

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.1 OF 2019

The State of Maharashtra,
Through Police Station Officer,
Tamalwadi, Tq-Tuljapur,
Dist-Osmanabad

...APPLICANT

VERSUS

- 1) Shankar S/o Sitaram Pawar,
Age-28 years, Occu:Agri.,
- 2) Subhash S/o Dhanaji Rathod,
Age-38 years, Occu:Agri.,
- 3) Laxman S/o Sitaram Pawar,
Age-30 years, Occu:Agri.,
- 4) Mangalbai W/o Sitaram Pawar,
Age-60 years, Occu:Agri.,
- 5) Chhayabai W/o Subhash Rathod,
Age-32 years, Occu:Agri.,
- 6) Rajashri W/o Laxman Pawar,
Age-25 years, Occu:Agri.,
- 7) Renuka W/o Netaji Pawar,
Age-28 years, Occu:Agri.,
- 8) Lalita W/o Shankar Pawar,
Age-26 years, Occu:Agri.,

All R/o-Kati Tanda, Tq-Tuljapur,
Dist-Osmanabad.

...RESPONDENTS

...
Mr. S.J. Salgare, A.P.P for Applicant - State.
...

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

DATE : 13th JUNE, 2023

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed by the prosecution seeking leave to appeal under Section 378(1)(b) of the Code of Criminal Procedure challenging the acquittal of the respondents by the learned Additional Sessions Judge, Osmanabad in Sessions Case No. 17 of 2017 from the offence punishable under Sections 147, 148, 307, 323, 354, 504 and 506 read with Section 149 of the Indian Penal Code on 18th September 2018.

2. We have heard the learned APP and with his able assistance we have gone through the entire record which was before the learned trial Judge.

3. The prosecution story is that PW-2 Shalan lodged First Information Report (for short "the FIR") while she was admitted in Civil Hospital, Osmanabad. Incident is stated to have been taken place around 10.30 a.m. on 14th April 2015. She was in

the house which is situated in the field. Accused Nos.1, 3 and 4 came abusing her when she was having breakfast. They asked as to how she let her she-buffalo in their field. Informant came outside the house. At that time accused Nos.1 and 3 caught hold of her hands and took her to their land which was adjoining to her land. They had tied her to a tree in the field. Accused No.1 misbehaved and outraged her modesty and all of them started beating her. She had received injuries to her left eye, mouth and face. After some time the other accused persons came and started assaulting her. She was beaten by sticks, axe and sickle. One Vimal and Ashok rescued her and kept her in a room. When informant came out of the said room, she found that Vimal was lying on the floor after sustaining head injury.

4. The prosecution has examined eleven witnesses to bring home the guilt of the accused. After hearing both the sides and perusing the evidence, the learned Additional Sessions Judge has acquitted the accused persons.

5. The fact to be noted is that apparent consideration of the evidence would show that testimony of PW-2 Shalan was tried to be supported by the prosecution with the testimony of PW-3

Vimal and PW-4 Ashok. The panchas to the seizure panchnama as well as spot panchnama have proved those panchnamas. PW-11 Dr. Ashwini Sontakke is the medical officer who had examined Shalan, Ashok and Vimal. On examination of Vimal, the medical officer found eight injuries on her person, on the person of Shalan there were 11 injuries and on the person of Ashok there were two injuries. Therefore the ocular evidence was tried to be supported by the medical evidence. It appears that the testimony of the witnesses has been discarded on the alleged discrepancy and under the reason, 'not up to the mark'. Whether only these reasons are sufficient, itself is a question and therefore the matter needs re-appreciation. Hence the following order:-

ORDER

- (I) Application stands allowed.
- (II) Leave is granted to the prosecution to file Appeal.
- (III) Registry to register the Appeal.
- (IV) Appeal stands admitted.

(V) Call Record and proceedings.

(VI) Action under Section 390 of the Code of Criminal Procedure be taken against the respondents to the satisfaction of the trial Court.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/JUNE23