

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

CRIMINAL APPEAL NO. 930 OF 2022

Atul s/o Subhash Wakchaure
Age : 29 Years, Occu: Labour,
R/o: Nalegaon,
Tq. and Dist. Ahmednagar

... Appellant

Versus

1. The State of Maharashtra
2. Aau @ Kishor s/o Sanjay Bhaganagare
Age: 32 Years, Occu: Labour,
3. Akshay s/o Sanjay Bhaganagare,
Age: 27 Years, Occu: Labour,
4. Sanjay s/o Dattaray Bhaganagare,
Age: 55 Years, Occu: Labour,
All R/o: Kumbhar Galli, Nalegaon,
Tq. and Dist. Ahmednagar.

... Respondents

(Resp. Nos.2 to 4 - Orig. Accused)

...

Mr. Pratik Prashant Pangal, Advocate for the Appellant.

Mrs. P. V. Diggikar, APP for Respondent No.1-State.

...

WITH

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 87 OF 2022

The State of Maharashtra
Through Police Inspector,
Topkhana Police Station,
Tq. & Dist. Ahmednagar.

... Applicant

(Ori. Prosecution)

Versus

1. Aau @ Kishor s/o Sanjay Bhaganagare
Age: 28 years, Occu:- Labour,
2. Akshay Sanjay Bhaganagare,
Age: 23 years, Occu:- Labour,

3. Sanjay Dattatray Bhaganagare,
Age: 51 years, Occu:- Labour,
All R/o. Kumbhar Galli, Nalegaon,
Tq. and Dist. Ahmednagar.

..Respondents
(Orig. Accused)

...
Mrs. P V. Diggikar, APP for Applicant-State.

...

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

DATE : 11.01.2023.

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

1. Appellant (original informant) has questioned judgment and order passed by the learned Additional Sessions Judge, Ahmednagar in Sessions Case No.117 of 2018 by which learned trial Judge has acquitted respondent Nos.2 to 4 from charges under Sections 307, 504, 506 r/w 34 of IPC and under Section 4/25 of Arms Act.

At the same time, State also intends to come up in appeal and thereby seeks leave to file an appeal by filing Application (ALS) No.87 of 2022 against acquittal of original accused Nos.1 to 3 from charges under Sections 307, 504, 506 r/w 34 of IPC and under Section 4/25 of Arms Act.

2. The primary grievance of appellant seems to be that inspite of charge under Sections 307, 504, 506 r/w 34 of IPC and 4/25 of Arms Act, there is no

conviction for above offences. It is submitted that prosecution has examined eight witnesses. Medical witness PW8 Dr.Kausar was also examined who has deposed that there was head injury along with fracture to temporal bone and that such injury was not only grievance one but was infact endangering life. Evidence of PW8 Dr.Kausar ought to have been considered and relied for bringing home the guilt of accused for commission of offence under Sections 307, 504, 506 r/w 34 of IPC and under Section 4/25 of Arms Act, however learned trial Court failed to appreciate such crucial evidence. That further prosecution had also succeeded in causing recovery of weapons. The said weapons were used for targeting vital parts and as such prosecution had made out full-proof case for recording guilt for commission of offence under Sections 307, 504, 506 r/w 34 of IPC and under Section 4/25 of Arms Act and thereby learned trial Court ought to have held all accused, i.e. respondent Nos.2 to 4, guilty and ought to have convicted them according to law. The same had not been done. It is his prayer that the above Judgment under challenge be set aside. That alongwith conviction for offence under Sections 324 and 326 of IPC, accused persons need to be convicted for offence under Sections 307, 504, 506 r/w 34 of IPC and under Section 4/25 of Arms Act.

3. As far as leave to file appeal by State is concerned, they too seem to be dissatisfied on account of acquittal of accused for offence under Sections 307, 504, 506 r/w 34 of IPC and under Section 4/25 of Arms Act, and thereby

intending leave of this Court to prefer appeal against said Judgment of learned trial Judge.

4. We have heard learned Advocate for the appellant - informant in appeal and learned APP for the applicant State in application for leave to appeal. With their able assistance, we have also gone through the oral and documentary evidence which had come up for consideration before learned trial Judge. Having done that, we have also carefully gone through the Judgment passed by the learned trial Judge in Sessions Case No.177 of 2018. On doing so, it is revealed that prosecution was relying on testimonies of in all eight witnesses including injured witnesses. It is emerging from the evidence that, though assault was carried out, intention to commit murder is not found in the available evidence. Rather the incident seems to have taken place at the spur of moment. Investigating machinery seems to have failed in causing recovery of sword which was also put to use.

5. We have minutely examined the medical expert's evidence. There seems to be only single injury on the head. Doctor has not opined that the injuries suffered by injured were either life threatening or endangering life so as to bring the offence of assault under Section 307 of IPC. Similarly, necessary ingredients for attracting offence under Sections 504, 506 r/w 34 of IPC and under Section 4/25 are also not available. Therefore, for want of evidence to

that extent, prosecution has not been able to bring home the guilt of the accused persons. However, in the light of nature of recovery, site of injury and nature of injury as held by learned trial Judge, ingredients for attracting offence under Sections 324 and 326 of IPC being available on record, learned trial Judge has rightly held accused persons guilty for the same. On evaluation of entire evidence, it seems that there was no evidence in support of charge under Sections 307, 504, 506 r/w 34 of IPC and under Section 4/25 of Arms Act. Therefore, we are convinced that the findings reached by the learned trial Judge, thereby convicting accused only for offence under Sections 326 and 324 of IPC and acquitting the accused from remaining charges, is the only possible conclusion that can be drawn from the quality of evidence adduced by prosecution. Therefore, in our considered opinion, appellant (original informant) has also failed to point out as to how there is wrong appreciation by the learned trial Judge while acquitting accused persons from the charge under Sections 307, 504, 506 r/w 34 of IPC and under Section 4/25 of Arms Act.

6. Similarly, even learned APP appearing on behalf of State, though tried to persuade to grant leave to file appeal, could not convince us that there is illegality or perversity committed by the trial Court while acquitting the accused from charge under Sections 307, 504, 506 r/w 34 of IPC and under Section 4/25 of Arms Act. Consequently, both appellant and State having

failed to establish their cases, we refrain from granting the prayers raised by them before us. Hence, we proceed to pass the following order :

ORDER

- (i) Criminal Appeal No.930 of 2022 stands dismissed.
- (ii) Application for leave to Appeal by State No.87 of 2022 is rejected.

(ABHAY S. WAGHWASE, J.) (SMT. VIBHA KANKANWADI, J.)