

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 27 OF 2021

The State of Maharashtra
Through Shrirampur Taluka Police Station,
Shrirampur, District Ahmednagar. ... Applicant

Versus

1. Rajendra Rakhama Barse,
Age 44 years, Occu. Nil.
2. Rakhama Shankar Barse,
Age 66 years, Occu. Nil.
3. Suresh Rakhama Barse,
Age 49 years, Occu. Nil.
4. Vatsalabai Rakhama Barse,
Age 60 years, Occu. Nil.
5. Raibhan Shankar Barse,
Age 76 years, Occu. Nil.
6. Vijay Raibhan Barse,
Age 39 years, Occu. Nil.
7. Shakuntala Raibhan Barse,
Age 70 years, Occu. Nil.

All R/o. Karegaon, Taluka Shrirampur,
District Ahmednagar. ... Respondents
[Orig. Accused]

.....
Mr. A. M. Phule, APP for the Applicant-State
.....

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

DATED : 27.09.2023

ORDER [ABHAY S. WAGHWASE, J.] :

1. As prosecution intends to prefer appeal against the judgment and order of acquittal passed by learned Additional Sessions Judge, Shrirampur dated 18.12.2020 in Sessions Case No. 25 of 2015, the instant leave has been preferred.

2. Learned APP would submit that prosecution was launched against present respondents after completion of investigation which revealed their complicity for commission of offence punishable under Sections 143, 147, 148, 302, 323, 324, 325, 504, 506 r/w 149 of the Indian Penal Code [IPC] and under Section 37(1)(3) of the Maharashtra Police Act. He pointed out that in support of its case, prosecution had examined in all 16 witnesses. There was not only direct eye witness account but even injured witness account. That, all the witnesses had consistently defined role of each of the respondents herein. There is death of a lady in the assault. Evidence of prosecution witnesses has not been shaken except minor inconsistencies. He would strenuously submit that the core of prosecution case has remained unshaken. Numerous medical experts are examined on the count of injuries and death. He submits that, learned trial court ought not to have acquitted accused, rather they ought to have been held guilty, however not having done so, learned APP submits that it is a

fit case for being challenged in appeal and hence leave is sought for.

3. In the backdrop of above submissions, we have gone through the entire record. It seems that as many as 16 witnesses have been examined by prosecution which are **PW1** Sachin, **PW5** Yakub, **PW6** Mangal, **PW7** Amol, **PW8** Pushpa and **PW9** Sonali are injured/eye witness; **PW2** Ashok, **PW3** Dattatraya and **PW4** Rajendra are pancha witnesses; **PW10** Dr. Sonawane is the autopsy doctor; **PW11** Dr. Satpute, who treated the injured witnesses; **PW12** Dr. Dungarwal and **PW13** Dr. Yogita Dende are the treating doctors who, after death of Kusum, referred her dead body for autopsy to Civil Hospital, Ahmednagar; **PW14** Dilip Guge is the carrier whereas **PW15** PHC Babasaheb Ugalmugale and **PW16** PSI Rameshwar Turnar are the Investigating Officers.

4. On going through the evidence of Informant **PW1** Sachin, it is seen that according to him, there was a civil dispute between the complainant party and respondent party. Occurrence seems to have taken place around 6.30 p.m. on 26.01.2015. He narrated that when he was sitting outside the house, at that time, in above backdrop, respondents approached getting armed with articles like iron rod, sticks and axe. That, accused Rajendra and Vijay assaulted him and his mother Kusum by iron rod and stick, whereas other accused

assaulted his cousin brother, uncle and other family members and all injured were initially went to police station, but were referred to hospital and were required to be treated. According to him, while in hospital, he set law into motion and he identified his statement Exhibit 19.

5. Like wise, PW5 Yakub also stated that on 26.01.2015, respondents initially abused and thereafter, there was assault by accused Rajendra on informant Sachin by iron rod whereas, accused Rajendra and Vikas assaulted deceased Kusum by iron rod, accused Raibhan and Vijay assaulted Anandibai by iron rod and stick, whereas accused Rajendra, Suresh and Rakhama beat him, his wife and son by sticks and iron rod.

6. PW6 Mangal i.e. wife of PW5 Yakub also deposed about assault by respondents. Similarly, PW7 Amol i.e. cousin on informant, also in his evidence at Exhibit 29 stated that accused came armed with articles like iron rods and wooden logs and they assaulted informant, himself, father, mother, aunt Kusum, sister and they all suffered injuries.

7. PW8 Pushpa, who is wife of informant, also stated that accused came armed with sticks and iron rod and they initially abused and

thereafter assaulted her husband with iron rod on the head. Kusum, who intervened, was also assaulted by accused Vijay by means of iron rod and by accused Rajendra, Sunny, Rakhama, Raibhan, Vatsala, Suresh and Shakuntala by fist blows and kicks.

8. PW9 Sonali also stated about assault by respondents causing injuries to Sachin, Kusum and other family members.

9. However, on visiting cross of these witnesses, it is very conspicuously emerging that whatever they deposed in their examination-in-chief, is not finding place in their statement to police. Their versions are full of material omissions touching the very arrival and assault by accused persons. Therefore, all witnesses seem to have exaggerated and improvised their version. The very material omission goes to the root of the matter regarding occurrence. We have also visited the evidence of several medical experts, however, though they claim to have examined and treated deceased as well as injured, autopsy doctor PW10 Dr. Sonawane has not given opinion about death of Kusum to be only and only homicidal and not otherwise. Apart from that, medical experts, who have issued certificates, have also admitted in cross that injuries noticed by them are also possible on account of fall.

10. Therefore, on taking survey of entire prosecution evidence in the trial court, apart from previous enmity on account of civil dispute and litigation, and when the evidence of informant and injured is found to be full of material omissions relating to the alleged occurrence of assault, entire case of prosecution comes under the shadow of doubt. Though articles are shown to be recovered, more than one articles are shown to be recovered at the instance of one accused. Even there is variance in the spot pointed out by so called direct eye witnesses. Taking all such material into consideration, though there is mere quantity, quality which is expected is apparently missing from the prosecution evidence and reasonable doubt creeps in from the very evidence of crucial witnesses like informant and the so called injured witnesses. Therefore, with such quality of evidence, learned trial court, in our opinion, has committed no error whatsoever in refusing to accept the case of prosecution and thereby, has further committed no error in acquitting the accused. Finding no merits in the application for leave to appeal, the same is hereby rejected.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]