File, Akola, Taluka Akola, District Akola

..vs..

Swapnil Baswant Wankhede

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

.....
Shri T.A.Mirza, Addl.P.P. for the applicant/State.

Shri Ajay Londhe, Counsel for the non-applicant.

**CORAM : V.M.DESHPANDE &
AMIT B.BORKAR, JJ.**

DATED : JUNE 23, 2021.

1. Hearing was conducted through video conferencing and learned counsel agreed that audio and visual quality was proper.

2. This is an application filed by the State seeking leave to file appeal against judgment and order of acquittal dated 24.4.2018 passed by learned Additional Sessions Judge, Akola in Sessions Trial No.147/2012 whereby learned Judge below acquitted the non-applicant of offence punishable under Section 307 of the Indian Penal Code.

3. Notice on this application was issued and in pursuance to the Notice Advocates Shri V.R.Tiwari and Shri Ajay Londhe filed their Vakalatnamas.

4. Heard learned Additional Public Prosecutor Shri

T.A.Mirza for the applicant/State and learned counsel Shri Ajay Londhe for the non-applicant.

5. According to learned counsel Shri Ajay Londhe for the non-applicant, the prosecution has utterly failed to prove its case against the non-applicant and, therefore, learned Judge below has rightly acquitted the non-applicant. He submits that evidence of injured does not inspire confidence and, therefore, this Court may not interfere with the judgment and order of acquittal.

6. During Trial, the prosecution examined injured Sonu (PW1). As per his evidence, on 5.8.2011 he was assaulted by the non-applicant by knife when he was standing beside his motorcycle. His evidence shows that he resisted the attack by caught holding knife due to which he also sustained injury on his palm.

7. The prosecution has also examined Dr.Bhaskar Laxman Lokhande (PW2), who examined injured Sonu (PW1). His evidence shows that Sonu suffered five injuries. In cross-examination, a suggestion was given to Dr.Lokhande in consonance with theory of witness that injured Sonu received injury due to fallen on broken glass. The said particular suggestion was not only denied by Dr.Lokhande but also he very specifically stated that injuries found on the person of Sonu cannot occur due to fallen on broken glass.

8. Further, evidence of injured Sonu (PW1) is supported by medical evidence inasmuch as Dr.Bhaskar Lokhande (PW2) found injures on palm of injured person. Learned Judge below, in our view, very lightly brushed aside

the said particular aspect and swayed away with the some delay on the part of Investigating Officer in sending weapon to Chemical Analyzer. It is to be mentioned that even clothes of the injured as well as present non-applicant were having blood stains.

9. After having gone through the evidence of witnesses and judgment and order passed by learned Judge below, we are of view that this is a fit case wherein leave should be granted to the applicant/State to file appeal since re-examination of the prosecution case is absolutely necessary.

10. In this view of the matter, I pass following order:

ORDER

(1) The criminal application is allowed.

(2) Leave is granted to the applicant/State to file appeal challenging judgment and order of acquittal dated 24.4.2018 passed by learned Additional Sessions Judge, Akola in Sessions Trial No.147/2012.

With this, the criminal application stands disposed of accordingly.

Criminal Appeal No...../2021

1. Heard.

2. **ADMIT.**

3. Learned counsel Shri Ajay Londhe waives service on behalf of the respondent.

4. Action under Section 390 of the Code of Criminal Procedure be taken against the respondent.

5. When the respondent will be brought in execution of action under Section 390 of the Code of Criminal Procedure, learned Judge below shall release the respondent on bail on he executing a P.R.Bond in the sum of Rs.5000/- with one solvent surety of the like amount.

6. Learned Judge below before whom the respondent will be executing the bail bond shall direct the respondent to attend nearest police station of his residence once in six months during the pendency of this appeal.

JUDGE

JUDGE

!! BRW !!