

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.118 OF 2018

The State of Maharashtra,
Through Police Inspector,
Pathardi Police Station,
Dist. Ahmednagar.

..Applicant

VERSUS

1. Kailas Dashrath Dhotre
Age : 24 years.
2. Vijay Bapu Dhotre
Age: 29 years.
3. Raju Bapu Dhotre
Age: 35 years.
4. Dashrath Bapu Dhotre
Age: 50 years.

All R/o. Ambika Nagar, Takali Manur,
Tq. Pathardi, Dist. Ahmednagar.

..Respondents
(Ori. Accused)

...

APP for Appellant-State : Mr. S. D. Ghayal

...

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

**RESERVED ON : 6th July, 2023
PRONOUNCED ON : 12th July, 2023**

ORDER (PER ABHAY S. WAGHWASE, J.) :

1. As State intends to prefer appeal against the judgment and order of acquittal dated 06.02.2018 passed by the learned Additional

Sessions Judge, Ahmednagar in Session Case No.12 of 2015, it is hereby seeking leave to file appeal.

2. According to learned APP, present respondent nos.1 to 4 were chargesheeted for commission of offence under Sections 307, 323, 504, 506 r/w Section 34 of the Indian Penal Code (IPC). It is submitted that alleged incident had taken place on 05-04-2014. While injured **PW1 Shivaji** (informant) was proceeding in front of the house of accused no.2 Vijay, accused nos.1 to 4 approached him. Accused persons questioned him by saying that his brother Laxman is trying to be a leader and thereafter, it is stated that, accused persons assaulted him. Accused no.1 Kailas assaulted **PW1 Shivaji** by means of iron rod on his head and right shoulder. **PW2 Laxman**, i.e. brother of informant, rushed to the spot of occurrence and took the informant to hospital. There informant lodged report Exh.35.

3. It is further pointed out that injured **PW1 Shivaji** as well as **PW2 Laxman**, who has immediately reached to the spot and shifted **PW1 Shivaji** to the hospital, are examined by prosecution. Their evidence is consistent and corroborating each other on the point of assault. Medical evidence was also adduced in support of injuries

suffered by **PW1 Shivaji**. That in spite of clear case being made out for commission of offence of attempt to commit murder, learned trial Judge has acquitted accused from all the charges. It is pointed out that essential ingredients for attracting the charges are very much available in the evidence on record. A full-proof case was made out against the accused. The testimonies of very injured and his brother have not been appreciated by the learned trial Judge and thereby learned Judge has erred in acquitting the accused persons in serious offence and as such, State intends to challenge the same by filing appeal and hence the prayer for leave to file appeal.

4. In the light of above submissions, we have examined evidence available before the trial Court. **PW1 Shivaji** seems to be alleged injured and informant. **PW2 Laxman** seems to be his brother. **PW3 Shobha** seems to be sister-in-law of **PW1 Shivaji**. **PW4 Bhaskar** is panch to spot panchnama. **PW5 PSI Krushna Jopale** is the Investigating Officer. **PW6 Dr. Kalamkar** examined and treated the informant. **PW7 ASI Batule** and **PW8 PHC Kakade** are Police Officials. Apart from above oral account, prosecution seems to have adduced on record panchanama, memorandum of seizure and injury certificate.

5. On going through the above evidence, it is seen that evidence of injured and his brother, who shifted him to hospital after reaching the spot, is significant.

6. We have noticed that evidence of **PW1** Shivaji goes to show that alleged incident took place on 05-04-2014 and that there was previous dispute already existing. This witness stated that accused caught hold of him and after questioning him, accused no.1 Kailash hit blow of iron rod on the head as well as on right shoulder and he was taken to the hospital and so he lodged FIR Exh.35. In **cross-examination** also he seems to have answered that he suffered contusion and haematoma and he did not suffer fracture injury.

7. **PW2** Laxman, brother of PW1 Shivaji also stated about hearing noise and going out and seeing accused persons hitting his brother with iron rod, fist and kick blows. He also spoke about previous dispute.

8. **PW3** Shobha also narrated about assault on PW1 Shivaji by iron rod.

9. **PW6** Dr.Sandip narrated the injuries noticed by him on examining PW1 Shivaji. He identified injury certificate issued by him which is at Exh.48.

PW7 Jagannath and **PW8** Dadasaheb are Police Officials.

10. Taking into account above substantive evidence, it has come on record that in backdrop of previous dispute, **PW1** Shivaji was assaulted with iron rod. Medical evidence confirms injury. Here learned trial Judge had disbelieved above evidence and has acquitted accused from all charges. In the light of availability of injured witness account, who is informant himself, coupled with evidence of **PW2** Laxman and **PW3** Shobha, we are convinced that incident of assault had taken place resulting into injury and that is demonstrated by prosecution.

Therefore, in our opinion, whether offence under Section 307 of IPC was made out and if not, then which offence would be attracted needs to be carefully examined thereby necessitating re-analysis, re-appreciation of evidence.

11. Resultantly, case being made out for grant of leave, we propose to pass the following order :

ORDER

- I. The application stands allowed.
- II. Leave is granted to the prosecution to file Appeal.
- III. Registry to register the Appeal.
- IV. Appeal stands **admitted**.
- V. Call record and proceedings.
- VI. Action under Section 390 of the Code of Criminal Procedure be taken against the respondents to the satisfaction of the trial Court.

(**ABHAY S. WAGHWASE**)
JUDGE

(**SMT. VIBHA KANKANWADI**)
JUDGE