



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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 46 OF 2021

. The State of Maharashtra,
Through Police Inspector,
Naga Taluka Police Station,
Tq. & Dist.Ahmednagar. ..Applicant

Versus

1. Manda Bapu Kotkar
Age: 28 years, Occu.: Nil,
R/o. Ralegaon Mhasoba Shivar,
Tq. & Dist.Ahmednagar.
2. Sopan Zumbar Kotkar
Age: 30 years, Occu.: Nil,
R/o. Gundegaon,
Tq. & Dist.Ahmednagar. ..Respondents

...

APP for Applicant-State : Mr.S.J.Salgare

...

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

DATE : 27 OCTOBER 2023

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

1. By invoking Section 378(1) of the Code of Criminal Procedure, applicant State by instant application is seeking leave to challenge the judgment and order passed by the learned Additional Sessions Judge, Ahmednagar dated 13-01-2021 in Sessions Case No.250 of 2017.

2. Learned APP pointed out that present respondent nos.1 and 2 were chargesheeted for commission of offence under Sections 120-B, 326, 307 read with Section 34 of the Indian Penal Code (IPC). It is pointed out that on receipt of report of one Suryabhan Kotkar, crime was registered. Daughter-in-law of informant had affair with Sopan, respondent no.2 herein. Informant's Son Bapu Suryabhan Kotkar learnt about it. Therefore, to eliminate Bapu, both accused respondents hatched conspiracy and on 27-06-2016, he was assaulted. According to learned APP, he was so mercilessly assaulted that he was unconscious for almost two months and only on discharge, his statement was recorded wherein he had named respondents. Learned APP pointed out that there is medical evidence as well as injury certificate and medical papers regarding Bapu suffering head injury over ear, eyebrows, nose and parietal region. As many as seven witnesses are examined by prosecution including medical expert but still learned trial Court disbelieved the case of prosecution and has thereby by his judgment and order dated 20-03-2021 acquitted both accused from serious offence. According to learned APP there is improper appreciation of evidence and law and as there is every hope of success in appeal, it is prayed that leave to prefer appeal be granted.

3. We have, on hearing learned APP, visited the evidence adduced by prosecution in trial Court.

PW1 Suryabhan Parvati Kotkar seems to be informant and father of injured PW2 Bapu. Apart from PW1 Suryabhan and PW2 Bapu, prosecution has examined PW3 Appa Sopan Borkar, cousin of injured, three medical experts PW4 Dr.Shuaib Ahmed Saudagar, PW5 Dr.Sachin Amrut Gandhi, PW6 Dr.Mohamad Abdul Majid and PW7 Mahesh Kailash Kshirsagar, Investigating Officer. Injury certificates of injured are also placed on record. It seems that he was treated at Pune. Medical papers show that injured Bapu had suffered disability. Therefore, there is *prima facie* evidence about occurrence.

4. On going through the impugned judgment, it is noticed that learned trial Court has observed that informant PW1 Suryabhan, who set law into motion, has merely expressed suspicion. Even victim's evidence seems to have been disbelieved on the ground that being injured, whether he could have comprehended and seen the actual assailants. Learned trial Court has further observed that there is no eye witness. Obviously, there may not be evidence of illicit relationship, however, learned trial Court has also taken such aspect

into consideration. Failure of investigating machinery to gather SDR and CDR also seems to have prompted trial Court to disbelieve the case of prosecution.

5. Therefore, taking such observations and findings into consideration, we are of the opinion that the case needs re-appreciation, re-analysis of evidence, more particularly, in the light of injured witness account as well as medical expert's account. Hence, we are inclined to grant relief as prayed and pass 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 respondent to the satisfaction of the trial Court.

(ABHAY S. WAGHWASE)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE