

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

**APPLICATION FOR LEAVE TO APPEAL BY STATE
NO. 103 OF 2018**

The State of Maharashtra	... Applicant
Versus	
Avinash Ramrao Shinde and others	... Respondents
....	
Mr. A. M. Phule, APP for the applicant - State	
....	

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

DATE : 03.04.2023.

ORDER (PER Y. G. KHOBRAGADE, J.) :-

The present application under Section 378(1)(b) of the Code of Criminal Procedure has been filed by the prosecution seeking leave to file appeal, challenging the judgment and order dated 01.01.2018 passed by the learned Additional Sessions Judge, Nilanga, District Latur in Sessions Case No. 31/2013, thereby acquitting the respondents accused for the offences punishable under Sections 307, 506 of Indian Penal Code arising out of Crime No.69/2012 registered on 13.12.2012.

2. With the help of learned APP Mr. A. M. Phule, we have considered the evidence which was before the learned trial Court on the point, whether leave can be granted to the prosecution to file appeal.

3. In nutshell, it is the case of prosecution that on the day of incident the informant Datta @ Pravin Pandurang Jadhav was sleeping in

a bullock cart at the spot of incident and at that time the respondents accused went there and put towel on his face. They asked him as to why he has cultivated the land Survey No.146 of Parbat Gunderao Jadhav in partnership? Thereafter they had forcibly administered some poisonous substance to him and thereby attempted to commit his murder. Thereafter he was taken to Government Hospital where the Police Officer Mr. Ranzunjare attached with Gandhi Chowk Police Station recorded his statement, on the basis which Crime No.69/2012 came to be registered against the accused persons for the offence punishable under Sections 307, 506 of the Indian Penal Code. Mr. Deshmukh, the Investigating Officer, carried out panchanama of the spot and recorded statement of witnesses. He arrested accused persons under arrest panchanama and seized articles i.e. quilt and scarf and sent those articles for Chemical Analysis. He had collected the medical papers of the informant. On completion of investigation, charge-sheet came to be filed against the accused persons before the learned Judicial Magistrate First Class (J.M.F.C.), Nilanga Court No.3. On compliance of Sections 207 the learned J.M.F.C. has passed the order under Section 209 of the Code of Criminal Procedure and committed trial to the Court of Sessions.

4. The learned trial Court framed the charge at Exh.55 against the accused, to which they have pleaded not guilty and claimed for trial. Accordingly, their plea was recorded.

5. In order to prove the guilt of the accused, the prosecution has examined PW-1 Hujar Najayat Shaikh at Exh.75; PW-2 Balaji Gyandeo Shinde at Exh.77, PW-3 Umakant Pundlik Shinde at Exh.82,

PW-4, Datta Pandurang Jadhav (informant) at Exh.88, PW-5. Vithal Keshavrao Jadhav at Exh.94, PW-7 Dr. Sumit Shivajirao Waghmare at Exh.101, PW-8, Latif Pashamiya Saudagar at Exh.105, PW-9 Vinod Hanmant Shelke at Exh.110 and PW-10 Nanasaheb Namdeo Ubale at Exh.115.

6. On conclusion of evidence for prosecution, the learned trial Court has recorded statements of the accused under Section 313 of Cr.P.C. The defence of the accused is of total denial and about their false implication in the crime due to land dispute.

7. Learned trial Court passed the impugned judgment on 01.01.2018, and acquitted the respondents – accused from the offences under Sections 307 and 506 read with Section 34 of the Indian Penal Code. Being dissatisfied by the same, the prosecution filed present application seeking leave to file appeal.

8. On careful examination of evidence of PW-4 informant Datta Pandurang Jadhav, it reveals that there is civil dispute on account of cultivating of land bearing Gat No.151 standing in the name of Shri Pandurang Jadhav and land bearing Gut No.146 standing in the names of Parbat Gunderao Jadhav and Shamrao Gunderao Jadhav.

9. PW-4 has deposed that at the time of incident he had gone to his field and offered fodder to the cattle and then he went to sleep in the bullock-cart which was kept in front of tin shed in land bearing Gat No.151 at village Kambalga. Then someone had covered his face with towel and tried to administer poison to him. He resisted the same;

however, those persons then closed his nostrils, due to which, his mouth got automatically opened and then those persons poured poison in his mouth and he became unconscious. PW-4 further deposed that he had seen those four persons in the light of torch and identified the accused persons. Thereafter, he went to his uncle Vithal and disclosed about incident. He had disclosed the names of accused persons to his uncle about administering poison to him, but he did not see them. The evidence of PW-4 further shows that when he was in the field of his uncle Vithal Jadhav (PW5), at that time one Vinod Shelke (PW9), neighboring land owner also visited there and who informed about incident on phone to the father of victim. Thereafter, the informant (PW4) went at his home along with Vinod Shelke on his motorcycle. Thereafter, his parents and Ganesh Jadhav took him to the hospital where police recorded his report.

10. Though the prosecution examined PW-1 to PW-3, but these witnesses have not supported the case of the prosecution. The prosecution examined PW-5 Vithal Keshavrao Jadhav at Exh.94. The PW-5 deposed that, incident had occurred at about 8.30 p.m., about five years prior to his deposition, in Gut No.151. PW-4 Datta Jadhav had come to his field and told him about administering poison to him by the accused and he would not survive. Therefore, he took PW-4 Datta to his home and subsequently, family members of PW-4 took him to hospital for treatment.

11. Prosecution has also examined PW-7 Dr. Sumit Shivajirao Waghmare at Exh.101 to prove the medical evidence. The PW-7 has deposed that patient Datta was brought by his father Pandurang Jadhav

with a history of forcible administration of poisonous substance. On medical examination of the patient, he has treated the PW-4 w.e.f. 10.12.2012 to 12.12.2012. He had caused the gastric lavage sample of the patient taken and referred it for Chemical Analysis at Aurangabad through the Police Head Constable Shri. B. B. Shinde B.No.238 and it was the case of poisoning as per the CA report Exh.90.

12. The evidence of PW-6 Pandurang Jadhav i.e. father of PW-4 Datta shows that he has 7 – 8 Acres of land in Gut No.151 and one Parbat Jadhav is owner of land bearing Gut No.146. PW-6 appears to be hearsay witness. It seems that when PW-4 Datta was taken to his house, he was vomiting and not even in a position to talk properly, but during the course of trial, the PW-4 improved the story about identification of voices of accused persons.

13. As per the testimony of PW-7 Dr. Sumit Waghmare, the gastric lavage sample of the patient PW-4 was collected and sent for CA and on the basis of story of forcible consumption of poisonous substance and PW-4 patient was medically treated. As per CA report Exh.90, poisonous substance Organo-phosphorous Insecticide detected in gastric lavage sample. In cross examination, PW-7 has admitted that the history was given by the patient PW-4, but he did not find any injury to the mouth of patient and if any person could have tried to commit suicide, in that circumstances similar symptoms always appear, which are mentioned in the history of patient.

14. It has been tried to be brought on record that, PW-4 was sleeping in the bullock-cart and if the prosecution case is to be believed then the accused persons went to the spot, had put towel on the face of PW -4 and then administered poison. This story certainly appears to be improbable. PW-4 has not stated as to whether the bulls were still tied to the cart when he slept in it. When he says that he had given fodder to bulls, he would have untied them. In that case, the cart would have been in slanting position. It will be natural for him to keep his head on the portion of the cart, which is high. If the person is sleeping on the slanting bullock-cart, then it may be at the height of more than 4 and ½ feet and in that circumstance, it would be highly impossible to cover the face of the sleeping person and then administer poisonous substance to him. Even as per the testimony of PW-4, when he resisted the accused persons, someone had closed his nostrils and then his mouth got automatically opened, thereupon the accused persons administered poisonous substance to him. Under these circumstances, there was every chance for him to raise voice, which could have been heard by PW-5 Vithal Jadhav who was appears to be present in his field Gut No.151. However, testimony of PW-4 and PW-5 itself suggest that PW-4 had visited the field of PW-5 Vithal Jadhav after alleged administration of poisonous substance to him.

15. The evidence of PW-10 Investigating Officer does not suggest about collection of evidence in respect of purchase of insecticide by the accused persons though they were interrogated. There is no investigation taking into consideration the batch number of the insecticide bottle. No doubt, accused persons are agriculturist; but informant is also

agriculturist and therefore, there is every possibility that they both might be having insecticide bottles. It is not the positive case of prosecution that bottle which was purchased by the accused persons was found at the spot. Therefore, the evidence of prosecution witnesses does not inspire confidence about administration of poisonous substance to PW-4 by the accused. The alleged motive also appears to be not of such degree so that inference can be drawn that accused had decided to eliminate informant. Since when he had taken the land for cultivation is not disclosed by him. Hence, we conclude that prosecution has miserably failed to prove the essential ingredients of the offence under Sections 307 and 506 read with Section 34 of the Indian Penal Code.

16. Learned trial Court passed the judgment and order on 01.01.2018 and acquitted the respondents/accused, which does not warrant further scrutiny at the hands of this Court. No substantial grounds are set out to interfere with the findings recorded by the learned trial Court.

17. In view of the above discussions, we do not find to grant leave to file appeal against acquittal. Accordingly, the present application is dismissed.

[Y. G. KHOBRAGADE, J.] [SMT. VIBHA KANKANWADI, J.]