

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.29 OF 2020

The State of Maharashtra
Police Station Officer,
Shahada.

.. Applicant

Versus

Sayeed Shabir Khatik
Age: 38 years, Occu.: Meat Seller,
R/o. Prakasha Maliwada,
Tq. Shahada, Dist. Nandurbar.

.. Respondent

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Mrs. V. S. Choudhari, APP for the applicant – State.

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

DATE : 7th October, 2023

ORDER [Per Smt. Vibha Kankanwadi, J.] :-

. Present application has been filed under Section 378(1)(b) of the Code of Criminal Procedure seeking leave to file an appeal challenging the judgment and order dated 18.12.2019 passed by the learned Additional Sessions Judge, Shahada in Sessions Case No.54 of 2014; thereby acquitting the respondent from the offence punishable under Section 307 of the Indian Penal Code.

2. Heard learned APP Mrs. V. S. Choudhari for the applicant – State. With the able assistance of learned APP, we have gone through the record,

which was before the learned Trial Judge.

3. At the outset, it is to be noted that we are considering the matter at the admission stage in order to ascertain as to whether case is made out for grant of leave and, therefore, to the limited extent the scrutiny of evidence has been done. The learned Trial Judge has acquitted the accused from the offence punishable under Section 307 of Indian Penal Code, but he has been convicted for minor offence punishable under Section 324 of Indian Penal Code. Accused was sentenced to suffer rigorous imprisonment for 45 days and to pay fine of Rs.5,000/- in default to suffer simple imprisonment for one month. Now this acquittal of respondent – accused from the offence punishable under Section 307 of Indian Penal Code has been challenged here. For that purpose, we need not re-appreciate the evidence from the point of view that whether offence under Section 324 of Indian Penal Code has been made out or not.

4. The prosecution story is that informant Khalid is resident of village Prakasha, Taluka Shahada, District Nandurbar. P.W.4 Rafique is the cousin of P.W.1 Khalid. It appears that P.W.4 Rafique is attached to some political party and he says that the accused was jealous of him due to his political and economic development. P.W.1 Khalid, P.W.4 Rafique, P.W.2 Amrut Chiman Thakre and one Alpesh Dabhade were chitchatting around 12.00 p.m. on 11.02.2014 at Sampark Karyalay of Rafique. Accused went there

on motorcycle around 12.30 noon, parked his motorcycle in front of the office and entered the said office holding big knife (*Sura*). Accused started saying that Rafique is doing politics and he would finish him. He assaulted Rafique by the said knife on the left side of neck. Rafique fell down after sustaining injury. Khalid, Amrut and Alpesh caught hold of accused, but by dropping the knife there and giving jerk to them accused escaped. Since Rafique had sustained bleeding injury, he was taken to Primary Health Center, Prakasha. It was told that his injury is serious and therefore, the concerned doctor referred Rafique to Hospital at Nandurbar. Rafique was then shifted to Navjivan Hospital, Nandurbar. From there, he was shifted to hospital at Surat in Gujarat State. Thereafter PW.1 Khalid lodged FIR at about 3.45 p.m. with Shahada Police Station. It came to be registered under Section 307 of Indian Penal Code.

5. Spot panchanama was executed, in which the knife was also seized. Statements of witnesses were recorded including that of injured. After the completion of investigation, charge-sheet was filed.

6. After committal of the case, the prosecution has examined in all nine witnesses to bring home the guilt of the accused.

7. As aforesaid, we are considering the evidence for a particular purpose only and, therefore, that much evidence is only considered. The

testimony of P.W.4 Rafique stood corroborated in material particulars with P.W.1 Khalid, P.W.2 Amrut and P.W.3 Alpesh. It has been so held by the learned Trial Judge also. P.W.5 Shrikant Amrutkar is the panch witness to the spot panchanama from where the weapon was seized. P.W.6 is the panch to the memorandum seizure panchanama from where the motorcycle was recovered. P.W.8 Dr. Tryambak Tukaram Patel was the medical officer from Navjivan Accident Hospital, Nandurbar. He has stated that the injury of P.W.4 Rafique was examined by him. It was an incised wound bone deep having size 3 x 2 x 4 cm. to the left side base of the neck. The x-ray of cervical spine showed that there was fracture to C-6 spinous process i.e. part of vertebra and the injury was grievous. Here, it is to be noted that the learned Trial Judge has held the accused liable for offence punishable under Section 324 of Indian Penal Code. The ingredients of offence under Section 324 of Indian Penal Code would require simple injury by an instrument of cutting, shooting, stabbing etc. When the injury is stated to be grievous, then certainly it will not be under Section 324 of Indian Penal Code, but it should be of some aggravated form. Under the said circumstance, case is made out to allow the application to file appeal, as re-appreciation is required, as to under exactly which definition the facts of the case would fall and whether the Trial Court was justified in holding that only offence under Section 324 of Indian Penal Code of Indian Penal Code is made out.

8. The application stands allowed.
9. Registry to register the appeal.
10. The said appeal stands **admitted**.
11. Issue notice to the respondent, returnable on 10.11.2023.
12. Call record and proceedings.
13. Action under Section 390 of the Code of Criminal Procedure be taken against the respondent to the satisfaction of the Trial Court.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm