

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.31 OF 2019

The State of Maharashtra
Through The Police Inspector,
Kranti Chowk Police Station,
Aurangabad.

.. Applicant

Versus

Anil Suryakant Patil,
Age: 40 years, Occu.: Lawyer,
R/o. Sudarshan Nagar, N-11,
Hudco, House No.A-49/1, Aurangabad.

.. Respondent

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Mr. S. D. Ghayal, APP for the applicant – State.

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

DATE : 11th 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 13.08.2018 passed by the learned Additional Sessions Judge, Aurangabad in Sessions Case No.246 of 2016; thereby acquitting the respondent from the offence punishable under Sections 307, 326, 504, 506 of Indian Penal Code.

2. Heard learned APP Mr. S. D. Ghayal 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. The prosecution story in short is that informant Gajanan Haribhau Mule is a practicing Advocate and Notary at Aurangabad. He lodged report on 29.03.2005. It was stated that on 04.03.2005, when he was doing his work on his table in the hall of District Bar Association, Aurangabad, at that time, accused came. The accused had brought affidavit of his brother in which it was said that he has no objection for transfer of property in the name of the accused. The brother of the accused was not accompanying him, yet the accused wanted the affidavit to get executed, informant refused and told him that he should bring the brother. Accused got annoyed with him and threatened that he would see him. On the next day i.e. 05.03.2005 around 2.30 p.m. accused again came to the table of the informant and started asking why he has not noted the affidavit of his brother. The Advocates, who were present there intervened and thereafter informant made a written complaint about the said incident to President of District Bar Association and the copy of the same was given to Bar Council of Maharashtra and Goa. Thereafter around 4.00 p.m. on 29.03.2005, when informant was going towards toilet of District Bar Association, accused came there and started abusing by saying that why he has made

his complaint to the Bar Association. Informant was pushed by the accused, then informant went off-balance. Then accused picked up a wooden chair and started beating the informant with the help of said chair. He had sustained injury to his left eye, left hand finger, which was bleeding. Thereafter when another Advocate i.e. Advocate Mr. Ahok Thakre tried to separate them, he was also assaulted by the accused. Advocate Mr. Ashok Thakre also received bleeding injury. Then the report was lodged with the police.

4. After the investigation was over, charge-sheet was filed and after the committal of the case and after framing of charge, the prosecution has examined in all nine witnesses to bring home the guilt of the accused. After considering the evidence on record and hearing both sides, learned Trial Judge has acquitted the accused from all the charges.

5. It appears from the evidence on record that the testimony of P.W.1 Gajanan was tried to be supported by the testimony of P.W.2 Ashok Thakre. They both have consistently stated that the accused had assaulted both the injured persons by means of chair. The medical evidence has also been produced. Informant has sustained two external injuries which were stated to be simple in nature and P.W.2 had sustained head injury. It is not mentioned in the Medico Legal Certificate as to which weapon was used. The lodging of the FIR appears to be prompt. Though P.W.4 Manohar, who

is also a practicing Advocate, has been declared as hostile, yet whether the prosecution has achieved the corroboration between PW.1 and PW.2 has to be re-appreciated. Their testimony is stated to be supported by the medical evidence. Further, when the incident is stated to have taken place in the Bar Association and the parties are the Advocates, the morality also counts. Defence has also examined witnesses who have stated about the fact that they had heard about the incident in the year 2005. The purpose for which they were examined is different. Whether Advocate would be permitted to take the law in hand, is a question and, therefore, re-appreciation and revisiting to the evidence is necessary.

6. The application stands allowed.
7. Registry to register the appeal.
8. The said appeal stands **admitted**.
9. Issue notice to the respondent, returnable on 11.12.2023.
10. Call record and proceedings.
11. 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