

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 141 OF 2019

The State of Maharashtra,
Through : In-Charge Police Inspector,
Police Station, Sonpeth,
Taluka Sonpeth,
District Parbhani

... Applicant

Versus

Manik Ramrao Jadhav,
Age : 44 Years, Occ : Agri.,
R/o : Mohal, Taluka Sonpeth,
District Parbhani.

... Respondent
[Ori. Accused]

.....
Mr. S. D. Ghayal, APP for the Applicant-State
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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 11.10.2023

ORDER [ABHAY S. WAGHWASE, J.] :

1. The State is seeking leave to prefer appeal against the judgment and order of acquittal passed by learned Additional Sessions Judge dated 12.03.2019 in Sessions Trial No. 45 of 2014 by which present respondent came to be acquitted from charge under Sections 307, 341 and 504 of the Indian Penal Code [IPC].

2. Inviting our attention to the papers and FIR, learned APP would submit that the alleged incident had taken place on 19.07.2014, when informant-injured alongwith his son Balaji had been to school for admission. It is pointed out that while returning, accused restrained informant-injured questioning him why he had lodged complaint against him at Sonpeth Police Station and in that backdrop, informant was assaulted by *katti* in the abdomen. There was grievous injury. Medical Expert, who has examined and treated informant, has defined the injury to be grievous one. According to learned APP, there is overwhelming evidence apart from testimony of informant, his son, who was accompanying him, and other witnesses. Therefore, it is his submission that evidence of prosecution was inspiring confidence and the charges were brought home, but learned trial court has erred in disbelieving the evidence and has failed to consider and appreciate the settled legal position and has thereby acquitted the accused. It is submitted that there is strong case in appeal for re-appreciation and therefore State is intending to prefer appeal and hence he prays for leave.

3. In the light of above submissions, we have gone through the evidence placed before us which was adduced in the trial court. As many as 17 witnesses seem to have been examined by prosecution.

Informant Vickram's evidence is at Exhibit 34 and in the capacity of PW4. In his substantive evidence, he has stated that he had lodged complaint against accused for abusing him on 18.07.2014. In that backdrop, when he was returning from school with his son Balaji, he was intercepted and questioned by accused and thereafter assaulted. He has given statement while he was in hospital at Parali. The said statement is at Exhibit 42.

4. We have also noticed that apart from above witness, prosecution has adduced evidence of PW6 Satish, PW7 Siddheshwar, PW8 Ashwinkumar and PW11 Balaji, i.e. son of informant. *Prima facie*, they all are found to be consistent about PW4 informant Vickram being assaulted by accused. Medical expert has also been examined and he has deposed about examining informant-injured and about issuing injury certificate. A copy of the injury certificate is also placed on record. Apart from two incised injuries which are simple in nature, there is one grievous injury which, according to the doctor, was inflicted on epigastric region and which is a stab injury. Therefore, in our considered opinion, there is material at least to show that some body offence has been committed. Learned trial Judge seems to have acquitted the accused, however, we are convinced that *prima facie* there is case for re-appreciation in appeal.

Resultantly, prayers deserve to be granted. We therefore proceed to pass the 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, J.]

[SMT. VIBHA KANKANWADI, J.]

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