

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 15 OF 2019

The State of Maharashtra,
Through Police Station Officer,
Police Station Wadwani,
Tq. Wadwani, Dist. Beed.

... Applicant.

Versus

1. Someshwar Pandit More,
Age : 45 years,
2. Chakradhar Someshwar More,
Age : 42 years,
3. Babu @ Balasaheb Bhikaji Kolpe,
Age : 42 years,
4. Dnyanoba @ Dnyaneshwar Bhikaji Kolpe
Age : 35 years,
5. Ashok Bhikaji Kolpe,
Age : 32 years

All R/o. Chinchala, Tq. Wadwani, Dist. Beed.

... Respondents.
(Orig. Accused)

...
Mr. A. V. Deshmukh, APP for Applicant - State
...

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

DATED : 12th JULY, 2023

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

1. As State indents to question the legality and maintainability of judgment and order passed by Additional

Sessions Judge, Majalgaon in Sessions Case No.13 of 2016, dated 25.09.2018, acquitting respondents from offences punishable under sections 147, 148, 307, 504, 506 of Indian Penal Code (IPC), instant leave application has been preferred.

2. Learned APP for State would point out that, crime bearing No. 32 of 2015 was registered on the basis of statement of injured Ashok for above offences, wherein allegations are levelled that, there was land dispute between informant and accused persons. Police reports were lodged. In above backdrop it is submitted that, respondents went armed with articles like, axe, iron rod, stick, cycle chain to the field of informant on 09.05.2015 and after issuing threats to kill they amounted assault. It is pointed out that after the assault, brother of informant reached the field and it is he who brought him home in bullock-cart and thereafter arrangements were required to be made to shift injured to the hospital in a vehicle. Time was spent in that. After admitting informant injured, on the basis of his statement, crime was registered, therefore some delay has occurred but for above reason. It is next submitted that accused went armed with deadly weapons and when threats were issued and some of the articles were said to be put to use therefore, required ingredients for attracting above offences were clearly made out. Learned APP

points out that, as well as 11 witnesses have been examined. Though some witnesses have not supported, there is material evidence of injured and his brother. Medical expert has also been examined. Consequently, it is submitted that, with such evidence prosecution has established the charges. That, therefore guilt ought to have been recorded. Because of assault injuries were suffered and therefore, some bodily offence was definitely made out. However, as learned learned trial Judge has failed to consider and appreciate the evidence in proper perspective and has acquitted accused from all the charges, State is desirous of questioning the judgment by filing appeal and so leave is prayed for.

3. In the light of above submissions, we have gone through the record as well as impugned judgment. At the outset evidence suggests dispute over boundary of agricultural land and even police report seems to have been lodged. Therefore, parties seem to be in cross terms. Evidence of informant Ashok (PW8) shows that, on 09.05.2015 at around 5:00 p.m. while he was working in a field, according to him accused persons named in the FIR came armed with articles like axe, stick, cycle chain and iron rod. In his substantive evidence he has named respondents and the articles allegedly held and used by them. His brother PW9

Dharamraj, who allegedly reached the field has also stepped into witness box. By examining PW10 Dr. Momin, medical evidence is also adduced by prosecution. His evidence suggests that injured was shifted to hospital on 09.05.2015 and doctor has noted C.L.W. on frontal lobe admeasuring 5 x 5 x 1 cm and contusion over right elbow admeasuring 4 x 3 cm. Doctor has given the age of injuries as within 24 hours. It seems that doctor did notice CT scan of brain as normal and that there was no fracture, however still injured seems to have referred the patient to the higher center, Ambajogai.

4. Out of 11 witnesses, PW1 Limbaji, PW3 Vaibhav, PW5 Uttam, PW6 Shrimant and PW7 Syed Shakil does not seem to have supported prosecution. However, PW8 Ashok, PW9 Dharamraj, PW10 Dr. Momin and PW11 Santosh seem to have deposed about the background of the incident and assault.

5. We have gone through the judgment under challenge, it is appearing that learned trial Judge has disbelieved the version of informant and brother, holding that they are not consistent. Answers given by PW8 Ashok are analyzed to hold that genesis about dispute is rendered doubtful. Previous enmity seems to have been taken into consideration, holding that possibility of false implication cannot be ruled out. Aspect of delay in lodging FIR is

also taken into consideration while acquitting the accused.

6. Here, there is offence under section 307 of IPC along with other IPC sections. Some occurrence does seem to have taken place on 09.05.2015. There is a testimony of injured as well as his brother. As stated above, medical expert has noticed two injuries out of which one is on frontal lobe. It is on vital part. It is fairly settled that for attracting charge under section 307 of IPC, intention to kill has to be proved and causing injury may not be always necessary. Therefore, charge of such nature has to be examined in the light of such legal requirements. In such background, if judgment sought to be challenged is viewed, then it appears that learned trial Judge has not appreciated the evidence in the light of above background and legal requirements. Bodily offence is brought on record by examining injured himself. Hence, in our opinion, the case needs to be thoroughly re-analyzed and re-examined and as such prosecution does deserve a chance to take the matter in appeal. Hence, finding it a fit case for grant of leave, we proceed to pass 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, J.)

(SMT. VIBHA KANKANWADI, J.)