

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.46 OF 2020

The State of Maharashtra,
Through Police Station Umri,
Tq. Umri, Dist. Nanded.

.. Applicant

Versus

1. Shrinivas Pandharinath Anantwar,
Age: 48 years, Occu.: Service,
R/o. Umri, Tq. Umri, Dist. Nanded
2. Pappu @ Vishram Vinayak Sawant
Age: 22 years, Occu.: Agri.,
R/o. Gortha, Tq. Umri, Dist. Nanded
3. Laxman @ Pappu Bhaurao Sawant
Age: 20 years, Occu.: Agri.,
R/o. Umri, Tq. Umri, Dist. Nanded
4. Shankar Mohan Sawant
Age: 22 years, Occu.: Agri.,
R/o. Umri, Tq. Umri, Dist. Nanded

.. Respondents

...
WITH APEAL/247/2020
WITH APEAL/103/2020
WITH REVN/24/2023

...
Mr. R. D. Sanap APP for the appellant - State in ALS/46/2020.
Mr. S. B. Bhapkar, Advocate for appellant in APEAL/103/2020
Mr. Suvidh S. Kulkarni, Advocate for applicant in REVN/24/2023
...

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

DATE : February 08, 2023.

ORDER :-

. Present application has been filed by the State to seek leave to appeal to challenge the acquittal of respondents from the offence punishable under Section 307 of Indian Penal Code in Sessions Case No.47 of 2013 on 31.12.2019 by learned Additional Sessions Judge, Bhokar, Dist. Nanded.

2. It will not be out of place to mention here that the respondents stood prosecuted for the offences punishable under Sections 307, 148, 149, 341, 326, 324, 323, 427, 504, 120-B of Indian Penal Code, however, the learned trial Judge held that offence under Sections 325, 341, 504, 427 read with Section 34 of Indian Penal Code are only made out and the maximum sentence that has been imposed is rigorous imprisonment for three years with fine. Under the said circumstance, original accused Nos.1 to 4 have challenged their conviction by filing Criminal Appeal No.103 of 2020. The said appeal is admitted and the appellants therein i.e. present respondents have been released on bail. The prosecution has also filed separate appeal i.e. Criminal Appeal No.247 of 2020 under Sections 377(1)(b) of the Code of Criminal Procedure for enhancement in the punishment for which the appellants have been held guilty. Original informant has also filed Criminal Revision Application No.24 of 2023 under Section 401

of the Code of Criminal Procedure. In this background, we have only heard Application for Leave to Appeal by State No.46 of 2020 under Section 378(1)(b) of the Code of Criminal Procedure filed by the State because that is the first step in the process. If that leave is granted, then the said appeal can be heard along with the other appeals and revision. As aforesaid, the present application for leave to appeal is restricted only to the extent of acquittal of the respondents from the offence punishable under Section 307 of Indian Penal Code and, therefore, with that limited scope, the evidence and other material is considered.

3. The prosecution has examined in all 14 witnesses to bring home the guilt of the accused. The prosecution story in the nutshell is that the informant was the Ex-president and vice president of Municipal Council, Umri and on the date of offence, the wife of accused No.1 was the President of Umri Municipal Council. They are from different political party. The informant had filed petition for declaration of election of President of Municipal Council as null and void and it was pending before the District Collector, Nanded. The incident took place on 02.04.2013. It is stated as per the prosecution story that when the informant was travelling from the car, his car was stopped. The accused persons had tried to assault him while the informant was in the car. Thereafter, the informant, in order to save

himself, escaped and took lift of two wheeler, but he was stopped near the Court at Umri. He was assaulted there also and then further in order to save himself, he entered the Court premises and narrated the incident to the Judicial Magistrate. The Judicial Magistrate had then sent him to hospital along with the Court duty constable and during the treatment, his statement was recorded and FIR was registered. The weapons used in the commission of crime are *Katti* and stick. Definitely *Katti* is a dangerous weapon. The testimony of P.W.1 informant and two eye witnesses would show that the informant had sustained injury to right knee, right thigh, right leg middle third, left leg middle third, fracture base on 5th metacarapal right hand and fracture of right patella of right knee. For proving offence under Section 307 of Indian Penal Code, intention is required to be considered and as per the FIR and the oral evidence, the accused No.1 uttered "कितीजनचे घरं बुडवशिल भडव्या थांब एकदाचे तुला संपवून टाकतो म्हणजे सर्व किरकि—या मिटून जातील". The evidence of learned Magistrate before whom the informant had gone has also been recorded. Under such circumstance, it will have to be considered as to whether the learned Trial Judge was justified in holding the accused persons liable for committing offence punishable under Section 325 of Indian Penal Code instead of 307 of Indian Penal Code.

4. We are of the opinion that the leave deserves to be granted. Accordingly, it is granted.
5. The application i.e. ALS No.46 of 2020 stands allowed.
6. Action under Section 390 of the Code of Criminal Procedure be taken against the respondent Nos.1 to 4 to the satisfaction of the Trial Court.
7. Registry to register the appeal.
8. The said appeal stands **admitted**.
9. Tag the said appeal along with Criminal Appeal Nos.247 of 2020 with 103 of 2020 and Criminal Revision Application No.24 of 2023.
10. Matter to come up as per its turn.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm