

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.142 OF 2020

The State of Maharashtra,
Through Police Station Officer,
Dharur Police Station,
Tq. Dharur, Dist Beed.

..Applicant..
(orig. complainant)

Versus

1. Gorakshanath alias Balu Yeshwant Gholve,
age 36 yrs.
2. Suraj Machhindra Gholve,
age 26 years.
3. Umesh Maruti Munde,
age 27 years.
4. Yeshwanta Kerba Gholve,
age 87 years.
5. Maruti Yeshwant Gholve,
age 52 years.

All R/o Ambewadgaon,
Tq. Dharur, Dist. Beed.

..Respondents..
(orig. accused.)

...
Mr A.M. Phule, AGP applicants.

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**CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.**

...
DATED : 4th JULY, 2023.

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ORDER :- (Per S.G. Chapalgaonkar, J.)

1. The State of Maharashtra approaches this Court under section 378 (1)(b) of the Criminal Procedure Code seeking leave to file appeal against the judgment and order dated 30.1.2020 passed by the

Additional Sessions Judge at Majalgaon, District Beed in Sessions Case No.15 of 2015.

2. The case of the prosecution before the Trial Court was that one Sachin Pandurang Gholve lodged a report with the police station that he and his brother are serving in Indian Army. He was on leave for two months up to 8.5.2014. On 24.6.2014 at about 8 am while he was standing in front of pan stall owned by one Bandu Gholve at Bus stand, he received a blow from backside on his head. When he turned back he saw accused Gorakshanath @ Balu holding scythe (koyta) in his hand. Accused Gorakshanath gave another blow on his head. Accused Gorakshanath was accompanied with Umesh, Suraj, Yashwanta and Maruti. All of them were holding sticks in their hands and beat the informant by means of stick. Gorakshanath gave one more blow of scythe on left hand and injured him with intention to kill. Meanwhile, Bandu, Navnath, Deepak rescued him. They wrapped handkerchief on the injuries and took him to home. Thereafter, the informant, his mother and brother reported the incident to Dharur Police Station. MLC was recorded and after primary treatment, he was referred to Medical College and Hospital at Ambajogai. On the basis of the report, crime no.84 of 2014 was registered at Police Station, Dharur, District Beed for the offence punishable under section 147, 148, 307, 504, 506, r/w 149 of the Indian Penal Code. During the course of the investigation, statements of the witnesses were recorded, spot panchnama was drawn and charge-sheet was filed against the respondents/accused persons in the Court of Judicial Magistrate First Class, Dharur. Thereafter, the case was committed to the Sessions Court at Majalgaon. Since the accused pleaded not guilty, they were put to trial for the charges framed. During the course of the trial, prosecution relied upon the evidence of in all 9 witnesses. However, except PW-1 Sachin (informant-injured), PW-2

Sindhu (mother of the injured) and PW 8 Baburao Panpatte (IO), none support the case of the prosecution.

3. The Sessions Court, after hearing the parties, acquitted the accused u/s 235 (1) of the Cr.P.C. from all the charges.

4. Mr. Phule, the learned APP would submit that the case of the prosecution is based on the evidence of injured witness which is supported by the PW-2. He would further submit that the medical evidence on record supports that the PW 1 had suffered serious injuries in the incident dated 24.6.2014. It is further contended that the Sessions Court has not given adequate reasons for discarding the evidence of injured PW-1 and supporting evidence of PW-2. According to Mr. Phule, medical evidence corroborates the evidence of consistent eye witnesses. He submits that evidence of PW-8 I.O. proves the spot of the incident. According to him, the prosecution has proved its case beyond reasonable doubt and reasoning adopted by the Sessions Court does not stand to reason. He urges that re-appreciation of evidence is necessary in appeal before this Court and seeks to grant leave to file appeal.

5. We have heard the learned APP appearing for the applicant/ State. With his able assistance, we have perused the oral as well as documentary evidence tendered into service by the prosecution to bring home the guilt against the accused persons. We have perused the reasoning adopted by the Sessions Judge while recording acquittal against accused persons.

6. The case of the prosecution is based on evidence of PW-1, who himself is injured and also the informant. The contents of the first information report itself suggests that the family of the informant and accused are maintaining inimical terms for generations. The informant

states that he and his brother are serving in Indian Army and both of them were on leave. The incident alleged to have taken place at 8.00 am at Bus stand in front of a Pan stall. The narration in the FIR would suggest that there were four eye witnesses to rescue the informant while accused attacked him. Further, the informant had received bleeding injuries on account of brutal attack using the scythe and thereafter sticks. Pertinently, none of the eye witness except the informant himself and his mother supported the prosecution version.

7. Although, PW-2 who is mother of the informant narrated the incident in same line with the PW 1 she admits in the cross-examination that when the injured PW-1 was brought to home, other witnesses informed her about the incident. She admits that she was at home when the informant was brought by the other witnesses i.e. PW-5, PW-6 and PW-7. She further states that, on her inquiry PW-6 Navnath told her about the incident. Apparently, she has hear-say information of the incident though she has been posed as an eye witness. The Sessions Court recorded elaborate reasons to discard her testimony. The prosecution story narrates that the spot of the incident is in front of Pan shop, which is owned by PW-5 Bandu Gholve at Bus stand of Ambewadgaon. However, neither PW-5 nor PW-3 Somnath i.e. witness on spot panchnama supports the version of the prosecution. PW-3 Somnath in his evidence candidly states that he was at home at Dharur on the date of panchnama and he was never being called at the police station. Although, he admits signature on the spot panchnama, candidly denies the contents thereof. Pertinently, nothing incriminating has been recovered from the spot. The prosecution further relies on the recovery of scythe at the instance of the accused Gorakshanath under a memorandum statement. The evidence of PW-4 Gautam a panch is recorded. However, he denies preparation of the panchnama. As such, prosecution failed to prove recovery of incriminating article. PW-8, I.O.

Baburao Panpatte in his evidence candidly admits that blood-stained clothes of the injured or witnesses are not seized. Even, the incriminating articles like soil or stones lying on the spot or motorcycle that was used by the injured has not been recovered. He admits that the alleged weapon i.e. scythe was not sent to chemical analysis. The entire investigation appears to be doubtful.

8. So far as the evidence of PW-1 is concerned, it is also not free from the doubts. Narration of the incident given by him shows that he was hit using scythe by the accused Gorakshanath. The deposition of PW-9 Ravi Ghundare, a doctor attached with SRTR Hospital is recorded. The narration of the injuries noted by him at the time of the admission of the injured depicts that no injury on occipital region which ought to have been noted if the accused had assaulted from backside on head of the injured. The admission to that effect in the testimony of PW-9 is fatal to the case of the prosecution. PW-9 further admits that no other injuries were noted in the MLC register except noted by him. The PW 9 further admits that from the date of the incident, he had not issued injury certificate nor prosecution demanded it to him and he has produced the same directly before the Court. It creates sufficient doubt on the version of the PW-9 and injury certificate produced by him. Pertinently, PW-9 admits that size of the incise wound mentioned in MLC exhibit 121 is not possible by the weapon Article 'A' Scythe. This admission further dislodges the case of the prosecution. It is worthy to note here that initially PW-1 was examined by Dr. Sangle from Rural Hospital, at Kille Dharur but his evidence is not recorded though he has been cited as a witness.

9. The analysis of the evidence or record would show that the case of the prosecution does not inspire the confidence. The Sessions Judge recorded adequate reasons in the impugned judgment for acquittal

of the accused. Hence, we are not convinced to grant leave to file. It is trite that in an appeal against acquittal, the appellate Court cannot replace the finding of the fact or super impose its view when possible view is taken by trial court. The Supreme Court in case of ***Shivaji Sahabrao Bobade and Anr. Vs. State of Maharashtra*** reported in ***(1973) 2 SCC 793*** observed thus :-

“In law there are no fetters on the plenary power of the appellate Court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty to scrutinize the probative material de novo, informed, however, by the weighty thought that the rebuttable innocence attributed to the accused having been converted into an acquittal the homage our jurisprudence owes to individual liberty constrains the higher court not to upset the holding without very convincing reasons and comprehensive consideration.”

10. Applying the aforesaid principle in the facts of the case, we do not find substance to grant of leave to file the appeal. Hence, the application is rejected.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

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aaa/-