

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.53 OF 2020

The State of Maharashtra,
Through: Police Station, Latur (Rural),
on the complaint of
Vijay Dhanraj Kamble,
Age-21 years, Occu:Private Service,
R/o-Nanded, Tq-Nilanga, Dist-Latur

...APPLICANT

VERSUS

- 1) Mohan Ramnath Jagtap,
Age-36 years, Occu:Agri.,
- 2) Baliram Ramnath Jagtap,
Age-30 years, Occu:Agri.,

Both R/o-Kumtha, Tq-Ausa,
Dist-Latur.

...RESPONDENTS

...
Mr. A.V. Deshmukh, A.P.P for Applicant.
...

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

DATE : 7th JUNE, 2023

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed by the prosecution seeking leave under Section 378(1)(b) of the Code of Criminal

Procedure to challenge the order of acquittal dated 26th December 2019 by the learned Additional Sessions Judge and Special Judge, Latur, District-Latur in Special Case (Atrocity) No. 06 of 2017, acquitting the respondents from the offence punishable under Section 326, 506 read with Section 34 of the Indian Penal Code and Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, (for short "the Atrocities Act"). It will not be out of place to mention here that Section 14-A of the Atrocities Act came into force by the Act 1 of 2016 with effect from 26th January 2016. The offence in the present case is alleged to have committed on 5th December 2016. Therefore, definitely the amended provisions would come into effect. Section 14-A (1) of the Atrocities Act specifically provides that notwithstanding anything contained in the Code of Criminal Procedure, an appeal shall lie, from any judgment, sentence or order, of a Special Court to this Court both on facts and on law. Therefore, the prosecution ought to have filed an Appeal under Section 14-A(1) of the Atrocities Act and not Application under Section 378(1)(b) of the Code of Criminal Procedure. Even if it is taken that

Application itself is an Appeal, we are required to see whether it can be admitted.

2. We have heard learned APP and with his able assistance we have gone through the entire material which was before the learned trial Judge.

3. The prosecution story is that the informant Vijay Kamble is resident of village Nanand, Taluka-Nanand but he is serving at Pune. He had come to meet his paternal aunt on 5th December 2016. He had gone to village Kumtha from Nanand with his friend Varun Kanade, on motorcycle. When they came to Kumtha square near bus stand around 1.30 to 2.00 p.m., they found both the accused in the said square. Informant asked them, whether *Kachha* road leading from square is in good condition and further, how to go to the house of one Annarao Mhaske. According to the informant, the accused started abusing him in the name of caste and abused that " तुम्ही म्हाऱगे गावात का आलात तुम्ही म्हाऱगे गावात येवुन आमच्या पोरी पळवून नेतात " (*Tumhi Mharge Gawat Ka Aalat Tumhi Mharge Gawat Yewun Aamchya Pori Palawun Netat*). Accused Mohan had assaulted on the head of informant by means of iron rod and also on the hand causing him grievous injuries. He has also assaulted on his left hand and leg. Accused

Baliram assaulted Varun by stick causing him injury. It is stated that the informant and his friend became unconscious, but the persons gathered gave first aid and then took them to Government Hospital, Nilanga and then to Shwas Hospital at Nilanga. Thereafter the First Information Report (for short "the FIR") was lodged.

4. The investigation has been carried out by S.D.P.O., Ausa, District-Latur and after the completion of investigation, charge-sheet was filed before the Special Court under the Atrocities Act.

5. Trial has been conducted. The prosecution has examined in all ten witnesses. After considering the evidence on record and hearing both the sides, the learned Special Judge has acquitted both the accused from all the offences, hence the present application.

6. At the outset, from the contents of the FIR as well as from the testimony of the informant PW-2 Vijay, it can be seen that there is no reference, as to how the informant was knowing the accused and how both the accused were knowing informant prior to the date of incident and the accused especially were knowing caste of the informant as well as his friend. Though the

informant has stated that his parents, brother etc. are residing at Nanand, he says that he is doing private job at Pune. Since when informant is doing the job at Pune has not been explained by him. Further, it has not come in the evidence of Varun, as to how he was also knowing the accused and the accused were knowing him prior to the incident. In his cross-examination PW-6 Varun has specifically stated that he had no occasion to go to village Kumtha and had no acquaintance with the villagers from the said village prior to the said incident.

7. Prosecution has examined PW-5 Janabai Mhaske who is the paternal aunt of the informant Vijay. She was admittedly not present when the alleged incident took place, but in her cross-examination she has admitted that there was no occasion for the informant Vijay to come to Kumtha earlier and therefore he has no knowledge about the persons from village Kumtha. It is the basic ingredient to attract the offence under Section 3(1)(r) and 3(1)(s) of the Atrocities Act that the accused should know the caste of the victim as a member of the scheduled tribe or scheduled caste, prior to the incident and this basic ingredient has not been proved beyond reasonable doubt.

8. As regards the alleged assault to Varun is concerned, the FIR is silent and it appears that it has been stated later on byway of supplementary statement. PW-7 Dr. Vikrant is the medical officer who had examined Vijay and in his cross-examination PW-7 Dr. Vikrant has admitted that the injuries noted by him are possible after fall from a motorcycle. If we see his medico legal certificate issued by the Sub District Hosptial, Nilanga, Exhibit-34, the alleged history is by question mark, fall or fight. PW-10 Dr. Hanmant Kinikar is the private medical practitioner. He says that patient by name Varun Kanade was admitted in his hospital on 7th December 2016 and he has noted in all six injuries on the person of Varun. As per the prosecution story and the testimony of PW-2 Vijay and PW-6 Varun, the incident had taken place on 5th December 2016, then the question is, where Varun had taken treatment from 5th December 2016 to 7th December 2016. PW-10 Dr. Hanmant Kinikar has not given the age of the injuries noted by him and therefore, those injuries could not be connected to the incident. Interestingly, it has been deposed by PW-6 Varun that when they were assaulted, the persons who gathered there, applied bandage to his head and thereafter he had regained his consciousness and then by taking motorcycle through Nanand he went to Nilanga.

The informant was the pillion rider at that time and from Nilanga his brother Pankaj had taken them to Shwas Hospital, Nilanga. The informant was then taken to Government Hospital by his brother and Varun was taken to Sahyadri Hospital, Latur. It is therefore, hard to believe that after sustaining such injuries Varun would have driven the two wheeler to such a distance and this fact is in fact not supported by PW-2 Vijay. Still, PW-6 Varun has not explained where he had taken treatment between 5th December 2016 to 7th December 2016. The evidence led by the prosecution was not at all inspiring confidence. It appears that the injuries might have been sustained in an accident. Therefore, the acquittal on the basis of such evidence is justified. There is no perversity in the conclusion drawn by the learned trial Judge. The Application / Appeal deserves to be dismissed.

9. Accordingly the Application / Appeal stands dismissed.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE