

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 66 OF 2018

THE STATE OF MAHARASHTRA
VERSUS
SHAIKH ASLAM S/O. SHAIKH HAMID

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Advocate for Appellant/State : Mrs. V.S. Choudhari
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**CORAM : SMT. VIBHA KANKANWADI &
Y.G. KHOBRADE, JJ.**
DATE : 24th March, 2023

ORDER :- (Per: Y.G. Khobragade, J.)

1. The prosecution-State has filed present application under Section 378(i)(b) of the Cr.P.C. seeking leave to file appeal against the order of acquittal of the respondent-accused passed by the learned Additional Sessions Judge, Aurangabad in Sessions Case No.134/2016 and thereby acquitting the respondent-accused for the offence punishable under Section 307 of the I.P.C. in Crime No.32/2016 registered with Pachod Police Station, Tq. Paithan, District Aurangabad on 30.01.2016.

2. We would like to take into consideration the story of the prosecution as stated in FIR and evidence which was before the learned trial Court while considering the point of whether the leave can be granted to the prosecution to file appeal. Informant-Krishna Gabhud lodged a FIR with Police

Station Pachod, Tq. Paithan, District Aurangabad on 30.01.2016, alleging that he carrying business of mandap decoration. He had called a vehicle to load mats & chairs at Shri Krishna Vastu Bhandar, Vihamandva at about 10.00 a.m., on 30.01.2016. After the vehicle had arrived there, he was giving signal to the driver while taking the vehicle in reverse. However, accused came there, at that time, without any reason and stabbed with knife in his stomach. It resulted in grievous injury to him and the act of stabbing was with an intention to cause his death. Since he received severe bleeding injury, his father and brother took him at Primary Health Center, Vihamandva and subsequently he was shifted at Ghati Hospital, Aurangabad. On the basis of said report, a Crime No.32 of 2016 was registered against the respondent-accused for the offence punishable under Section 307 of the I.P.C.

3. The Investigating Officer-Namdeo Maddhe (PW6) arrested the accused under the arrest memo and drawn spot panchanama. So also, knife-weapon used in the crime and clothes were seized at the instance of accused from his house and statement of witnesses was recorded. The Investigating Officer got the sketch of the spot of incident drawn through the Revenue Officer and collected injury certificate of the informant-injured. The seized articles were sent for chemical examination at FSL, Aurangabad and after completion of investigation is over, the Investigating Officer filed charge-sheet against the accused before the learned JMFC, Court No.2, Paithan. On

compliance of Section 207 of Cr.P.C., the learned JMFC passed an order under Section 209 and committed trial to the Court of Sessions as the offence under Section 307 is exclusively triable by the Court of Sessions.

4. The learned trial Court framed the charge at Exhibit-24 and plea of the accused was recorded at Exhibit-25. The accused pleaded not guilty and claimed for trial. In order to bring home guilt of accused, the prosecution examined PW1-informant/injured Krishna Gabhud at Exhibit-32, PW2-Dnyaneshwar Rodge at Exhibit-37, PW3-Nilesh Aware at Exhibit-39, PW4-Dr. Archana Bhadikar to prove the injury certificate at Exhibit-43, PW5-Dadasaheb Bhise at Exhibit-45 and PW6-Investigating Officer-Namdeo Madhe at Exhibit-51. The learned trial Court recorded statements of the accused under Section 313 of the Cr.P.C. and pointed out incriminatory evidence to the accused. The defence of the accused is of total denial and about his false implication in the crime.

5. Upon hearing, the learned trial court passed the impugned order on 20.12.2017, and acquitted the respondent-accused under Section 307 of the I.P.C., however, the appellant accused has been convicted for the offence punishable Under Section 324 of the I.P.C. He has been sentenced to suffer imprisonment for the period for which the respondent-accused had already undergone during the course of trial. Being dissatisfied with said order of the

acquittal of the accused for the offence punishable under Section 307 of Indian Penal Code, the prosecution seeks leave to file appeal.

6. It is submitted that the informant-PW1 deposed at Exh.32 that, on 30.01.2016, he loaded mats and chairs in Bolero pick-up van from Shri Krishna Vastu Bhandar, Vihamandva and he was giving signal to the driver of the van while it vehicle in reverse but at that time the accused without any reason the accused gave a blow of knife on his stomach and caused grievous injury to him and tried to kill him though the vehicle did not give dash to the accused and due to which he sustained bleeding injury and his shirt and banyan were torned. Thereafter, his father and brother took him at Primary Health Center, Vihamandva for medical treatment and subsequently he was taken to Rural Hospital, Pachod and thereafter he was admitted in Govt. Hospital, Aurangbad. Thereafter, he lodged a report (Exh.33) and his blood stained clothes shirt (Article 1), banyan (Article 2) and pant (Article 3) seized by police. PW1-informant identified knife Article B. In cross-examination, the PW1 admitted about situation and shops adjacent to the spot of the incident but he does not know about mental condition of the accused.

7. The prosecution examined PW2-Dnyaneshwar Rodge at Exh.37 who appears to be the eye witness to the incident. The PW2 deposed that he was running a shop in the name and style of Shri Krishna Vastu Bhandar and

on 30.01.2016 at about 10.00 a.m., he was present in his shop and at that time Ramdas Gabhud and Krishna Gabhud (PW1) visited at his shop for taking mats and chairs for function. The injured PW1-Krishna Gabhud and Ramdas Gabhud were loading mats and chairs in the pick-up van but at that time the accused Aslam Shaikh came there and gave a blow of knife on abdomen of Krishna Gabhud (PW1) and ran away. In cross-examination, the PW2 deposed about knowing the accused since long but he does not know about abnormality mental condition of the accused.

8. The prosecution proved spot panchanama (Exh.40), seizure panchanama and weapon knife containing blood stained Article D under seizure panchanama (Exh.41) and seizure of clothes of accused Article E & F.

9. In order to prove the injuries sustained to the victim-PW1, the prosecution examined PW4-Dr. Archana Bhadikar at Exh.43. The PW4 deposed that on 30.01.2016 at about 10.45 a.m., she medically examined injured Krishna Gabhud (PW1) and found incised wound over chest, right sub-postal area 8x3 cm and age of injury was within 24 hours preceding to examination of patient and opined that the said injury caused by a sharp cutting object and the injured was referred to Govt. Hospital, Aurangabad and issued certificate (Exh.44). The prosecution proved seizure panchanama

(Exh.34) in respect of clothes of victim shirt (Article 1), banyan (Article 2) and pant (Article 3).

10. On perusal of injury certificate (Exh.44), it does not reflect that injured-PW1 caused grievous injury and the evidence of PW4-Medical Officer does not suggest that if the patient-PW1 could not have medically treated he would have died.

11. It would be appropriate to mention here that, to bring home the guilt of the accused under Section 307 of the I.P.C., the evidence could have been in corroboration that the accused assaulted victim-PW1 with an intention or knowledge, and under such circumstances, the death of victim-PW1 would have caused and the accused would be guilty of murder. The prosecution prove *mens rea* of the accused to cause death of the victim. However, in the case in hand, the evidence of Medical Officer-PW4 does not appear that whether the injury caused to the injury-PW1 was simple or of grievous nature and said injury was sufficient to cause death of the victim-PW1 in ordinary course of nature.

12. However, as per the evidence of PW4-Medical Officer the PW1-injured suffered stab injury on his abdomen due to single stab with knife and as such without any provocation and intention, the accused voluntarily caused hurt to the victim-PW1 which certainly falls within the ambit of Section 324 of

the I.P.C. Therefore, considering the evidence available on record the learned trial Court passed the impugned judgment and order dated 20.12.2017 and convicted the accused under Section 324 of the I.P.C. and acquitted him under Section 307 of the I.P.C., which is justifiable and it does not call for any interference at the hands of this Court. Therefore, we are not convinced to grant leave to the prosecution to file appeal against the order of acquittal and no substantial grounds are set out to grant leave under Section 378(i) (b) of the Cr.P.C. to file appeal.

13. In view of the above discussion, the present application is hereby rejected.

[Y.G. KHOBRADE, J.]

[SMT. VIBHA KANKANWADI, J.]