

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 124 OF 2020

The State of Maharashtra,
Through Police Station Officer,
Police Station, Manwat,
District Parbhani.

... Applicant

Versus

1. Mahadev s/o Balasaheb Raut,
Age : 37 years, Occu: Agri.,
R/o. Rampuri (bk),
Tq. Manwat, Dist. Parbhani.
2. Rameshwar s/o Balasaheb Raut,
Age : 34 years, Occu: Agri.,
R/o. As above.
3. Siddheshwar s/o Balasaheb Raut,
Age : 32 years, Occu: Agri.,
R/o. As above.
4. Vithal s/o Annasaheb Raut,
Age : 27 years, Occu: Agri.,
R/o. As above.
5. Annasaheb s/o Marotrao Raut,
Age : 57 years, Occu: Agri.,
R/o. As above.
6. Balasaheb Marotrao Raut,
Age : 57 years, Occu: Agri.,
R/o. As above.
7. Uddhav s/o Annasaheb Raut,
Age : 30 years, Occu: Agri.,
R/o. As above.

... Respondents
[Orig. Accused]

.....
Mr. S. J. Salgare, APP for the Applicant-State
.....

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

DATED : 26.09.2023

ORDER [ABHAY S. WAGHWASE, J.] :

1. Instant leave to appeal is directed against the judgment and order dated 05.08.2020 passed by learned Additional Sessions Judge, Parbhani in Sessions Trial No. 166 of 2013, thereby acquitting respondents from charge under Sections 307, 143, 147 and 148 r/w 149 of the Indian Penal Code [IPC].

2. Learned APP submitted that respondents were chargesheeted for above offences on the premise that on 17.05.2013, on petty count of branch of a tree falling on their tree, respondents initially abused PW3 Parwati i.e. wife of injured Dattarao [PW1] and therefore, when she reported occurrence to injured persons, they merely went to question said abuse. Getting annoyed by the same, respondents mounted assault on Dattarao, his son Ganesh [PW4] as well as brother Digambar [PW2] by use of axe and sticks. That, injured were taken to hospital. The Doctor, who examined and treated them, is

also witness on behalf of prosecution. Injury certificates are proved by him. MLC was recorded. Injured have consistently deposed about role of each of the respondents. However, learned trial court has disbelieved the case of prosecution and has thereby acquitted the respondents and so, learned APP submits that, it is a fit case for taking exception to by filing appeal and hence he prays for leave, as according to him, there is no proper appreciation of evidence and utter disregard to the settled legal position.

3. After hearing the submissions, we have gone through the record and the impugned judgment. It transpires that as many as 11 witnesses are examined by prosecution in support of the charge levelled against the respondents. Admittedly, complainant party and accused party seem to be immediate neighbours as their agricultural lands are abutting to each other. It is emerging that on 17.05.2013, wife of injured Dattarao [PW1] was abused by accused Balasaheb and Mahadev. On learning to that extent from wife, PW1 Dattarao went to question them and at that time, according to him, Annasaheb, Udhav, Vithal, Siddheshwar, Rameshwar and Mahadev rushed with axe and sticks. Accused Balasaheb directed others to kill all and therefore, accused Mahadev hit axe on the head of Dattarao whereas, accused Balasaheb and Udhav assaulted on his shoulder, back and waist by

means of sticks. When his son and brother intervened, accused Rameshwar and Siddheshwar assaulted on left hand of his son by sticks whereas, accused Annasaheb and Udhav assaulted on right upper arm and left elbow by way of sticks. Accused Vithal kicked his brother in stomach and therefore they went to Manwat Rural Hospital, but were referred to Parbhani and they were admitted and treated.

4. Likewise, even PW2 brother Digambar, PW3 wife Parwati and PW4 son Ganesh have also been examined by prosecution. They are all speaking about PW3 Parwati being abused by accused persons and thereafter, PW1 Dattarao, PW2 Digambar and PW4 Ganesh being hit by means of axe and sticks.

5. Though Dr. Ankush Lad, who treated injured, has been examined as PW10, he has attributed three contused lacerated wounds to Ganesh which are simple in nature, one contused wound to Digambar which is also simple in nature, whereas injured Dattarao has suffered one incise wound, two CLW injuries and one contusion and according him, even Datta has suffered simple injuries. The doctor has identified MLC certificate issued by him. Thus, it is noticed that all three injured have allegedly suffered simple injuries. There is

no suggestion nor any question to the doctor that injuries suffered could have turned out to be fatal or otherwise sufficient in the ordinary course of nature to cause death. Doctor has, in cross, admitted that all were treated as outdoor patients and he also admitted that said injuries noticed by him are possible on account of fall on a rough surface. Therefore, here, apparently injuries so suffered by injured are declared to be simple in nature and are, according to the medical expert, also possible on account of fall on rough surface.

6. There is previous animosity as PW1 Dattarao has admitted about pending case on account of boundary dispute. Independent witness PW5 Keshav and PW6 Rajebhau seem to have reached the occurrence after alleged incident had taken place. Therefore, they cannot be said to be eye witnesses to the alleged occurrence. Therefore, here, there is no motive and even apart from interested witnesses' account, there is no other evidence from independent corners. Taking into consideration the evidence of medico-legal expert, essential ingredients for attracting Section 307 IPC are patently missing. Seizure is also doubtful and there is no explanation for not informing police chowki at Manwat or lodging report immediately, except stating that occurrence was reported to police,

and there is no prompt lodgement of FIR. In spite of availability of medical facility at Manwat, it has been shown that deliberately in absence of medical advice, injured chose to travel to Parbhani and claimed to have got themselves admitted. However, medical expert PW10 Dr. Lad has stated that there was no need for admission and they were treated as outdoor patients. Therefore, in view of already existing animosity, possibility of false implication cannot be ruled out. Therefore, learned trial court has rightly considered the evidence of witnesses and prosecution having failed to establish their case beyond reasonable doubt, the same is refused to be accepted. Resultantly, having found no merit, we are also not inclined to grant leave as prayed for. The application for leave to appeal is accordingly dismissed.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]