



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.43 OF 2020

The State of Maharashtra,
Through Police Inspector,
Police Station Renapur,
Tq. Renapur, Dist. Latur

... Applicant

Versus

1. Rahul S/o. Sudhakar Munde,
Age: 23 years, Occu: Agri.,
2. Deepak S/o Atmaram Munde,
Age: 30 years, Occu: Agri.,
3. Krishna @ Kishan S/o Ramdhan Munde,
(Case against A. No. 3 abated)
4. Vyankat S/o Ramdhan Munde,
Age: 24 years, Occu: Agri.,
5. Shivaji S/o Nivrutti Munde,
Age: 65 years, Occu: Agri.,
6. Balaji S/o Pralhad Munde,
Age: 27 years, Occu: Agri.,
7. Pralhad S/o Nivrutti Munde,
Age: 63 years, Occu: Agri.,
8. Sudhakar S/o Prabhu Munde
Age: 62 years, Occu: Agri.,
9. Atmaram S/o Janardhan Munde,
Age: 62 years, Occu: Agri.,
10. Somnath S/o Vyas Munde,
Age: 22 years, Occu: Agri.,
11. Nagnath S/o Raghunath Munde,
Age: 44 years, Occu: Agri.

12. Govind S/o. Shivaji Munde,
Age : 39 years, Occu. : S. T. Driver,

All R/o. Wanjarwadi, Tq. Renapur,
Dist. Latur.

... Respondents.
(Orig. Accused)

...
Mr. S. D. Ghayal, APP for Applicant/Appellant
...

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

**RESERVED ON : 7th OCTOBER, 2023
PRONOUNCED ON : 17th OCTOBER, 2023**

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

1. This leave application arises out of judgment and order of acquittal passed by learned Sessions Judge, Latur dated 11.11.2019, thereby acquitting present respondents from charges under sections 143, 147, 148, 307, 324, 504 and 506 read with section 34 and 149 of Indian Penal Code (IPC).

2. According to learned APP, vide Sessions Case No.67 of 2016 present respondents were tried for committing above offences. It is pointed out that, informant injured gave statement in hospital on 08.04.2016 that when he was returning in his bullock-cart with his mother from the field, at that time, accused persons assaulted him by means of articles, like lead-ball, sickle, wooden sticks and iron rods, and thereby, affected severe injuries.

According to learned APP, on the statement of injured given in hospital, crime was registered and investigation was carried out. During investigation, statements of relevant witnesses were recorded. There is recovery at the instance of accused. That, medical evidence suggested that offence of attempt to murder was after forming unlawful assembly with common object. Accused were armed with deadly weapons. That, evidence of none of the prosecution witnesses is demolished or rendered doubtful during cross examination and therefore, it is submitted that, learned trial court ought to have accepted the evidence of prosecution as proved and ought to have held respondents guilty, but by assigning improper reason and by not appreciating the evidence in correct perspective, learned trial court has erred in acquitting accused. That, there is a strong case in appeal for re-appreciation and reanalysis of evidence and hence the prayers.

3. We have visited the prosecution evidence adduced before trial court. It transpires that, prosecution has adduced evidence of in all 8 witnesses. Their status is as under :-

PW1 Balasaheb is the pancha to spot panchanama at (Exh.77).

PW2 Anil is the pancha to seizure and he deposed to that extent. His evidence is at Exh.89.

PW3 Rahul is the injured and his evidence is at Exh.104.

PW4 Ganesh is the eye witness and his evidence at Exh.109.

PW5 Anant is the another eye witness and his evidence at Exh.110.

PW6 Sunita is the mother of injured and an eye witness.

PW7 P.I. Bandopant Munde is the Investigating Officer.

PW8 Dr. Swati Tondare, Medical Officer, who issued injury certificate at Exh.141.

4. After *prima facie* going through the evidence, it is emerging that, crucial evidence is of PW3 Rahul, PW4 Ganesh, PW5 Anant and PW6 Sunita. Informant PW3 Rahul deposed that, on 08.04.2016 when he was returning from his field in bullock-cart, along with his mother, accused persons intercepted his way, abused and dragged him and his mother from the bullock-cart. According to him, accused Govind, Pralhad and Sudhakar caught hold of him and Rahul Munde gave blow of lead-ball on his head from backside and thereafter, Deepak and Kisan assaulted him with iron rod and sickle. After hue and cry, Anand Munde, Ganesh Phad and Namdeo Bhange came there for rescue and both he and his mother taken to hospital, where he gave statement.

In cross he admitted that, at the time of incident, no other villagers reached there. He denied previous quarrel between

him and Shrimant @ Bablu on account of taking connection of tap. He admitted that, iron rod and stick shown to him, if are used, there could be injury to the head. He further admitted that, he suffered only simple injuries. Rest all suggestions are denied.

5. PW4 Ganesh claims that he heard noise, and therefore, he went to the spot. According to him, one ambulance was standing there and he saw bullock-cart of PW3 Rahul Bhangе on Bavchi road and further claims to have seen 13 persons were assaulting Rahul Bhangе and he gave their names. He attributed role to Rahul Munde for assaulting on the head with lead-ball, Deepak assaulting with sickle on left forearm of Rahul Bhangе, Kisan Munde and Venkat Munde assaulting with iron pipe, Nagnath Munde assaulting with wooden stick and other accused persons assaulting with fist and blows. According to him, because of previous quarrel between accused Rahul Munde and PW3 Rahul Bhangе assault was carried out.

In cross he admitted that, he and his uncle provided the articles to police. He claims that he was also beaten up, but he lodged no complaint. Rest all suggestions are denied.

6. PW5 Anant also claims that he personally saw accused assaulting Rahul and he intervened. Even he is extensively cross

examined, but he has denied almost all suggestions.

7. PW6 Sunita, mother of PW3 Rahul also narrated about accused raising quarrel while they were returning in a bullock-cart and accused mounting assault. She has also narrated and attributed roles to the accused persons.

8. Therefore, here, above witnesses are lending support as regards to occurrence of assault on PW3 Rahul by means of lead-ball, sickle, sticks and iron rod. *Prima facie*, it is noticed that, in spite of extensive cross, actual occurrence has not been rendered doubtful. Medical expert (PW8 Dr. Swati Tondare), who examined injured has also stepped into witness box and described the nature of injuries. Doctor has categorically stated that weapons, like sticks, iron rod and sickle shown to her are capable of causing injuries on the person of injured. She has categorically stated that, if a person is assaulted with said weapons and injury is caused to head, then there is possibility of death. Medical expert has identified medico legal certificate issued by her. Injuries seem to be on parieto occipital region, contusion over arm and abrasions on scapular region. Medical certificate shows that treatment was given from 08.04.2016 to 15.04.2016.

9. Therefore, *prima facie*, there is evidence regarding assault and injury. Resultantly, there is scope for re-appreciation and to ascertain which of the body offence has actually been committed, if not section 307 of IPC. Resultantly, finding it a fit case application deserves to be allowed and leave to file appeal deserves to be granted. Hence, 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.)