

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 91 OF 2018

The State of Maharashtra **... Applicant**
On complaint of Sagar Shivaji Shinde,
Age 20 years, r/o Puranwadnagar, Ward
No.7, Shrirampur, Dist. Ahmednagar.

VERSUS

1. Mauli @ Dnyaneshwar Maruti Lad,
Age 26 years,
2. Maruti Ramdas Lad, Age 50 years,
3. Tukaram Maruti Lad, Age 20 years,
4. Santosh Eknath Waykar, Age 23 years,
5. Pappu @ Kishor Tukaram , Age 23 years,
6. Vicky @ Vikas Bhanudas Gore, Age 28 years
7. Bhausahab Tukaram Gangawane, **... Respondents**
Age 29 years
8. Santosh Mhasu Magar, Age 25 years

Shri A. M. Phule, APP for the applicant-

**CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

DATE : 30.03.2023

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

1. The prosecution has filed the present application under section 378 (1) (b) of the Criminal Procedure Code seeking leave to file appeal challenging the judgment and order dated 09.01.2018 passed by the learned Additional Sessions Judge, Shrirampur, Dist. Ahmednagar in Sessions Case No.20 of 2015 thereby acquitting the

respondents/accused persons from the offences punishable under sections 143, 147, 148, 307, 323 read with section 149 of the Indian Penal Code, under section 4 punishable under Section 25 of Indian Arms Act and under section 37(1)(3) read with section 135 of the Bombay Police Act.

2. Heard Mr. A. M. Phule, learned APP for the State and with his able assistance, we have gone through the documents and depositions which were before the learned trial judge.

3. We have considered the prosecution story, as narrated in the FIR. The informant Sagar Shivaji Shinde had lodged the FIR on 08.09.2014, with Shrirampur City Police station alleging that prior to six month of lodging of FIR, Mr. Amarpritsingh Sethi @ Happy Sethi, had taken Hotel Natraj and permit room on Belapur Road, Shrirampur on rent. One Jaypal Reddy was the managing affairs of the said permit room. Informant was employed with said Sethi. On the day of incident, Hotel was closed due to observing dry day on the eve of Ganesh Immersion. Informant and Jaypal Reddy were standing outside the hotel, at about 5.00 pm. Accused No.1 Mauli @ Dnyaneshwar Maruti Lad, with his associate Santosh Mhasu Magar (accused no.8), visited the Hotel and demanded parcel of liquor and meal from Hotel Manager Jaypal Reddy. It was informed to both the accused about closure of permit room and kitchen on account of dry day, but both the accused

started threatening Jaypal Reddy. Therefore, he gave call to Amarpritsingh Sethi, who then visited the Hotel and disclosed the accused inability to give parcel of meals and liquor on account of dry day. Thereafter there were some hot exchange of words between the Amarpritsingh Sethi and accused persons. Thereafter, both the accused- Mauli and Santosh left the spot of incident but again came at about 5.30 p.m. At that time, the informant and Manager Jaypal Reddy were still standing outside the Hotel. Accused No.1 Mauli asked the informant to call Amarpritsingh Sethi. Accordingly, the informant gave phone call to Amarpritsingh Sethi, who then visited at the spot of incident. As soon as Amarpritsingh Sethi alighted from his car, accused No.1 Mauli, his father Maroti Lad-Accused No.2 and Santosh Magar (Accused No.8), Santosh Waykar (accused No.4) and other three unknown persons rushed towards the vehicle of Amarpritsingh Sethi. Accused No.1 Mauli and Accused No.8 Santosh Magar were having sword in their hands. Accused No. 2 Maruti was holding Axe in his hand and others were holding iron rods. Thereafter, all of them started assaulting Amarpritsingh Sethi. Accused No.1 Mauli and Accused No.2 Maruti assaulted with sword and axe on head of Amarpritsingh; due to which he sustained grievous injury and fell down. At that time, the accused no.8 Santosh tried to assault Amarpritsingh Sethi with sword but the informant pushed accused No.8 Santosh Magar, as a result of which the sword fell down from his hand. Thereafter accused No. 8

Santosh had snatched iron rod from the other unknown person and assaulted informant on his left shoulder and below the left ear resulting in injury. Accused No. 8 Santosh Magar, accused no. 4 Santosh Waykar and other four unknown persons assaulted Amarpritsingh Sethi on his head, forehead, face, nose; due to which Amarpritsingh Sethi sustained grievous injury. It is therefore stated that the accused persons have tried to commit murder of the injured.

4. On the basis of said report, Crime No.I-208/2014 was registered with Shrirampur City Police station against the accused persons/respondent Nos. 1 to 8 for the offences punishable under sections 143, 147, 148, 307, 323 read with section 149 of the Indian Penal Code, under section 4(25) of Indian Arms Act and under section 37(1)(3) read with section 135 of the Bombay Police Act.

5. PW-11 Suresh Sapkale (P.I.) conducted investigation and drawn spot panchanama, seized blood mixed soil and simple soil, weapon, cloths of injured persons as well as accused persons. Seized articles have been sent for chemical analysis. The Investigating Officer has recorded the statements of the witnesses and collected injury certificates of the injured and on completion of investigation, charge-sheet came to be filed with Judicial Magistrate First Class, Shrirampur.

6. On compliance of section 207 of Cr.P.C., the learned Judicial Magistrate passed order on 06.04.2015 under section 209 of Cr.P.C. and committed the trial to the Court of Sessions. The learned Additional Sessions Judge, Shrimpur framed charge against accused persons at Exh. 2 and Exh. 131. The accused pleaded not guilty and claimed for trial.

7. In order to bring home the guilt of the accused/respondent Nos. 1 to 8, the prosecution has examined in all 13 witnesses. Besides oral evidence, the prosecution proved documentary evidence viz. FIR Exh. 21, Spot Panchanama Eh. 23, Seizure Panchanama Exhs. 28, 29 and 38, Injury certificates Exh. 40 and 41, CT scan report Exh. 42, arrest panchanamas Exhs. 53 to 56 and 73 to 77, disability certificate Exh. 71, C.A reports Exhs. 82 to 84, statement of injured Amarpritsingh Sethi Exh. 85 and other documentary evidence. Incriminatory evidence was explained to the accused and his statement under section 313 of Cr.P.C. was recorded. The defence of the accused is that they have not committed any crime and they have been falsely implicated.

8. After hearing both the sides and considering evidence available on record, the learned Additional Sessions Judge, Shrirampur has passed the impugned order on 09.01.2018 and acquitted all the accused persons from all the offences. Being aggrieved by said order of

acquittal, the prosecution seeks leave to file appeal to challenge the same.

9. At the outset, we would like to make it very clear that we would be considering the evidence only for a limited purpose at this stage, as to whether the case is made out for grant of leave.

10. As per the testimony of PW-1 Sagar Shinde- informant and PW-7 -Amarpritsingh Sethi-injured, the accused persons assaulted them with sword and iron road, due to which they have sustained injuries. Prosecution examined PW-6 Dr. Ravindra Bhausahab Jagdhane Medical Officer to corroborate the ocular evidence of the injured persons. As per the injury certificate Exh.40, injured Amarpritsingh Sethi had sustained following injuries:

- (1) Lacerated wound over left eyebrow 3 cm x 1/2 cm x 1/2 cm.
- (2) Lacerated wound extending from nose below right eye, 4 m x 1/2 cm x 1/2 cm.
- (3) Lacerated wound below right eye,
- (4) Bleeding from nostrils,
- (5) Both eyes black,
- (6) CLWs over occipital region 8 cm x 1 cm x 1 cm, 5 cm x 1cm x 1cm.
- (7) Contusion over left shoulder movements restricted.
- (8) Multiple wheal marks over back
- (9) Swelling over right forearm.

- (10) Left eye-Evidence of ruptured globe, iris was seen in the wound, oozing of blood from the left eye.
- (11) Right eye-pupils over not reacting to light corena was hazy.

Further as per injury certificate Exh. 41, injured PW-1 Sagar Shinde sustained following three injuries:

- (1) Wheal mark over left arm 10 cm x 1 cm.
- (2) Multiple abrasion over left shoulder.
- (3) Swelling over left mandible, abrasions.

The medical officer opined that the injuries described in injury certificates Exh. 40 and Exh. 41 are possible due to assault with hard and blunt object.

11. There is evidence regarding seizure of weapons, which were used in committing offence i.e. axe, iron rods; at the instance the accused persons under seizure Panchanama Exh. 25, 26,28,29, 30, 37 and 38, respectively. Spot panchanama shows that the incident of assault was occurred in front of hotel Natraj and testimony of the prosecution witnesses corroborate spot panchanama. Therefore, the learned trial court ought to have appreciated the evidence in proper manner. Prima facie it appears that the learned trial court has passed the impugned order in mechanical way. Therefore, to our conscious view, the prosecution has set out substantial arguable points and re-appreciation and scrutiny of evidence is required. Therefore, it would be

just and proper to grant leave to the State/prosecution to file appeal against acquittal of the respondents/ accused.

12. In view of above discussion, we proceed to pass following order:

O R D E R

- (i) Application for leave to Appeal stand allowed. Leave is granted to file appeal and the registry to register the appeal.
- (ii) The Appeal is **admitted**.
- (iii) Issue notice to the respondents, returnable on 6th June, 2023.
- (iv) Action under section 390 of the Code of Criminal Procedure be taken against the accused to the satisfaction of the trial court.
- (v) Call record and proceedings with paper book.

(Y. G. KHOBRAGADE, J.)

(SMT. VIBHA KANKANWADI, J.)

JPChavan