

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.08 OF 2019

The State of Maharashtra
Through Police Inspector,
Police Station, Bhokardan,
Tq. Bhokardan, Dist. Jalna

... **APPLICANT**
(Original Complainant)

Versus

Sanjay s/o Jagannath Dalvi
Age: 40 years, R/o Borgaon Jahagir,
Tq. Bhokardan, District: Jalna

... **RESPONDENT**
(Orig. Accused)

....
Mr. A. M. Phule, APP for applicant - State
....

**CORAM : SMT VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

DATE : 24.04.2023.

ORDER (PER Y. G. KHOBRAGADE, J.) :-

By the present application under Section 378(1)(b) of the Code of Criminal Procedure, the prosecution is seeking leave to file appeal to challenge the judgment and order dated 01.11.2018 passed by the learned Sessions Judge, Jalna, in Sessions Case No.53/2016, thereby acquitted the non-applicant / accused for the offence punishable under Sections 307, 324, 504, 506 of the Indian Penal Code.

2. With the able assistance of the learned APP Mr. A. M. Phule, we have gone through the record. We take the story of prosecution as well as evidence placed before the learned trial Court to consider whether leave can be granted to file appeal.

3. In short, it is the case of prosecution that, the PW-1 Dinesh Ganesh Dalvi lodged a report on 13.11.2015 with Bhokardan Police Station, District Jalna alleging that, he had gone to attend nature's call in field beside his house at about 7.30 p.m. on 12.11.2015. While he was answering nature's call, the accused flashed torch light on his face and quarreled with him by saying "*Tula Jasti Maj Chadla Ahe Va Tula Jivant Sodnar Nahi*". (he has become arrogant and he would not leave him alive). But he gave understanding to the accused, however, the accused assaulted him with stick on calf muscle of left leg, left ear and on forehead. Therefore, he raised alarm, due to which, nearby persons came to rescue him. Thereafter, the accused fled away and he became unconscious. He was taken to hospital at Aurangabad. On the basis of said report Crime No.171/2015 registered against the accused for the offences under Sections 307, 324, 504, 506 of the Indian Penal Code. The Investigating Officer conducted the spot panchanama, recorded statement of witnesses and arrested the accused under arrest panchanama. During the course of

interrogation, the Investigating Officer has seized stick at the instance of accused under Section 27 of the Evidence Act. The clothes of injured and accused are seized under seizure panchanamas. The injury certificate was collected and on completion of investigation, charge-sheet came to be filed against the accused.

4. The learned trial Court framed the charge at Exh.7 against the accused for the said offences. The plea of accused recorded, however, he pleaded not guilty and claimed for trial.

5. In order to bring home the guilt of accused the prosecution has examined PW-1 informant Dinesh Dalvi at Exh.13, PW-2 Baburao Shripat Kudar at Exh.15, PW-3 the panch witnesses Gajanan Sheshrao Chinchole for seizure of stick u/s 27 of the Indian Evidence Act at Exh.21, PW-4 Rajaram Rambhau Dalvi for seizure of clothes at Exh.28, PW-5 Sarlabai Vishnu Dalvi at Exh.35, PW-6 Rameshwar Sukhdeo Dalvi at Exh.36, PW7 Dr. Angad Dajisaheb Shirole, Medical Officer at Exh.42, PW-8 Nandkishor Yallaya Antrap, Investigating Officer at Exh.58. Besides oral evidence, the prosecution has relied on documentary evidence F.I.R., at Exh.14, spot panchanama at Exh.16, memorandum and seizure panchanama at Exh.22 and 22A, cloth seizure

panchanama at Exh.29 and 30, M.L.C. information at Exh.43, injury certificate at Exh.44, certificate of the hospital at Exh.45, arrest memo at Exh.49, communication by the concerned police to the Doctor and Chemical Analyzer at Exh.50, 51, 52 and 53, sketch of the spot of incident at Exh.55, 7/12 extract at Exh.56.

6. After completion of trial, the statement of accused was recorded under Section 313 of the Code of Criminal Procedure. Defence of the accused is about his false implication. Learned trial Court passed the judgment and order on 01.11.2018 and acquitted the accused for the said offences holding that though the prosecution proved injury on person of victim PW-1, however evidence of prosecution witnesses does not prove the involvement of accused in the crime beyond reasonable doubt.

7. The testimony of PW-1 informant would show that, he and his friend Rameshwar Sukhdeo Dalvi (PW-6) had gone to answer nature's call in nearby field of his house at about 7.30 p.m. on 12.11.2015. At that time, he saw Sanjay Jagannath Dalve (accused), Rajaram Gopala Dalvi and Tejrao Dattu Dalvi had also come for nature's call. While he was answering nature's call, the accused Sanjay flashed torch light on his face. He asked the accused not to flash torch light, but the accused threatened him

that, “*Tula Jasti Maj Chadla Ahe Va Tula Jivant Sodnar Nahī*”. Thereafter, he gave understanding to the accused not to quarrel with him, but the accused did not listen to him and hit on his calf muscle of left leg, left ear and forehead with wooden stick and received bleeding injury. Therefore, he shouted. The accused threatened his friend Rameshwar Dalvi PW-6. After hearing shouts, his aunt Sarlabai Vishnu Dalvi PW-5 came there by running and the accused was fled away. Thereafter, his uncle Vishnu Shamrao Dalvi and his cousin brother Parmeshwar Dalvi admitted him in Century Hospital, Aurangabad. Thereafter the police from Kranti Chowk Police Station recorded his statement at Exh.14.

8. The prosecution examined PW-2 Baburao Shripat Kudar, who proved spot panchanama Exh.16 and seized articles. The prosecution examined PW-3 Gajanan Chinchole to prove seizure of stick Article-‘A’ under Section 27 of the Evidence Act. PW-3 admitted in his cross examination that, stick article ‘A’ was lying in dark room, due to which could not see how many wooden sticks were lying in said room.

9. In order to prove injuries, the PW-7 Medical Officer Dr. Angad Shitole has deposed at Exh.42 that on 12.11.2015 he

medically examined the patient PW-1 Dinesh Dalvi and found following injuries:

- (i) CLW on the frontal region of forehead 6x2x1 cm bone deep.
- (ii) CLW on right Mastoide 2x0.5x0.05 cm sub cut deep.
- (iii) CLW on left forearm 2x0.5x0.05 cm sub cut deep.
- (iv) Swelling on left forearm.
- (v) Depressed fracture of outer wall of frontal sinus with hyperdense collection in frontal sinus, suggestive of blood (grievous).

PW-7 further deposed that, PW-1 was hospitalized between 12.11.2015 to 16.11.2015. He had issued injury certificate Exh.44. PW-7 opined that due to assault with stick article 'A', injuries described in Exh.44 are possible.

10. In cross examination, PW-7 admitted that while admitting the injured, no name of assaulter was given and no story of assault was given by the injured PW-1. PW-7 admitted that he has not sutured the injury of patient.

11. As per the testimony of PW-8 the Investigating Officer Nandkishor Antarap, the accused was arrested on 14.11.2015 and during custody the wooden article 'A' seized under seizure panchanama Exh.22-A. As per the testimony of PW-3 Gajanan and

Investigating Officer PW-8, the stick article 'A' was seized from back side of house of accused from the room, which was darkened and how many sticks were in said room not known to the witnesses. As per the testimony of PW-2 Baburao and PW-4 Rajaram, the Investigating Officer collected mud, blood mixed mud from the spot of incident. He effected seizure of clothes of accused and victim. As per testimony of PW-8 the Investigating Officer seized articles were sent for Chemical Analysis (C.A.) under letter Exh.53, but no C.A. reports are produced to that effect.

12. As per the testimony of PW-7, the injuries described in Exh.44, do not appear to be grievous in nature. The evidence of the Medical Officer does not reflect that there would have been death of victim PW-1 if he would not have been medically treated for said injuries.

13. Further, as per the testimony of PW-1 when he was attending nature's call, at that time other persons namely Rajaram Gopala Dalvi, Tejrao Dattu Dalvi appears to be eye witness, but the prosecution not examined them. The PW-1 testified that, the accused flashed torch light on his face, however the evidence of PW-1 does not appears how he identified the accused by face

when light from torch was flashed on his eyes. He has not stated that he recognized the voice of accused. PW-1 has not given any history of enmity between them. Why the accused should utter such words and think about committing murder of informant is not forthcoming from the prosecution evidence. Thus, the motive is absent or not proved. The evidence of PW-1 appears full of contradictions and omissions about going to attend nature's call accompanied with his friends and found sitting while attending nature's call by the Sanjay Dalvi (accused), Rajaram Dalvi and Tejrao Dalvi, so also, flashing torch light on his face and presence of Sarlabai Vishnu Dalvi, where men were answering nature's call. Therefore, the evidence led by the prosecution does not appear sufficient to prove guilt of accused beyond reasonable doubt. The prosecution story is unbelievable as well as concocted.

14. Learned trial Court passed the impugned judgment and order on 01.11.2018 and acquitted the accused, which does not appear to be perverse, illegal, bad in law. No substantial grounds are set out to grant leave to file appeal against acquittal. Accordingly, the application is dismissed.

[Y. G. KHOBRADE, J.]

[SMT. VIBHA KANKANWADI, J.]