

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 15 OF 2018

The State of Maharashtra ... Applicant

Versus

Vikas Uttam Shinde and another ... Respondents

....
Ms V. S. Choudhari, APP for the applicant - State
....

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

DATE : 27.03.2023.

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

. The prosecution/ State has filed the present application under Section 378(1)(b) of the Code of Criminal Procedure, seeking leave to file appeal against the order of acquittal of the respondents/accused passed by the learned Additional Sessions Judge, Ahmednagar on 03.11.2017 in Sessions Case No.341/2013.

2. We would like to take into consideration the story of prosecution as narrated in the First Information Report (FIR) and

evidence which was before the learned trial Court on the point, whether the leave can be granted to the prosecution to file appeal.

3. The informant lodged the FIR with Shevgaon Police Station, Taluka Shevgaon, District Ahmednagar alleging that he unloaded milk from his vehicle at Nimbark Milk Centre on 23.10.2010 and took meal at Saiban Dhaba, Shevgaon. Thereafter, he was proceeding by Shevgaon to Georai road in his vehicle, but at about 11.00 a.m., one vehicle Indica Car crossed his vehicle and stopped in front of his vehicle. Thereafter four persons i.e. accused No.1 Vikas Uttam Shinde, PW-2 Kadir Hussain Pathan and other two unknown persons got down from the said car. Accused No.1 caught hold of the collar of informant and asked him as to why he has not withdrawn the case filed by him in the Court. Informant then declined to withdraw the case. Accused No.1 then annoyed and assaulted him. So also, the accused No.2 and other two unknown persons caught hold his hands, legs and made him fall down on the ground. Accused No.1 had thereafter, forcibly administered poisonous substance from a bottle to him, but at the relevant time, one motorcyclist came from Shevgaon side, due to which the accused persons fled away from spot towards Shevgaon. Thereafter, anyhow, informant then went near the gate of Nityaseva Hospital, Shevgaon and fell down. Informant was

medically treated and lodged First Information Report. On the basis of the said report, Crime No. I-143/2010 registered against the accused persons for the offence punishable under Section 341, 323, 307 read with Section 34 of the Indian Penal Code.

4. PW-10 API Shri Ganesh Tathe investigated the crime and has drawn spot panchanama Exh.15 and seized bottle of poisonous substance, clothes of the informant PW-1 under seizure panchanama. During the course of investigation, the Investigating Officer recorded statements of the witnesses, sent articles for Chemical Analysis and collected medical papers pertaining to informant PW-1 and on completion of investigation, charge-sheet came to be filed against the accused. On compliance of Sections 207 of the Code of Criminal Procedure, the learned Judicial Magistrate, First Class, Shevgaon passed the order under Section 209 of the Code of Criminal Procedure and committed trial to the Court of Session on 27.09.2016. The learned trial Court framed the charge at Exh.6 against the accused for the offences punishable under Sections 307, 341, 323 read with Section 34 of the Indian Penal Code. The accused pleaded not guilty and claimed for trial.

5. In order to bring the home guilt of the accused for the said charges, the prosecution examined following witnesses.

PW-1	Suresh Balasaheb Sarode	Exh.12
PW-2	Balu Bhausahab Lokhande	Exh.14
PW-3	Santosh Bhanudas Pawar	Exh.16
PW-4	Sanjay Sundarsingh Belval	Exh.18
PW-5	Dr. Sonar	Exh.20
PW-6	Dr. Pardeshi	Exh.23
PW-7	Vinod Namde	Exh.27
PW-8	Police Constable Dilip Rathod	Exh.28
PW-9	A.S.I. Biraji Waghmode	Exh.29
PW-10	A.PI. Tathe	Exh.30

6. Besides oral evidence, the prosecution proved FIR Exh.13, Spot Panchanama Exh.15, Clothes seizure Panchanama of the informant Exh.17, Medical case papers of PW-1 Exh.21, Discharge card Exh.22, Injury Certificate Exh.24, Chemical Analysis Report Exh.34, Arrest Panchanama. The statements of accused under Section 313 of Cr.PC. was recorded. The defence of the accused is of total denial and about their false implication.

7. Learned trial Court has passed the impugned judgment and order on 03.11.2017 and acquitted all the accused from the charges under Sections 341, 323, 307 read with Section 34 of the Indian Penal Code.

8. The learned APP submitted that as per the testimony of PW-1 Suresh, the accused No.1 had administered poison to him

at the place of incident but after one motor cyclist came from Shevgaon side, both the accused along with other unknown accused fled away and thereafter he went near the hospital, but on the gate, he fell down. Thereafter, PW-4 Sanjay, who was serving as Watchman at Nityaseva Hospital, admitted the PW-1 in Hospital and the Medical Officer PW-5 Dr. Vijay Sonar treated informant from 24.10.2010 to 27.10.2010. The prosecution proved medical papers Exh.21 and discharge card Exh.22, so also, the prosecution examined PW-6 Dr. Deepak Pardeshi attached with Rural Hospital, Shevgaon, who deposed that on 24.10.2010 at about 1.45 a.m., PW-1 Suresh was brought by one Babasaheb Baburao Chavan with history of poisoning. On examination, he found smell of poisonous substance from the mouth of PW-1 and froth was coming from his mouth. Accordingly, certificate Exh.24 issued and if the PW-1 could not have been medically treated in time, there would be the possibility of his death. Therefore, the learned trial Court ought to have held that accused persons have committed the offence, however, the learned trial Court passed the impugned order and illegally acquitted the accused. Therefore, the prosecution has made out substantial ground for seeking leave to file appeal.

9. The case of the prosecution is about administration of poisonous substance to the PW-1 Suresh by the respondent accused at about 11.00 p.m. on 23.10.2010, when PW-1 was proceeding in his vehicle towards Shevgaon - Gevrai road. PW-1 himself visited at Nityaseva Hospital, Shevgaon where he was hospitalized. He has stated that accused No. 1 has as to why he has not withdrawn the case. No details have been given about the said proceedings. Whether it was between the informant and accused No. 1, since when it was pending, etc. It rather shows that there was enmity between them and therefore, informant had reason to implicate accused. Admittedly there was no eye-witness to the incident. Unless the testimony of the informant inspires confidence, it can not be said that prosecution has proved the guilt of the accused beyond reasonable doubt.

10 As per the evidence of Medical Officer PW-5 Dr. Vijay Sonar, the PW-1 himself gave history about administering forcible poisonous substance by four unknown persons and he was medically treated the PW-1 w.e.f. 24.10.2010 to 27.10.2010. However, question arises that when PW-5 had come to know about the case of administration poisonous substance, then he ought to have intimated to Police, but he has not produced the copy of MLC

report. He has also not stated that such report was sent to police. It raises doubt.

11. PW-6 Dr. Deepak Pardeshi, Medical Officer attached with Rural Hospital, Shevgaon has deposed that, PW-1 Suresh was brought to the hospital on 24.10.2010 at about 1.45 a.m. with the history of poisoning, but he was not sure whether PW-1 had consumed the poison or it was administered to him. PW-6 had not found any fresh injury on the person of PW-1. He has further deposed about smell of poisonous substance and froth from the mouth of PW-1. However, evidence of PW-6 does not suggest about giving stomach wash to the PW-1 and collection of stomach wash of the PW-1.

12. On perusal of evidence of PW-5 Dr. Vijay Sonar, as well as PW-6 Dr. Deepak Pardeshi would show apparent contradiction regarding the visit of PW-1 Suresh to both the hospitals on the same day. Further, though the prosecution has proved FSL report Exh.34 in respect of examination of substance found in bottle, clothes of PW-1 Suresh, which appears about finding of "organophosphorus insecticide", but it has not been supported with substance in the stomach. Both the medical officers have not explained as to why the stomach wash was not

collected. Mere smell to the mouth is not the criteria to judge administration. In other words, merely sending the seized bottle containing some poisonous substance to the Chemical Analysis, will not prove that the accused persons forcibly administered poisonous substance to the PW1. The evidence of the prosecution witnesses does not inspire confidence that, the accused persons administered the poisonous substance forcibly. If there would have been forcible administration of poisonous substance to the PW-1 at the hands of accused, in that circumstance, there would have been resistance between the PW-1 and accused persons. There was possibility of some kind of injuries to the informant. However no injuries have been noticed by the PW5 and PW-6 Medical Officer on the person of informant. This fact raises doubt.

13. Further, while lodging the report, the PW-1 has not given description of other two unknown persons and there was no search in respect of those unknown persons by the Investigating Officer.

14. On perusal of the impugned judgment and order, it appears that the learned trial Court considered oral as well as documentary evidence available on record, and acquitted the accused, which is justifiable. No substantial grounds are set out to interfere with the findings recorded by the trial Court.

15. In view of the above discussion, we are not inclined to grant leave to file appeal against the order of acquittal. Accordingly, the application is hereby dismissed.

[Y. G. KHOBRADE, J.] [SMT. VIBHA KANKANWADI, J.]

SMS