

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

**APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 11 OF 2018**

|                               |                |
|-------------------------------|----------------|
| The State of Maharashtra      | ... Applicant  |
| Versus                        |                |
| Shaikh Javed Moinuddin Bagwan | ... Respondent |

....  
Mr. A. V. Deshmukh, APP for the applicant - State  
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**CORAM : SMT VIBHA KANKANWADI AND  
Y. G. KHOBRAGADE, JJ.**

**RESERVED ON : 21.03.2023.  
PRONOUNCED ON : 05.04.2023**

**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 of acquittal of the respondent/accused passed on 10.11.2017 by the learned Additional Sessions Judge, Ahmednagar in Sessions Case No.133/2014.

2. With the able assistance of the learned APP Mr. A. V. Deshmukh, we have gone through the record.

3. In nutshell, it is the case of prosecution that the informant lodged a report with Kotwali Police Station,

Ahmednagar, on 21.01.2014. She alleged that the accused visited her office at about 7.00 p.m. on the same day and demanded Rs.5,000/- as he wanted to visit his village Udayalpura, Beed. Informant declined to give amount and therefore the accused threatened her with dire consequences. After seeing her two staff members Mr. Mukhtar and Mr. Abed, accused ran away from her office. (“तु जर आज पैसे दिले नाही तर तुला येथेच मारून टाकतो” “माझे ऑफिसचे दोन लोक मुख्तार व आबेद तेथे आले त्यानंतर पाहून तो तेथुन पळून गेला.”). Thereafter, again at about 11.00 a.m. on 21.01.2014, she visited her office with her brother Aftab on motorcycle bearing MH-16-AR-125. Her brother had stopped the motorcycle near Bansi Paan shop which below her office and while she was getting down from the motorcycle at that time one stone fell from gallery of her office on petrol tank of motorcycle of her brother, due to which the motorcycle fell down. Thereafter her brother Aftab saw that accused was standing in the gallery of her office. Thereafter, the accused again hurled second stone towards motorcycle of her brother, which hit the head of her brother and he sustained bleeding injury. Thereafter accused was about to throw third stone towards her, but at that time, other persons went to the gallery of her office and caught hold the accused. Her brother Aftab became

unconscious due to bleeding injury to the head, and was hospitalized at City Care Hospital. The informant further alleged that the accused intended to kill her and threw stones towards her. Even death of her brother could have been caused and the respondent / accused could have been guilty for murder of her brother because of the throwing of stone by the accused. On the basis of said report, Crime No.24/2014 was registered against the accused for the offence punishable under Section 307 of the Indian Penal Code.

4. The Investigating Officer carried out necessary investigation and on completion of investigation, the charge-sheet came to be filed against the accused for the offence under Section 307 of the Indian Penal Code. The learned trial Court framed the charge against the accused for the offence under Section 307 of I.P.C. at Exh.10. The accused pleaded not guilty and claimed for trial.

5. In order to bring home the guilt of accused for the offence, the prosecution has examined in all six witnesses and proved documentary evidence, viz; FIR Exh.16, seizure panchanama of clothes of injured Aftab Exh.20, spot panchanama

Exh.23, injury certificate of the injured Aftab Exh.25, arrest panchanama of accused Exh.28. After conclusion of trial, the statement of accused under Section 313 of the Code of Criminal Procedure was recorded. The defence of the accused is of total denial.

6. After hearing both sides, the learned trial Court passed the impugned judgment on 10.11.2017 and acquitted the accused for the offence punishable under Section 307 of the Indian Penal Code. The prosecution is seeking leave to file appeal to challenge the said judgment.

7. Burden was on the prosecution to prove that the accused with an intention or knowledge, attempted to cause death of the injured and the accused would have been guilty of his murder. On perusal of evidence of the informant, PW-1 Smt. Rehana Nawab Bagwan, who is a Chartered Accountant, it can be revealed that her marriage was solemnized with the accused in 2001. However, the accused divorced her in the year 2002. Thereafter there was no contact between her and accused. However, when the informant was in her Office on 20.01.2014, accused visited her office around 7.00 p.m. and demanded Rs.5,000/-. He told that he is in need on money for visiting his

native place. Informant refused to give said amount, the accused threatened her to kill.

8. PW Informant has further deposed that when she went to her office with his brother Aftab Nawab on motorcycle at about 11.00 a.m. on 21.01.2014 and she was getting down from motorcycle, a big stone fell on petrol tank of her brother's motorcycle. The motorcycle fell down. Thereafter, she immediately saw upwards, and found accused in the gallery of her office. Accused again threw another stone towards her and her brother, which hit the head of her brother Aftab, who sustained head injury. Thereafter the accused again tried to throw stone towards her, but the persons gathered at the spot raised hue and cry and some persons went to the gallery of first floor and caught hold the accused. Thereafter, she moved her injured brother at City Care Hospital where her injured brother was unconscious for 3-4 hours.

9. In order to prove the injury sustained to the injured Aftab, PW-2 examined the injured Aftab at Exh.17. He has corroborated the testimony of informant.

10. The prosecution examined Medical Officer Dr. Sandip Surana at Exh.24 and deposed that he examined the injured PW-2

Aftab on 21.01.2014 at about 12.00 noon, and found injury CLW over left parietal region (Approx. 5 x 2 x 1 cm.) and took CT scan of head of the injured and issued injury certificate Exh.25. PW-5 opined that the injury described in Exh.25 injury certificate, is possible by stone. The prosecution examined PW-4 Rashid Shaikh Ahmed to prove spot-cum-seizure panchanama Exh.23 and seizure of stone article 'A'. PW-3 Muntajir Shaikh Naeem, is the eye-witness who has corroborated PW 1 and 2.

11. On perusal of injury certificate Exh.25, it appears that the injury sustained by Aftab appears to be of grievous in nature provided under Section 320 of I.P.C. It is therefore required to be seen as to whether the case falls within the ambit of Section 322 of I.P.C. Taking into consideration the evidence on record it will have to be considered as to whether, the learned trial Court could have punishment for lesser offence. Therefore, we are of the view that prosecution has made out a case for scrutiny of evidence to be made in appeal. We are inclined to grant leave to the prosecution to file appeal against the order of acquittal. Accordingly, we proceed to pass following order.

### **ORDER**

(i) The application is hereby allowed.

- (ii) Leave is granted to file appeal and the Registry is directed to register appeal.
- (iii) The appeal is **admitted**.
- (iv) Issue notice to the respondent, returnable on 27.06.2023.
- (v) Action under Section 390 of the Code of Criminal Procedure be taken against the original accused in Appeal filed by the State and that should be to the satisfaction of the trial Court.
- (vi) Call record and proceedings with paper-book.

[ Y. G. KHOBRAGADE, J. ]

[ SMT. VIBHA KANKANWADI, J. ]

SMS