

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.156 OF 2018

The State of Maharashtra
Through the Police Inspector,
Ashti Police Station,
Tq. Ashti, Dist. Beed.

.. Applicant

Versus

1. Ravindra s/o. Dashrath Khakal (Died)
2. Ankush s/o Asaram Deshmukh
3. Shaikh Jakir Hidayat
4. Gorakh s/o Kissan Sonwane
5. Deepak s/o Dattatraya Sonawane
6. Shaikh Ansar Hidayat
7. Mahesh s/o Baburao Khakal

.. Respondents

...

Mrs. V. S. Choudhari, APP for the applicant – State.

...

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

DATE : 14th June, 2023

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

. Present application has been filed under Section 378(1)(b) of the Code of Criminal Procedure seeking leave to file an appeal challenging the judgment and order dated 27.03.2018 passed by the learned Additional Sessions Judge, Beed in Sessions Case No.86 of 2011; thereby acquitting respondent Nos.2 to 7 from the offences punishable under Sections 147,

148, 307, 326, 504, 506 read with Section 149 of Indian Penal Code and under Section 4 read with Section 25 of the Arms Act.

2. Heard learned APP Mrs. V. S. Choudhari for the applicant – State. With the able assistance of learned APP, we have gone through the record, which was before the learned Trial Judge.

3. It is to be noted that the prosecution has examined in all nine witnesses to bring home the guilt of the accused. As per the FIR lodged by PW.3 Sachin Suryawanshi, the incident has taken place at about 3.30 p.m. on 26.09.2010. He was taking rest in the house due to illness. His father was grazing the cattle near the house, mother was collecting grass and wife was at home. A four wheeler stopped in front of his house and from that 7-8 persons got down. They started abusing him. Two persons amongst them were holding sword, two were holding wooden log and two were holding iron rod and after seeing this, the informant closed the door of his house, however, after he heard the noise of fire (fire of gunshot), he opened the door, at that time, he found that accused Ankush was holding revolver in his hand. Accused Ravindra and Shaikh Jakki were holding sword, Balu came near him and assaulted on his head by sword. Deepak and Gorakh assaulted him by wooden log. Mahesh, Shaikh Ansar and one unknown person assaulted him by iron rod on his both hands and leg. He became unconscious and thereafter his father had taken him to

Government Hospital, Kada. The doctor asked to shift him at Ahmednagar and from a private hospital from Ahmednagar, he gave FIR.

4. After the evidence was adduced, it was appreciated by the learned Trial Judge and in the meantime, accused No.1 had expired and, thereafter, all the accused i.e. accused Nos.2 to 7 came to be acquitted of all the charges.

5. The learned Trial Judge has appreciated the evidence of P.W.3 Sachin Suryawanshi, P.W.4 Vitthal Suryawanshi - eye witness, P.W.5 Nitin Suryawanshi - eye witness, however, it has been rightly stated that the mother of the informant has not been examined. There is no consistency in the testimony of P.W.3 Sachin, father P.W.4 Vitthal and brother P.W.4 Nitin. No doubt, the injury certificate shows that he had suffered three grievous injuries and two simple injuries, but the fact remains is that when there is no consistency in the evidence, the interested words of the witnesses cannot be believed. From the impugned judgment, it can also be seen that Exhibit-95 was filed before the Court, which was the FIR dated 04.10.2010 in respect of alleged incident dated 26.09.2010. It was alleged in the said FIR by P.W.4 that the accused persons had planned to administer the poison to Gitabai on 29.09.2010, as a result of which she expired on 30.09.2010. In the said FIR Exhibit-95, the incident dated 26.09.2010 is totally silent as regards his own role to rescue his son Sachin, but then Gitabai was alone

projected as the sole eye witness. Therefore, said FIR Exhibit-95 lodged by PW.4 Vitthal destroys the story in the present FIR. The evidence of the panch witnesses has also been disbelieved taking into consideration the admissions given by them in the cross-examination. The panch to the discovery panchanama has turned hostile. The spot panchanama does not make a mention about finding of cartridge at the spot and, therefore, it is taken that the theory of firing by pistol appears to be suspicious. The pistol appears to have been not seized in the matter and the investigating officer is not giving any explanation to that effect. The learned Trial Court has given elaborate reasons. The case is not worth for re-appreciation. We do not find any illegality or perversity in acquitting the respondents. No case is made out for grant of permission. Hence, the application stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm