

JPChavan

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

13 APPLN. FOR LEAVE TO APPEAL BY STATE NO.34 OF 2018

THE STATE OF MAHARASHTRA
VERSUS
VENKATI S/O. RAVAN CHOLE AND OTHERS

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APP for Advocate for Appellant : Ms. V. S. Chaudhari

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

DATE : **27th March, 2023**

ORDER:

1. The present application has been filed seeking leave under section 378 (1) (b) of the Criminal Procedure Code by the prosecution to challenge the judgment and order dated 05.12.2017 passed by the learned Additional Sessions Judge, Udgir Dist. Latur in Sessions Case No.15 of 2014 thereby acquitting the respondents from the offences punishable under sections 143, 147, 148,506,307 read with section 149 of the Indian Penal Code and under section 135 of the Bombay Police Act.

2. Heard learned APP and with the help of her, we have gone through the documents and depositions which were before the learned trial judge.

3. The prosecution story, in short, is that the informant PW-1 Ramesh has agricultural land within the jurisdiction of village Kolnur Tq. Jalkot Dist. Latur. He had gone to his field alongwith his wife Premalabai at around 11.00 p.m. on 11.02.2014 to look after his thrashed tur crop. It is then said that all the accused persons came under the influence of liquor and started to quarrel with the informant as to why he has uprooted the gram crop. The accused started beating Premalabai with stick. When the informant Ramesh interfered, the accused Shankar gave two stab injures by means of knife which resulted in bleeding injuries to the informant. The other accused persons had abused and assaulted the informant as well as Premalabai with fists, kicks and stick and thereafter they ran away. Premalabai then brought the informant to their house in the village in injured condition and thereafter, the son and Premalabai shifted the injured informant in a Auto rickshaw to the Hospital and before that they had taken him to Jalkot Police Station. At the Police Station, his statement was not recorded but only the *Yadi* was given. The FIR of the victim was recorded on 13.02.2014 on the basis of which Crime No. 13 of 2014 came to be registered.

4. After the investigation, charge-sheet was filed and then trial was undertaken.

5. The prosecution has examined in all ten witnesses in order to bring home the guilt of the accused. After hearing both the sides and perusing evidence on record, the learned Additional Sessions Judge, Udgir has acquitted all the accused persons and that acquittal is under challenge in this proceeding.

6. At the outset, we would like to make it very clear that we would be considering the evidence only for a limited purpose at this stage, as to whether the case is made out for grant of leave. The testimony of PW-1 Ramesh appears to be well corroborated by PW-3 Premalabai. Both have stated that they had gone to sleep as they were preparing crop at night time in their field at around 11.00 p.m. on 11.02.2014 and thereafter the accused persons came and assaulted them. Role has been attributed to each of the accused, especially, to the accused Shankar who had stabbed the informant two times. Further, it will not be out of place to mention at this stage itself that the informant was examined by the medical officer (PW-2) of Rural Hospital, Jalkot around 2.30 a.m. on 12.02.2014. He had noted two stab injuries, one was over hypocondric region towards right side and another was towards left side. He has given size of the injuries also and then he had also noted the third injury in the form of CLW at sedital region margin. In clear words, he has stated that the nature of injuries were simple but according to him, for the first and second

injuries, the weapon that was used might be hard and sharp, whereas for the third injury, the weapon used would be hard and blunt. The injuries were within 24 hours and he has stated that injury Nos. 1 and 2 were possible by knife, whereas the injury no.3 was possible by stick. He has also stated that the stab injury may require one days time to recover in normal condition of health. However, if sharp weapon is used, then death might be caused due to such stab injury.

7. Further, piece of evidence is PW5 Yadav Fad who was the panch witness to the seizure of clothes of the informant and accused. At this stage, it appears that the panchanama regarding discovery of the weapon was proved through the investigating officer. Whether it can be taken further to connect the crime with accused or not would be considered at the time of final stage. However, the evidence that is taken note of up-till now would be sufficient to consider the application as there appears to be prima facie corroboration. It can also be seen from the impugned judgment that the testimony of the informant as well as his wife has been discarded mainly on the ground that there was delay in lodging the FIR and both of them had not raised their voice or made it known to the villagers about the incident.

8. Appreciation would be required taking into consideration the place where the offence has taken place and the time at which it is said to have been committed. Whether the evidence that was adduced

proves the offence under section 307 of IPC or any lesser offence is also required to be considered taking into consideration the fact that the the opinion that has been given by the medical officer that the injuries those were found on the person of the informant were simple in nature. The situs chosen is also required to be considered from the point of offence under section 307 of IPC. Therefore, we arrive at the conclusion that case is made out to grant leave. Accordingly, leave is granted to the State to file appeal.

9. The Registry to verify and register the appeal.
10. The appeal stands **admitted**.
11. Call record and proceedings with paper book.
12. Issue notice to the respondents, to be made returnable on 08.06.2023.
13. Compliance under section 390 of the Criminal Procedure Code should be before the trial Court.

(Y. G. KHOBRADE, J.)

(SMT. VIBHA KANKANWADI, J.)