

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 29 OF 2021

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

Versus

1. Yakub Ezak Barse,
Age 42 years, Occu. Nil.
2. Sachin Raosaheb Barse,
Age 33 years, Occu. Nil.
3. Amol Yakub Barse,
Age 27 years, Occu. Nil.
4. Vikas Pralhad Barse,
Age 21 years, Occu. Nil.
5. Mangal Yakub Barse,
Age 42 years, Occu. Nil.
6. Anandibai Ezak Barse,
Age 80 years, Occu. Nil.

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

.....
Mr. S. J. Salgare, APP for the Applicant-State
.....

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

DATED : 27.09.2023

ORDER [ABHAY S. WAGHWASE, J.] :

1. Dissatisfied by the judgment and order of acquittal passed by learned Additional Sessions Judge, Shrirampur in Sessions Case No. 33 of 2015 dated 18.12.2020, thereby acquitting present respondents from charge under Sections 143, 147, 148, 307, 323, 324, 504, 506 r/w 149 of the Indian Penal Code [IPC] and Sections 37(1)(3) and 135 of the Maharashtra Police Act, the instant leave has been preferred.

2. Learned APP pointed out that prosecution has approached the trial court with strong evidence. As many as 17 witnesses including injured were examined by prosecution. Even medical experts who have treated injured are examined by prosecution. Eye witnesses' accounts are found to be consistent and they have remained unshaken on crucial aspect of occurrence. That, in spite of such evidence, learned trial court has disbelieved the case of prosecution and has acquitted the accused. According to him, there is total non-application of mind as well as non-appreciation of law. He pointed out that learned trial court has merely disbelieved prosecution witnesses on the count of minor variances and inconsistencies. According to him, there are bound to be variances but the same not being fatal and crucial, ought to have been accepted. However, learned APP

submitted that, this has not happened in this case. Ocular account, having supported by medical evidence, ought to have been accepted for accepting the case of prosecution. According to learned APP, precisely that has not been done and so it is prayed that leave as sought be granted.

3. In the light of above submissions, we have gone through the papers placed before us, more particularly the evidence of 17 witnesses and documentary evidence placed on record. It is emerging that alleged occurrence has resulted into cross complaints. Both parties are at loggerheads on account of some civil dispute.

4. In the case in hand, law seems to be set into motion by **PW1** Rajendra. According to him, occurrence took place at around 6.00 p.m. on 26.01.2015. He has named Yakub and Sachin approaching him, intercepting him, abusing and assaulting him. He attributed allegations of assault by means of sickle on himself as well as his relatives by other accused, who had joined previous accused persons. He identified his statement Exhibit 60.

5. **PW2** Ujjawala is sister-in-law of PW1 informant Rajendra and she too has stated that on hearing shouts, she came out of the house

and saw accused Yakub and Sachin obstructing way of her brother-in-law Rajendra asking him to leave the agricultural land received on the basis of gift deed. She further stated that accused Yakub dealt a blow of sickle on the hand of Rajendra. According to her, when her father-in-law Rakhma went to intervene, he was also assaulted on head by sickle. She has also deposed about assault on Suresh, Sunny, Shakuntala and Vinayak by accused persons, and about her brother-in-law Rajendra setting law into motion.

6. **PW3** Sunny, nephew of informant Rajendra, also narrated about occurrence which allegedly took place on 26.01.2015. He also claimed that on hearing the incident in which there was obstruction to PW1 Rajendra by accused persons, his grandmother, grandfather, uncle and cousin grandfather, uncles, mother and he himself came out and when they tried to intervene and rescue, he has alleged that, Yakub dealt sickle blow on left hand of Rajendra and his grandfather was hit with sickle on head and they both got severely injured resulting into fall.

7. **PW4** Rakhmaji, father of informant PW1 Rajendra, also stated that his son was obstructed by four persons, namely, Sachin, Yakub, Amol and his younger brother and thereafter they assaulted him. He

claims that his son raised shouts and thereafter he himself, his wife, son, grandson and brother rushed to the spot to intervene and they were also assaulted by sickle blows. He claims that even he fell unconscious.

8. Another direct eye witness is **PW11** Raybhan. He also stated that on hearing voice of Rakhma and Rajendra, he went towards them. He claims that he saw all the accused persons and that he was also beaten by accused Amol as well as Vikas, both by sickle on head. He stated that Rakhma and Rajendra were lying there in injured condition. He also claims that he fell unconscious.

9. On carefully going through the cross of all above witnesses, it is noticed that there testimonies are full of omissions, specifically about the so called assault by respondent accused. All these witnesses have thereby improvised their versions as whatever they spoke in their substantive evidence in the witness box is apparently accepted by them to be not finding place in the police statement.

10. Though recovery is caused, it is apparently at a very belated stage. Though doctors are examined, they are found to be agreeing in cross about injuries noticed by them to be possible on account of fall or accident.

11. Here, it is a cross complaint. The genesis of the occurrence has not been proved. It seems to be a free fight. Who was the aggressor has not come on record. In previous case also (ALS 27/2021), which is at the instance of present respondents, witnesses are inconsistent. Even learned trial court has disbelieved the prosecution case for the same reason as ocular account is found to be full of material omissions as regards the occurrence is concerned. Therefore, with such quality of evidence, in our opinion, learned trial court has committed no error in holding that prosecution failed to prove their case beyond reasonable doubt. *Prima facie* also, we are of the same opinion that on going through the evidence of prosecution witnesses, the distinct feature is that there are material omissions as regards the very occurrence and role of each of the accused. Witnesses are not consistent. Therefore, as case is not forthcoming as regards the actual occurrence is concerned, we too are of firm opinion that case is not proved by prosecution beyond reasonable doubt. Hence, finding no merit, the application for leave to appeal is hereby rejected.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]