

JPChavan

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

**8 APPLN. FOR LEAVE TO APPEAL BY STATE NO.14 OF 2018**

**THE STATE OF MAHARASHTRA  
VERSUS  
BHAGWAT GOVIND PATIL AND OTHERS**

**...  
APP for Appellant :Mr. A. V. Deshmukh**

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

**DATE : 27<sup>th</sup> March, 2023**

**ORDER:**

1. The present application has been filed for seeking leave to appeal under section 387(1)(b) of the Criminal Procedure Code by the prosecution. They want to challenge acquittal of the respondents by the learned Additional Sessions Judge, Jalgaon in Sessions Case No. 29 of 2016 on 30.10.2017 thereby acquitting the respondents from the offences punishable under sections 143, 302, 307, 326, 324, 323, 147, 148, 504 read with section 149 of the Indian Penal Code.

2. We have heard learned APP Mr. A. V. Deshmukh on behalf of the applicant for a limited purpose, as to whether such leave can be granted or not. With his able assistance, we have gone through the copies of deposition and other documents which were before the learned trial judge.

3. The prosecution story, in short, is that the informant PW1 Anna Maharu Patil was sitting outside his house on the raised platform (Ota) around 8.00 p.m. on 09.09.2015 and there was electric light at that place. The work of repairing the road in front of his house, which was undertaken by Grampanchayat, was going on at that time. It is his contention that his younger brother Akosh Maharu Patil went towards Sarpanch i.e. Accused No.1, who was present at the spot, to make a request that the ditch in front of his house should be filled at the time of the said repairing work. Accused No.1 got annoyed and started abusing Akosh. Thereafter, cousin brother of accused no.1 i.e. accused no.2 Bhushan Patil rushed to the spot and started attacking. The informant went there to save his brother. Thereafter, the relatives of the Sarpanch came to the spot, so also the relatives of the informant also joined. It is then stated that the accused persons assaulted the informant, his brother and other family members. It is stated that one pointed weapon, iron hoe was used to cause the injuries, so also they were assaulted with fists and kicks. Injured persons thereafter were taken to Hospital and on the next day, i.e. on 10.09.2015, the informant lodged the FIR from the Hospital itself.

4. The trial was conducted and prosecution examined in all 14 witnesses to bring home the guilt of the accused. After considering the evidence on record and hearing both sides, the learned Additional

Sessions Judge, Jalgaon has acquitted all the accused persons from all the charges. Hence, the present application seeking leave to appeal.

5. At the outset, we may say that the testimony of PW1 Anna- the informant, PW-2 Anil Akosh Patil- nephew of the informant-cum-injured eye witness, PW3 Ganesh Anna Patil-son of the informant-cum-injured eye witness may appear to be corroborating each other on the point of assault by the accused persons. Yet, taking into consideration the minute scrutiny of their testimony, it is to be noted that PW-1 Anna is not disclosing the presence of PW-3 Ganesh as the person sitting along-with him on ota at 8.00 p.m. on that day. However, PW3 Ganesh says that he was sitting on the ota with his father and mother.

6. It is rather the statements by all these three witnesses that Akosh was the person who had gone near the Sarpanch with a request that he should fill the ditch in front of his house during that repairing work and thereafter the Sarpanch got annoyed. Another fact which has come in the cross examination of these witnesses is that the said ditch was in front of the house of the informant and it was in the road, then the question arises, when that repairing work was going on, why it could be anticipated by Akosh that the said ditch will not be filled and repaired in the said on going repairing work. Another fact where the prosecution has failed is that they have not explained the relationship between accused Nos. 2 to 9 and accused No.1. They appear to be

from different family and the location of their house from the spot has also not come. How they had come to know about whatever was going on in front of the house of the informant has not been explained by any of the prosecution witnesses. When the prosecution wanted to project that those other accused persons had come with weapons, then there should have been explanation as to how the news of quarrel went to those accused persons and within how much time those other accused persons alleged to have arrived at the place, armed with weapons. The another fact from the testimony of the panch witnesses, specially spot panchanama and the testimony of the investigating officer would show that at the time of spot panchanama, the said ditch was not shown at all which was the reason for the quarrel.

7. It appears that the informant and his family members had received injuries. However, the prosecution should establish the nexus that those injuries are the outcome of the incident which had taken place as prosecution wanted to convey. The learned Additional Sessions Judge has further taken the pains to consider the medical evidence on record. He has taken note of the testimony of PW10 Dr. J. V. Deore from Deore Hospital, Chalisgaon. Though the medical officer, in his examination-in-chief, has opined the injuries which he had noted on the person of Ganesh, Anil, Nirmala and Anna, but then in his cross examination, he had not noted the injury on the person of victim

Nirmala with any sharp object and those injuries which were there were possible by fall over a sharp and blunt object. No doubt, a fact is also taken that X-ray plates were not produced. It is also noted that Articles 1 to 3 were having different sizes of length. However, in the letter about identification of injuries with the weapons which were forwarded to him later on, he has not mentioned which injury is possible by which weapon. He admitted that there is difference between sharp and pointed objects and Article- 4 spade was having hard and blunt edges. He has not noticed any fracture of rib of PW-2 Anil.

8. Unfortunately, it appears that Akosh expired due to injuries and PW-12 Dr. B. P. Baviskar, is a medical officer attached to Rural Hospital Chalisgaon who conducted the autopsy. The external examination of the dead body as per postmortem report Exh. 207 shows that he has stab wound over right side of chest 5 cm. below right nipple between 7th and 8th ribs, obliquely placed with sharp edges with size of 2.5 cm. x 1 cm x deep up to thoracic cavity and second was another stab wound over right hypochondriac region, having size of 2.5 cm x 1 cm deep up to peritoneal cavity, which was obliquely placed with sharp edges. It was opined that both the injuries were anti mortem. He has therefore given the probable cause of death as “ due to cardio-respiratory failure, due to injury to vital organs i.e. right lung

and liver." He has then stated that Police had approached him on 12.09.2015 with one knife to seek opinion and then he has given opinion that those injuries which he had noted on the person of Akosh were possible by means of the said knife. In the cross examination, he has admitted that if two knives, differencing with their measurement attacked on the victim, then there is likelihood to cause different types of injuries. He was shown with Article 2 knife which was having width of 3 to 4 cms and then he opined that in case of stab injury sustained to the victim is more than the width of the weapon thereby it was pointed out that blade of the knife Article-2 and the injuries those were found on the person of Akosh were not matching as regards the dimension are concerned.

9. PW-13 Dr. A.P. Mali is the medical officer who had examined victim Rohini who is the daughter of deceased Akosh. However, it is to be noted that she was examined on 11.09.2015. Why she was referred for the medical examination belatedly when the incident had allegedly taken place around 9.15 p.m. on 09.09.2015 has not been explained by the prosecution.

10. The Additional Sessions Judge has also considered the improvements, contradictions and omissions of injured eye witnesses including the informant. As per PW2- injured Anil, the entire incident had taken place on the road at Ota of their house. However, the spot

panchnama shows blood stains on the road, ota of the house and also inside the house of deceased. Therefore, further clarification was lacking.

11. As aforesaid, the prosecution has not explained as to within how much time the other accused persons came that too armed with the weapons. If we consider the starting of the quarrel, it was as per prosecution story that the Akosh went to Sarpanch with a request to fill up ditch. Even if for the sake of argument it is accepted that Sarpanch got annoyed with the said fact and started abusing Akosh, it could not have been taken further. The other accused persons were not concerned with the repairing work of the road taken up by the Grampanchayat. It shows that real story of the incident was different that it has been tried to be canvassed by the informant and the injured eye witnesses. At the cost of repetition it can be seen that many portions from the statements of the witnesses recorded under section 161 of Cr.PC. have been denied by them. When the story is then not inspiring confidence, it cannot be said that whatever evidence was produced was of such a quality that can hold the proof of the offence beyond reasonable doubt.

12. PW-4 is the spot panch who has clearly admitted in cross examination that there was no electricity connection point or any electricity fitting on the house of the informant towards ota, but rather

all the injured persons who have been examined in this case have categorically stated that the informant was sitting below the light. One more aspect which has to be highlighted is that the prosecution has not taken pains to examine the neighbours who would have seen the incident and also those workers who were working for the repairing of the road at the relevant time. The only injured eye witnesses have been examined and therefore the learned trial judge was justified in holding that the offence has not been proved beyond reasonable doubt.

13. No case is made out for grant of leave. A well reasoned order is passed and logical and legal reasons have been assigned by the learned trial Judge while acquitting the accused persons. The application, therefore, stands rejected.

**(Y. G. KHOBRAGADE, J.)**

**(SMT. VIBHA KANKANWADI, J. )**