

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

912 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.98 OF 2019

The State of Maharashtra
Through the Police Inspector,
Police Station, Shrigonda,
Tq. Shrigonda, Dist. Ahmednagar.

... Applicant

... **Versus** ...

- 1 Shivaji Sakharam Saptal,
Age 60 yrs., Occ. Nil,
- 2 Pandurang Sakharam Saptal,
Age 48 yrs., Occ. Nil,
- 3 Sindhubai Shivaji Saptal,
Age 50 yrs., Occ. Nil,
- 4 Shankar Pandurang Saptal,
Age 25 yrs., Occ. Nil,

Respondent Nos.1 to 4 are
R/o Loni Venknath, Dist. Ahmednagar.

- 5 Raju Dada Hole,
Age 32 yrs., Occ. Nil,
R/o Behwadi, Tq. Daund,
Dist. Pune.
- 6 Vijay Bandu Satav,
Age 35 yrs., Occ. Nil,
R/o Shidankar Vasti, Kashti,
Tq. Shrigonda, Dist. Ahmednagar.
- 7 Sunil Kisan Saptal,
Age 38 yrs., Occ. Nil,

R/o Pargaon Kapre Vasti,
Tq. Shrigonda, Dist. Ahmednagar.

... **Respondents**

...

Mr. A.V. Deshmukh, APP for applicant

...

**CORAM : SMT. VIBHA KANKANWADI
S.G. CHAPALGAONKAR, JJ.**

DATE : 30th JUNE, 2023

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed by the prosecution seeking leave under Section 378 (1)(b) of the Code of Criminal Procedure, 1973 to file appeal challenging the Judgment of acquittal dated 16.01.2019 passed by learned Additional Sessions Judge, Ahmednagar in Sessions Case No.196/2016, thereby acquitting respondents – original accused persons from the offence punishable under Section 307, 143, 147, 148, 323, 427, 504, 506 read with Section 149 of the Indian Penal Code, 1860.

2 Heard learned APP Mr. A.V. Deshmukh for the prosecution and with his help we have gone through the record which was available before the learned Trial Judge.

3 The prosecution story, in short, is that – informant Sakharam is an agriculturist. His land is situated adjacent to the land of original accused No.1. Both are residing in their respective fields. There was boundary dispute in between them. Even on 19.04.2015 there was such boundary dispute and, therefore, informant had lodged the First Information Report against original accused No.1. However, on the day of incident i.e. 02.03.2016 all the accused came to the house of informant and started abusing him. Informant asked them not to abuse, but then accused No.1 gave two blows by means of axe on his head. The other persons also assaulted the informant, his wife and son. Prior to that they had pelted stones on the house of the informant. Informant's son had then given phone call to the police. Police came to the spot and shifted the informant to the Rural Hospital, Shrigonda. After preliminary treatment he was shifted to City Care Hospital, Ahmednagar. The First Information Report came to be lodged by him. Tofkhana Police Station recorded the statement of the injured when he was admitted in the hospital and then it has been treated as First Information Report.

4 The investigation was carried out and after the completion of the same charge sheet came to be filed. At the time of trial the prosecution has examined in all seven witnesses and relied on the documents proved during

the trial. After considering the evidence on record and hearing both sides, the learned Trial Judge has acquitted all the accused persons by judgment dated 16.01.2019. Hence, the present application.

5 At the outset, it has been submitted that the testimony of the informant, his wife PW 2 Usha and PW 3 Vilas – son of PW 1 and PW 2 are corroborating each other, so also their testimony stood corroborated by testimony of PW 5 Dr. Vijaykumar Rathod, who was the Medical Officer at Rural Hospital, Shrigonda and had examined the informant as well as PW 6 Dr. Tushar Kohok, who was the Medical Officer attached to City Care Hospital, Ahmednagar and, therefore, learned Trial Judge ought to have convicted the accused persons. Since the appreciation of the evidence is not proper, the application deserves to be allowed.

6 It is to be noted from the perusal of the evidence adduced by the prosecution that PW 1, 2 and 3, who are the family members, were corroborating with each other and they have admitted that there was dispute in respect of boundary between them and the accused. The prosecution has not tried to examine any independent witness. If we consider the spot panchnama, then, towards Northern side of the house of informant as well as accused there is road and thereafter there is canal and the bandh, in respect

of which there is dispute, is towards the West of the house of informant (towards East of the house of accused). Even if for the sake of argument it is accepted that there would not have been scope for independent eye witnesses; yet, with the background that there is dispute between them we will have to receive the evidence of the family members with caution. Learned Trial Judge has held that when there were seven accused persons alleged to have assaulted three witnesses, then, the injuries ought to have been more and not in the form of CLW. If we consider the testimony of PW 5 Dr. Vijaykumar Rathod, Medical Officer of Rural Hospital, Shrigonda, he had noted three injuries; 1) CLW over parieto temporal region, 2) Blunt trauma over face and 3) Blunt trauma over chest and abdomen. In his examination-in-chief PW 1 Sakharam says that the blow of the axe was on his head on the middle portion and another blow was towards the side of first blow. So, this does not match with the factual injury that was noted by PW 5 Dr. Vijaykumar Rathod. Another aspect to be noted is that as per the prosecution story, the police had gone to the spot and then they had shifted PW 1 Sakharam to hospital. The question is then – Why the First Information Report was not lodged or taken down on 02.03.2016 ? Here, the First Information Report has been taken on 05.03.2016. There is no evidence on record to show that after the alleged incident till 05.03.2016 Sakharam was not in a position to speak. Further, there was no hurdle for PW 2 or PW 3 to

lodge the First Information Report with the police. The belated lodging of the First Information Report has also been considered by the learned Trial Judge. The Trial Judge has also rightly considered that PW 5 and PW 6 have issued injury certificates Exhs.54 and 68, but those certificates are not corroborating their testimony. When PW 5 says that the CLW was over parieto temporal region, PW 5 Dr. Tushar Kohok says that it was the CLW over high parietal region. The dimensions are different, therefore, taking into consideration these aspects the learned Trial Judge has rightly held that the testimony of only interested witnesses cannot be relied upon. No case is made out for granting leave. Application stands rejected.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

agd