

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.26 OF 2019

The State of Maharashtra,
Through Daithana Police Station,
Tq. & Dist. Parbhani.

... Applicant
(Orig. Informant)

Versus

1. Munjaji @ Pappu S/o. Shivaji Kachhave,
Age : 35 years, Occu. : Agri.,
2. Hanuman S/o. Shivaji Kachhave,
Age : 30 years, Occu. : Agri.,
3. Gangubai W/o. Shivaji Kachhave,
Age : 30 years, Occu. : Agri.,
4. Sau. Yeshoda W/o. Munjaji @
Pappu Kachhave, Age : 30 years,

All R/o. Indewadi, Tq. & Dist. Parbhani.

... Respondents.
(Orig. Accused)

...
Mr. A. M. Phule, APP for Applicant - State
...

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

DATED : 10th JULY, 2023

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

1. By invoking section 378(1)(b) of the Code of Criminal Procedure (Cr.P.C.) State has preferred instant application praying for grant of leave to appeal against judgment and order passed by Additional Sessions Judge, Parbhani in Session Trial No. 133 of 2016, dated 30.10.2018.

2. The sum and substance of the argument advanced by learned APP is that, present respondents were made to face trial for charge under sections 302, 324, 323, 504 read with 34 of Indian Penal Code (IPC). Elaborating the case of prosecution in the trial court, it is submitted that, on 12.05.2016, respondent no.1 was annoyed due to land dispute. In such backdrop, all accused persons went to the field on 12.05.2016. At around 10:00 to 10:30 a.m., respondent no.1 Munjaji initially bite Nilesh and thereafter with intention to cause death, hit stone on vital part of head of deceased Bhausahab. The injury turned down to be fatal. That, treating doctor and autopsy doctor were examined by prosecution. Deceased died on 17.05.2016. Accused are solely responsible for death of Bhausahab which was nothing short of homicidal one. That, there was evidence of injured witness along with other eye witnesses. That, prosecution had examined in all 13 witnesses. All their testimonies were intact. It is submitted that thereby prosecution had established all the charges. However, learned trial court erred in appreciating the evidence on record and has wrongly acquitted accused persons. There is improper appreciation of evidence and failure to appreciate settled legal position. It was unwarranted acquittal and therefore, it is submitted that, State is desirous of challenging the said judgment and order and hence, as

there is every of hope of succeeding, it is submitted that instant application be granted.

3. We have carefully gone through the evidence placed before trial court. It seems that in all 13 witnesses have been examined by prosecution. The incident in question seems to be fall out of land dispute. Prosecution seems to have examined PW2 Yogesh, i.e. son of deceased at Exh.29. His evidence suggests that on 12.05.2016, deceased Bhausahab, injured Nilesh and Laxman went to land gut no.244. Respondent Munjaji was demanding 2 acres land more. He initially assaulted Laxman by stone. Thereafter, according to this witness, Munjaji assaulted his father Bhausahab on his left parietal region, as a result of which deceased become unconscious and was taken to hospital. Injured Nilesh also is examined as PW5 at Exh.39 and he too has stated that present respondents abused deceased on refusal to give share in the land. This witness also stated that present respondent Munjaji initially hit this witness and when his father came to his rescue, respondent Munjaji hit him on the head with stone, whereas respondent Gangubai and Yeshodabai threw chili powder in their eyes.

Likewise, prosecution has examined PW7 Sakharam, who claimed to be acquainted to both accused and deceased. He too

has stated that Munjaji hit Bhausahab with stone. Both, Bhausahab and injured Nilesh, were taken to hospital. PW12 Narsing also stated that in his presence Munjaji initially bite Nilesh and thereafter assaulted Bhausahab on the head.

4. Apart from above oral evidence, in support of injury, prosecution has examined medical experts, i.e. PW8 Dr.Ankit, PW9 Dr.Ruturaj, PW10 Dr.Vitthal and PW11 Dr. Pratap, autopsy doctor. Autopsy doctor claims to have noticed contusion over left parieto temporal area of head and depressed circular fracture in left temporal area of bone of skull. He has also narrated the internal examination findings and he gave measurement of the injury. In his opinion, death was due to head injury.

5. We have also gone through the impugned judgment. It is noticed by us that learned trial Judge has appreciated the entire evidence adduced by prosecution, but has disbelieved prosecution story and the testimonies by opining that no prompt cognizance has been taken by police. We have also found that, in para 27 of the judgment, learned trial Judge has observed that there is recovery of two stones (Article-1 and Article-2), but none of the prosecution witnesses is able to state which stone was hit. We have also come across observations of trial court in para 27 that

prosecution failed to prove whether injury to the deceased was caused by Article-1 or Article-2. Unfortunately, above discussed evidence does not seem to be properly appreciated. Learned trial Judge ought to have considered the circumstances in which alleged occurrence has taken place as narrated by eye witnesses including injured and even medical expert's evidence ought to have been properly appreciated. Therefore, the same having not been done, we consider it a fit case for re-appreciation and re-analysis of the evidence, i.e. by way of appeal. Consequently, State having made out a 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.)