

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

CRIMINAL APPEAL NO.812 OF 2019

Sopan Shankarrao Wagh

...APPELLANT

VERSUS

- 1) The State of Maharashtra,
- 2) Shrinivas S/o Laxman Wagh @ Jadhav,
- 3) Dhondiram S/o Yadav Jadhav,
- 4) Prabhakar S/o Yadavrao Jadhav,
- 5) Dnyaneshwar S/o Prabhakar Jadhav,
- 6) Jalinder S/o Maroti Sabne,
- 7) Trimbak S/o Keshavrao Wagh,
- 8) Venkati S/o Nagrao Renewar,
- 9) Natha S/o Maroti Sabne,
- 10) Ganesh S/o Digambarrao Giram,
- 11) Kusum W/o Laxmanrao Wagh,
- 12) Shankar S/o Vithal Page,
- 13) Babasaheb S/o Sheshrao Sabne,
- 14) Sushilabai W/o Laxman Wagh,
- 15) Sangram S/o Keshavrao Shinde,
- 16) Pintya S/o Dhondiram Jadhav

...RESPONDENTS

...
Mr.Mahesh K. Bhosle Advocate for Appellant.
Mr.A.M. Phule, A.P.P. for Respondent No.1.
...

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

DATE : 8th FEBRUARY, 2023

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Appeal has been filed by the original informant under Section 372 of the Code of Criminal Procedure challenging the acquittal of the respondents – accused in Sessions Trial No.65 of 2012 by the learned Additional Sessions Judge, Parbhani on 8th July 2019 from the offence punishable under Sections 147, 148, 323, 504, 395 read with Section 149 of the Indian Penal Code and under Section 135 of the Bombay Police Act.

2. Heard learned Advocate Mr. Bhosle appearing for the appellant and learned APP Mr. Phule appearing for the State.

3. It can be seen from the evidence that has been led to bring home the guilt of the accused, PW-1 Sopan Wagh i.e. present appellant – informant that accused has come to his field

around 2.00 p.m. on 21st October 2009 and he was beaten by them by aerial roots of the banyan tree. It is stated that accused Nos. 3, 5 and 12 have assaulted him by the said roots. Accused No.1 had assaulted by way of knife on the palm of the informant and then he says that he has become unconscious. He has told that the accused had snatched his golden chain, golden ring and cash worth Rs.2000/-. The medical evidence is in the form of PW-6 Dr. Sandeep Wankhede, who has examined the informant on the same day and has found multiple imprint abrasion, CLW on right ear back side, CLW on finger and contusion at right knee. Important point to be noted is that the said medical evidence does not show any cut injury with the knife. With the help of knife, which is sharp weapon, how CLW will be caused, is a question and it was not answered by the prosecution. Further, there is apparent delay of two days in lodging the report and Section 395 of the Indian Penal Code came to be added on 29th November 2009. The important improvement is that appellant has disclosed the fact that accused Nos.3, 5 and 12 assaulted him with the roots of banyan tree. PW-4 Nagesh, son of the appellant claims himself to be the eye witness. If his testimony is to be accepted, then what prevented him from lodging the report immediately, is a question. There are improvements in the

testimony of other witnesses also. PW-4 Nagesh does not assign role to specific accused, rather he says that accused assaulted his father with stick and knife. He does not say about assault by roots. In his cross-examination, PW-6 has stated that the names of the accused are Dhondiram, Prabhakar and Shrinivas. He further says that he is unable to recollect names of other accused persons. That means, he was not even knowing the accused persons. What can be gathered from the evidence is that there is partition suit pending between the families. Under such circumstance, possibility of false implication cannot be ruled out.

4. The learned trial Judge appears to have appreciated the evidence properly. No illegality or glaring mistake has been committed so as to admit the Appeal and the Appeal deserves to be dismissed.

5. Accordingly, the Appeal stands dismissed.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE