

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.47 OF 2021

The State of Maharashtra
Through The Police Station Officer,
Police Station, Renapur, Tq. Renapur,
Dist. Latur.

... Applicant

... **Versus** ...

- 1 Dattatraya Nagnath Giri,
 Age 35 yrs., Occ. Cultivator,
- 2 Pandurang Nagnath Giri,
 Age 34 yrs., Occ. Cultivator,
- 3 Gayatri Dattatraya Giri,
 Age 32 yrs., Occ. Housewife
 and Cultivator,
- 4 Gangabai Pandurang Giri,
 Age 28 yrs., Occ. Housewife
 and Cultivator,

All are r/o Pangaon, Tq. Renapur,
Dist. Latur.

... Respondents

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Mr. S.J. Salgare, APP for applicant

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

DATE : 27th OCTOBER, 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 20.03.2021 passed by learned Sessions Judge, Latur in Sessions Case No.35/2015, thereby acquitting respondents – original accused from the offence punishable under Sections 307, 147, 148, 504 and 506 read with Section 149 of the Indian Penal Code and under Section 37(1)(3) read with Section 135 of the Maharashtra Police Act.

2 Heard learned APP Mr. S.J. Salgare for the applicant and perused the documents which were before the learned trial Judge.

3 The prosecution has come with a case that PW 1 Shyamal Rohidas Kuntewad, r/o Musalewadi, Tq. Renapur, Dist. Latur was tying cow in front of the shed of her farm around 6.00 a.m. on 06.10.2014. Accused No.1 came on motorcycle and started arguing with her as to why she had taken away soybean crop from his field. Prior to that he had assaulted her by fists and blows. Thereafter her son Kedari went on his bicycle and called PW 1 Shyamal's mother PW 4 Vatsalabai and PW 6 Kewalbai. By that time the

other accused persons had come and they abused and assaulted informant. Accused No.1 assaulted Shyamal on her head by means of an axe, Gayatri assaulted her with wooden stick on left forearm, accused Nagnath assaulted her by wooden stick on her back. When PW 4 Vatsalabai tried to intervene, accused Gangabai assaulted her with wooden stick. When her parental aunt also tried to intervene, accused Gayatri had assaulted her on her head with wooden stick. After hearing hue and cry neighbour Manchak Jadhav, his wife and son came and separated them. Thereafter the injured went to Pangaon Police Station. Police referred them to Government Hospital. Around 1.00 p.m. they were discharged and, therefore, they went to Renapur Police Station and lodged First Information Report Exh.67.

4 After the registration of the offence further investigation was taken up, panchnama of the spot was carried out, statements of witnesses were recorded, accused came to be arrested, documents were collected and while in custody the accused No.1 discovered axe. After completion of the investigation charge sheet was filed. One of the accused was juvenile in conflict with law and, therefore, his charge sheet was presented before Juvenile Justice Board.

5 After the committal of the case charge was framed for the

offence punishable under Section 307, 148, 504, 506 read with Section 149 of the Indian Penal Code and under Section 37(1)(3) read with Section 135 of the Maharashtra Police Act. Prosecution has examined in all 13 witnesses to bring home the guilt of the accused. After considering the evidence on record and hearing both sides the learned trial Judge has acquitted all the accused. Hence, present application seeking leave to appeal.

6 The main points raised by the prosecution are that the trial Judge has not appreciated the evidence properly, though the testimony of PW 1 Shyamal, PW 4 Vatsalabai and PW 5 Kedari support each other. Though PW 6 Kewalbai has turned hostile; yet, independent witness PW 8 Manchak Jadhav supports the prosecution. The medical evidence would also show that Vatsalabai, Shyamal and Kewalbai had received injuries. Though it is stated that those injuries were simple in nature, the situs chosen was head and the weapon used is axe. Therefore, there was possibility of causing serious injury and it gives intention also to commit murder. In spite of sufficient evidence the accused persons have been acquitted and, therefore, the matter deserves admission.

7 It is required to be seen when already the accused persons, who faced the trial, have been acquitted, then whether prima facie there was

sufficient evidence to admit the appeal. The scrutiny, that is, required to be undertaken at this stage, has two folds; 1) whether there was sufficient evidence and 2) whether scrutiny done by the trial Court is perverse ?

8 The testimony of PW 1 Shyamal and PW 5 Kedari would give an impression that around 6.00 a.m. on 06.10.2014 accused No.1 went and started disputing with Shyamal. It has been stated by PW 1 Shyamal that after coming accused No.1 assaulted her with fists and blows by asking as to why she has taken soybean from his field. PW 5 Kedari does not say so though he says that accused No.1 started disputing with his mother. On what count accused No.1 was disputing with his mother has not been explained by him. He further says that after he saw that accused No.1 started disputing he went on his bicycle to call his grandmother PW 4 Vatsalabai and PW 6 Kewalbai. PW 1 Shyamal also says so. PW 1 Shyamal says that after the arrival of her mother and paternal aunt they started asking the accused why he is behaving like that as he has no concerned with their field. Testimony of PW 5 Kedari is on the same line that he went in the village, called Vatsalabai and Kewalbai and then they came to the field. Testimony of PW 4 Vatsalabai would support in saying that when she received information she went along with Kewalbai to the spot. However, none of them have stated as to how much time was consumed. There cannot be a pause button in a quarrel.

After the quarrel starts it is paused and then after some events it is continued. Therefore, the prosecution story itself is unbelievable. PW 1 Shyamal does not say that after the alleged assault by accused No.1 he left the scene and then after some time all the accused came together. She is trying to paint a picture that though accused No.1 assaulted her, he remained there, her son went and called Vatsalabai and Kewalbai and then the further episode started, but then how the other accused came to the same spot, is a question. It is to be noted that PW 6 Kewalbai has turned hostile and denied to have gone to the field or farm house of PW 1 Shyamal and even received the injury. The testimony of Medical Officer PW 11 Dr. Narayan Deshmukh would show that he had examined Kewalbai and had found two simple injuries and issued certificate Exh.93. Here, when the injured herself has turned hostile, then unless the identity of the person is established, we cannot infer that PW 6 Kewalbai is the same person. No doubt, the prosecution has completed the procedure laid down in Section 154 of the Indian Evidence Act, but that was not sufficient. There was admittedly civil dispute between accused and PW 1 Shyamal. Therefore, with the background of enmity and as aforesaid an unbelievable story the trial Judge was correct in not accepting the evidence laid down by the prosecution.

Jadhav and his wife PW 10 Kalinda Manchak Jadhav. Though they have stated that the accused persons were present in the field of Shyamal and Shyamal was assaulted, they have not stated that even Vatsalabai and Kewalbai were also received injuries. They have restricted themselves to the assault on PW 1 Shyamal. Further, in their cross it is transpired that whatever they have stated about witnessing the incident was the improvement and omission as compared to their statement under Section 161 of the Code of Criminal Procedure.

10 The medical evidence does not say that the injury allegedly suffered by PW 1 Shyamal was life threatening, though axe is said to have been used. The axe is stated to be recovered from accused No.1, but since he is an agriculturist he was bound to possess an axe.

11 It has also come on record that the accused had also filed report on the same day against Shyamal, Vatsalabai and offence under Section 324 of the Indian Penal Code has been registered against them. Unfortunately the learned Advocate appearing for the accused appears to have not brought the copy of the First Information Report in that matter on record in this matter. But if that is accepted, then the presence of the accused persons would be presumed, but for the reason that the copy of the spot panchnama in that

case has not been brought by the prosecution, so also, as aforesaid, the copy of the First Information Report, it cannot be tested as to whether it is a cross case or not and then only the point in respect of who is the aggressor can be dealt with.

12 With all the above said lacunas in the prosecution evidence we do not find that case is made out for grant of leave. Application stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

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