

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 138 OF 2018

. The State of Maharashtra,
Through Rural Police Station,
Parbhani. ... Applicant

Versus

1. Ramrao s/o Limbaji Ghule
Age 38 years, Occu. Labour,
R/o Jalalpur,
Taluka and District Parbhani.
2. Ashok s/o Shankar Sonwane,
Age 30 years, Occu. Labour,
R/o Brahmangaon,
Taluka and District Parbhani.
3. Bhagwan s/o Shankar Sonwane,
Age 50 years, Occu. Labour,
R/o Roshani Nagar, Parbhani.
4. Rohidas s/o Shankar Sonwane,
Age 38 years, Occu. Labour,
R/o Brahmangaon,
Taluka and District Parbhani. ... Respondents
[Orig. Accused]

....

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

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

DATED : 10 JULY 2023

ORDER [ABHAY S. WAGHWASE, J.] :

1. By way of instant application, State seeks leave of this Court to

question judgment and order passed by the Additional Sessions Judge, Parbhani in Sessions Trial No.153 of 2011, by which present respondents who were tried for offence under Sections 143, 147, 148, 365, 367, 341, 323, 326, 307 r/w 149 of the Indian Penal Code (IPC) and are acquitted of all the charges.

2. Taking us through the evidence on record, learned APP would submit that there was quarrel between wife of informant and sister of accused. In such backdrop, it is pointed out that informant was waylaid by accused. He was tied to a tree and beaten with sticks by accused until he fell unconscious. Informant himself narrated the incident to the Police, on the strength of which crime was registered. That there is recovery during the investigation. All the accused have mounted assault on informant only with intention to inflict grave injury and attempted to commit murder. That prosecution had examined medical expert, who had come across several injuries on the person of injured **PW1** Madhav. Therefore, it is submitted that there was cogent and reliable evidence of informant – injured himself. That, learned trial Court ought to have appreciated that by forming unlawful assembly and with object to take revenge, accused had assaulted injured. That therefore, it was a fit case for recording conviction, however, the learned trial Court failed to appreciate and

consider the oral and documentary evidence and has erred in acquitting accused. It is submitted that State intends to challenge the said judgment and order by preferring appeal and hence, the prayers.

3. In the light of above submissions, we have gone through the oral and documentary evidence and we have also carefully examined impugned judgment.

4. It transpires that informant **PW1** Madhav gave evidence that alleged incident took place on 06-07-2008 at around 03:00 p.m. According to him, accused persons caught-hold of him while he was at Jalalpur Pati on Jintur road. According to him, in the backdrop of dispute between his wife and sister of accused, accused persons after forming unlawful assembly and armed with sticks, assaulted him after tying to a tree. According to him, he suffered fracture injuries. He identified report lodged by him Exh.59.

However, in cross faced by him, paragraph 6 goes to show that there are material omissions and contradictions as regards to the occurrence, about he being caught and made to sit on ants' house, thereafter, being tied to a tree and beaten till he become unconscious and about assault on his leg and nail. He has also improvised by stating that he was made to drink urine.

5. **PW2** Dinkar is a eye witness but he has not supported prosecution. **PW3** Pushpa seems to be sister-in-law of PW1 Madhav. However, her evidence is hearsay. Similarly evidence of the **PW4** Jaishri, wife of injured, is also hearsay. She has learnt from her husband as to whatever happened. **PW5** Sandip is Panch to memorandum of articles and recovery. He has also not supported prosecution.

6. Though medical expert has examined as **PW6** Tanveer, in cross-examination he has admitted that he is not Radiologist and he has not handed over x-rays to Police. He admitted that while issuing certificate, no article was referred to him for his opinion. Apparently injuries are abrasion and contusion. In spite of alleged incident took place on 06-07-2008 afternoon, examination is done on 07-07-2008. Even history of injury is not reflected in medical certificate.

7. Thus, here there is FIR in the backdrop of previous dispute between wife of informant injured and sister of accused persons. Apparently except accused no.1, other accused were strangers to the injured. No T.I. parade has been conducted. Wife of informant also does not seem to be aware and she seems to be learnt about incident from one Nagorao, but such person is not examined. Therefore, when

both parties are on inimical terms, possibility of false implication cannot be ruled out. Version of informant being full of improvements, omissions and contradictions, it does not inspire confidence and so it is unsafe to rely on the same. Therefore, with such quality of evidence on record, no other opinion can be formed as formed by learned trial Judge, that prosecution has failed to prove the charges beyond reasonable doubt. Therefore, no error whatsoever is found in the impugned judgment. Hence, finding no merit in the application, the same is hereby rejected.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]