

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 12 OF 2018

The State of Maharashtra,
Through Police Station Nanded Gramin,
Tq. and Dist. Nanded.

. . . Applicant
(Orig. Informant)

Versus

1. Sunil @ Sunya Gangadhar Kokate,
Age 21 years, Occu. Private Service,
R/o Patoda, Tq. Naogaon,
at present MIDC Nanded.
2. Vijay Madhukar Dhage,
Age 20 years, Occu. Welding work.
R/o Lohan, Tq. Ardhapur, Dist. Nanded.
At present MIDC Nanded.
3. Prabhakar Namdeo Yede,
Age 20 years, Occu. Welding work,
R/o Kamlaj, Tq. Loha, At present
MIDC Nanded.
4. Satyam Venkatrao Hatte,
Age 22 years, Occu. Auto driver,
R/o Dhanora, Tq. Kandhar,
Dist. Nanded, at present MIDC Nanded.
5. Sunil Bhagwan Suryawanshi,
Age 24 years, Occu. Education,
R/o Kranti Chowk, CIDCO, Nanded.

. . . Respondents
(Ori. Accused)

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Mr. R. D. Sanap, APP for the Applicant-State.
Mr. D. S. Ingole h/f Mr. N. S. Ghanekar, Advocate for Respondent No.1.
Mr. V. P. Sawant h/f Mr. A. D. Hande for Respondent Nos. 2 and 3.
Mr. S. C. Bhosle, Advocate for Respondent No.5.

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

DATED : 01 FEBRUARY 2023

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

1. Instant application for leave to appeal is at the instance of State. State is dissatisfied by the Judgment and order of acquittal passed by the learned Additional Sessions Judge-5, Nanded in Sessions Case No.44 of 2014 by which present respondent Nos.2, 3 and 5 stood acquitted from the charge under Sections 302, 143, 147, 148 read with 149 of Indian Penal Code (IPC) and accused respondent Nos.1 and 4 stood acquitted from the charge under Section 143, 147, 148 read with 149 of IPC.

2. We have heard learned APP for the applicant-State.

3. Learned APP would submit that prosecution is launched against present respondents on the basis of report lodged by Yadav Gite alleging that on 27-12-2013 at around 03:30 p.m., he and deceased had been to Padmavati Beer Bar. Accused Raju Jadhav, Nitin Pavale, Akash Sonkamble and Gajanan Gajbhare were already sitting there and consuming liquor. Later on Nitin Pavale, Akash Sonkamble and Gajanan Gajbhare left the Beer Bar, whereas informant, Raju Jadhav and deceased continued to consume liquor till 07:00 p.m. It was stated that subsequently they all went to take tea at a hotel near Bus Stand. When deceased went to urinate, informant heard shouts and cries

and therefore, he ran in that direction and saw accused persons i.e. Sunil Kokate, Satyam Hatte, Prabhakar Yede and Vijay Dhage chasing him. Informant also went there and saw that deceased was caught by accused persons and accused Sunil Kokate was sitting on the the deceased. Thereafter, accused Sunil Kokate got up and accused Satyam Hatte sat on the deceased. Similarly, accused Sunil Kokate had assaulted deceased by a sharp weapon. Thereafter, when **PW6** Vikas came to his rescue at that time accused accused Sunil pointed dagger towards him and prevented him from approaching further. Accused accused Satyam Hatte also assaulted deceased. Thereafter, all persons fled towards Cidco Bus Stand. Injured was taken to the hospital, he was examined there and declared dead.

4. Learned APP pointed out that there is eye witness account in the form of testimony of informant as well as **PW6** Vikas. They have narrated whatever they had saw. There is recovery at the instance of accused persons. Death is already concluded by the medial expert as homicidal one. Accused persons formed unlawful assembly with common object of mounting assault on deceased. They are solely responsible for causing injuries to the deceased. However, inspite of availability of cogent and reliable evidence, learned trial Court has acquitted accused Nos.2, 3 and 5, who were also party to the assault, from the charge under Sections 302, 143, 147, 148 read with 149 of IPC and has also acquitted accused Nos.1 and 4 from the charge under

Sections 143, 147, 148 read with 149 of IPC. Lastly he submitted that there is ample evidence against accused persons. That there is no proper appreciation of the evidence. State has a strong case on merits. There are several legal points, which are ignored by the learned trial Court, which State intends to bring to notice of this appellate Court. Therefore, learned APP submits that leave to file appeal be granted in the interest of justice.

5. On examining the evidence of prosecution, it is emerging that alleged occurrence had taken place on 27-12-2013. From the FIR, it is seen that the informant and one Mohd. Avesh @ Chingaya had been to Padmavati Beer Bar. According to informant, Raju Jadhav, Nitin Pavale, Akash Sonkamble and Gajanan Gajbhare were already sitting there and consuming liquor. When drink was done, they came out and went towards Bus Stand. There it is alleged by the informant that deceased went to urinate. He heard shouts and so he ran in that direction. There he saw deceased Mohd. Avesh @ Chingaya being beaten by the accused person. Informant claims that he went to his rescue but accused persons prevented him. Informant has alleged that initially chase was given to Mohd. Avesh @ Chingaya, who was running and after he fell down, at that time, accused Sunil Kokate sat on the deceased and thereafter, accused Satyam Hatte also sat on the abdomen of deceased. Informant has alleged that Sunil kokate was armed with knife (dagger) and he had seen deceased being assaulted on chest and abdomen parts resulting in

bleeding injuries. Thereafter, accused persons fled and deceased was taken to the hospital and therefore, informant Yadav Gite set law into motion, on the strength of which Police seems to have registered Crime No.393 of 2015 for the offence punishable under Section 302 read with 34 of IPC. During the investigation, it was revealed that all accused person Nos.1 to 5 had joined in the assault and therefore, charge-sheet was filed for the offence under Section 302, 143, 147, 148 read with 149 of IPC.

6. Now, here five persons are made to face trial. As stated above, star witnesses are informant **PW1** Yadav and **PW6** Vikas. We have carefully gone through the evidence of these two witnesses. Informant clearly gives sequence of the events ensued on that day since sitting in the Beer Bar till the alleged occurrence of assault. It has come in the evidence of **PW6** Vikas that informant and he had seen accused No.1 Sunil Kokate assaulting deceased with knife and accused No.4 Satyam Hatte assaulting deceased by brick on the head. They both seem to have mounted attack by sitting over abdomen of deceased. Role of chasing and pelting stones is also attributed to accused No.3 Prabhakar Yede. As stated above, **PW1** Yadav has stated that he had seen deceased being chased by accused persons. This witness is categorical about both accused No.1 Sunil Kokate and accused No.4 Satyam Hatte sitting on the abdomen of the deceased. He claims to have seen accused No.4 Satyam Hatte hitting the deceased on the head by brick. He has deposed that when he

attempted to catch accused No.4 Satyam at that time accused No.1 Sunil caught him from his back side.

7. On taking survey of the evidence of prosecution, it is emerging that accused Nos.2, 3 and 5 are shown to be present at the spot and they were only chasing deceased. No further overt act is attributed to them. Taking into consideration the evidence on record and there being no incriminating evidence against accused Nos.2, 3 and 5, they cannot be held guilty for charges under Sections 302, 143, 147, 148 read with 149 of IPC. Apart from this, considering the evidence available on record against accused Nos.1 and 4, they cannot be held guilty for the charges under Sections 143, 147, 148 and 149 of IPC.

8. Learned trial Court has carefully appreciated the evidence on record, testimonies of each of the witnesses are sifted in the light of roles played by them and conclusion has been reached at. We do not find it a fit case to grant leave to prosecution to prefer appeal. Hence, we proceed to pass following order

ORDER

- (i) Application for leave to appeal by State No.12 of 2018 stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)