



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.201 OF 2018

The State of Maharashtra,
Through :
Police Station,
Nanded [Rural], District Nanded. **...Applicant/Appellant**

Versus

1. Raosaheb Motiram Telange,
Age : 30 years, Occu. : Driver,
2. Shivaji Motiram Telange,
Age : 35 years, Occu. Labour,
3. Motiram Rama Telange,
Age : 70 years, Occu. : Agri.,
All R/o. Kiki,
Tq. and Dist. Nanded. **... Respondents**
[Orig. Accused]

...
Mrs. V. S. Choudhari, APP for Appellant - State
...

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

DATED : 29th SEPTEMBER, 2023

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

1. Aggrieved by the judgment and order passed by Additional Sessions Judge, Nanded in Sessions Case No. 218 of 2013, thereby acquitting respondent Nos.1 to 3 from charges under sections 307, 323, 506 read with section 34 of Indian Penal Code (IPC), State is keen in challenging said judgment by way of appeal and is hereby seeking leave of this court to do so.

2. Learned APP submitted that, by examining six witnesses including injured, prosecution had proved the charges against accused respondents. That, there was use of deadly weapon axe and dagger. Injured is examined by medical expert and there is medical record to that extent apart from the testimony of such doctor. Therefore, all ingredients to attract the charges were very much available in the evidence of prosecution, but learned trial court has failed to consider and appreciate the said evidence in its correct perspective. It is submitted that even settled law has also not been correctly applied and erroneous findings reached at by the learned trial court. According to learned APP, the reasons assigned for non acceptance of prosecution evidence are not convincing. Direct and injured eye witness account has been disbelieved without assigning proper reasons, and therefore, as State intends to prefer appeal, wherein they have every hope of success, leave is prayed for.

3. In the light of above submissions, we have gone through the evidence adduced by prosecution in trial court.

PW1 Vithal seems to be son of injured and informant;

PW2 Suryakant is the injured himself;

PW3 Dr.Syed is the treating doctor;

PW4 Yadeo is the police official who noted report and referred injured to the hospital;

PW5 Ramchandra is the Investigating officer;

PW6 is also a medical expert;

4. We have gone through the evidence of **PW2** Suryakant. According to him, after taking supper, while he was sitting in the courtyard accused persons came, accused Shivaji instigated accused Raosaheb to beat him and accordingly Raosaheb gave blow of axe on the left parietal region, whereas accused Shivaji dealt blow with dagger on the back. His wife and son rushed along with one Maroti Deshmukh and they intervened and saved him. His son took him to police station, who referred him to gramin hospital and was further shifted to MGM hospital, Aurangabad.

Above witness in cross has answered that accused Motiram is his elder brother, whereas accused Raosaheb and Shivaji are the sons of Motiram. He denied that, there was no electricity power that night. Omissions are brought regarding son taking dinner and accused Shivaji initially putting his hand on his shoulder and initially Raosaheb beat. He admitted that he had not informed police about assault by Shivaji with dagger in the back. He admitted that, at police station he did not disclose the incident to police or even to the doctor in hospital.

5. **PW1** Vithal, son of informant, in his evidence at Exh.38 regarding occurrence stated that on 28.06.2013, while he was taking supper in the house, his father was in the courtyard. On call given by mother he came out of the house and claims to have noticed head injury to his father by means of axe. According to him, he saw accused Raosaheb holding axe which was stained with blood, whereas accused Shivaji holding dagger. His cousin Shivaji Tulshiram Telange and Maroti Raosaheb Deshmukh came there and refrained accused from assaulting. The accused threatened him to cause death. Thereafter, Shivaji Tulshiram Telange and he himself took father to the rural police station, Nanded, who referred them to Government hospital, Nanded and from there father was taken to MGM hospital, Aurangabad. He further stated that, on the next day, Sarpanch of village telephoned him and asked him to lodge the report at police station. He further stated that he was in hurry to shift his father to Aurangabad and therefore, he went to police station and cause signature over the report.

His cross shows that he is unaware of even holding his uncle i.e. brother of his father, about the details of the land. However, he admitted that they are residing separately. He claims to be unaware about any dispute between his father and accused. He claims that at the time of incident only he and his mother were

in the house. He answered that, he gave history of assault by axe to the doctor of Government hospital. He claims that he signed on the report at the instance of sarpanch and police and before signing the report he did not read over the contents.

6. **PW3** Dr. Syed deposed about patient namely, Suryakant being brought to Guru Govindsinghji Memorial Hospital, Nanded and on examination, he noticed incised wound of size 8 x 6 x 5 cm on left ear and left temporal area of skull. The wound was fresh and bleeding, but the patient was conscious and well oriented. After one hour, relatives of patient sought discharge of patient against medical advise. He identified certificate at Exh.54 issued by him. According to him, injury was grievous in nature. He denied that, said injury is possible by falling.

PW4 Yadeo and **PW5** Ramchandra are police officials.

7. **PW6** Dr. Sushilkumar Shinde, doctor of MGM hospital at Aurangabad, stated that, there was history of assault by axe and the injury was over left side of the face on left ear. Dr. Ishtiyak Ansari had treated the patient. The injuries were dangerous to the life of patient. He identified the discharge summary at Exh.84.

8. On *prima facie* going through the above evidence, it is

noticed that motive behind the occurrence is not forthcoming. There is said to be use of axe as well as dagger, but dagger is not seized. How axe is seized is not proved by prosecution and pancha to alleged memorandum as well as seizure is not made to step into witness box. It is noticed that, in spite of immediately going to police station first, occurrence is not reported to police or even doctor at Nanded. Alleged occurrence is of 28.06.2013, whereas report is lodged on 29.06.2013. Statement of injured is shown to be recorded after 80 days of the occurrence. Evidence of son PW1 Vithal shows that, when he came out of the house, he merely saw his father with head injury. According to injured, that night he was sitting in the courtyard, whereas his wife and son were in the house. Whereas according to PW1 Vithal, mother called him out of the house, which means she was also outside the house along with injured. Here, there are three accused, but no role is attributed to Motiram. PW1 Vithal does not mark presence of Motiram who is named by PW2. Therefore, overall, prosecution witnesses are not consistent and their evidence is ambiguous.

As stated above, in absence of memorandum, only axe is shown to be seized by Investigating Officer. Alleged dagger is not recovered. Therefore, with such quality of evidence, in our opinion, learned trial court has committed no error in refusing to accept the

case of prosecution. There being no merits, we refuse to grant leave. Hence, application for leave to appeal by State stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)