



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.198 OF 2019

The State of Maharashtra,
Through Police Station Officer,
Satara Police Station,
Aurangabad.

... Applicant

Versus

1. Ajay Ramesh Thakur,
Age : 26 years, Occu. : Nil,
R/o. Sai Nagar, Satara Parisar,
Aurangabad.

2. Akshay Kailas Bande,
Age : 26 years, Occu. : Nil,
R/o. Hamalwada, Aurangabad.

... Respondents.
(Orig.Accused Nos.1 and 2)

...
Mr. A. M. Phule, APP for Applicant - State
...

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

DATED : 25th OCTOBER, 2023

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

1. Judgment of acquittal of respondents from charges under sections 307, 332, 353 read with section 34 of Indian Penal Code (IPC) and section 135 of Bombay Police Act and section 4/25 of the Indian Arms Act passed by Additional Sessions Judge, Aurangabad in Sessions Case No. 309 of 2016, is sought to be challenged by filing appeal and hence State has preferred instant application praying for leave to do so.

2. Learned APP would submit that, one crime was registered in Osmanpura Police Station bearing Crime No.103 of 2016. Accused therein was absconding and on receipt of secret information that he was likely to travel Paithan Link Road, trap was laid. It is pointed out that, accused was seen coming on a motorcycle as a pillion rider, and therefore, he was tried to be intercepted to apprehend him, but the motorcycle was ran over the police officer. Accused also pointed revolver. Fortunately, the police squad apprehended accused. However, accused in furtherance of common intention had deliberately run motorcycle on the person of informant with intention to kill him, and therefore, charges were slapped and he was tried by prosecution by examining in all 7 witnesses. All persons were present in the police squad have been examined. Panchas have also supported the prosecution. Therefore there was sufficient evidence against respondents, however, there is no proper appreciation of the evidence adduced by the prosecution and learned trial court has disbelieved the testimonies of police officers and have acquitted the accused - respondents from above charges. There is every hope of success in appeal on re-appreciation of evidence and therefore leave is prayed for.

3. After hearing learned APP, we have gone through the evidence adduced by prosecution in trial court which comprises of oral evidence of 7 witnesses coupled with documentary evidence.

4. Informant **PW2** PSI Anil Wagh in his evidence has stated that, accused against whom NBW was issued, was to be apprehended. On secret information on 21.07.2016, trap was laid. Accused was seen coming at about 19:40 hours and when this witness tried to stop the motorcycle, it is alleged that, he was tried to be run over. As a result of which, he fell down and sustained injuries. Informant **PW2** PSI Anil Wagh stated that, accused sought to be apprehended was also possessing country made revolver. However, he was admitted in CIIGMA hospital.

PW3 PI Bharat Kakade, pancha also a police officer stated that **PW2** PSI Anil Wagh was admitted in the hospital on account of injuries on being hit by vehicle. Police officer was treated in CIIGMA hospital.

PW4 PSI Amitkumar Bagul also a police officer claims that he was among the police squad which had laid trap to apprehend accused Ajay Thakur. Accused came on motorcycle and when they were tried to be stopped, motorcycle was run over the

police officer. In personal search of accused, he was found to be possessing arms.

PW5 Yogesh is a pancha. He resiled from his earlier statement and did not support prosecution case.

PW6 Dr. Unmesh Takalkar, Medical Practitioner, who examined PW2 PSI Anil Wagh and he identified MLC certificate (Exh.57) regrading contusion on right knee, chest and abrasion over right elbow joint.

PW7 PSI Ravindra Bagul is the Investigate Officer.

5. Here, case of prosecution was that wanted accused was to be apprehended and therefore police officer claims that on receipt of secret information, trap was laid.

6. Cross of police officer shows that, said secret information is not noted. Secondly, there is no independent witness except police officers. Pancha has not supported the prosecution. Other members of both the teams are also not examined for the best reasons known to the prosecution. Even otherwise, case is put-forth that wanted accused was pillion rider and the person riding the motorcycle tried to run motorcycle over police officer. Therefore, section 307 of IPC cannot be attracted.

Police Officer has admitted that he suffered injuries on account of fall. Evidence of doctor does not show that injuries suffered by police officer were life threatening so as to attract section 307 of IPC.

7. Mere recovery of weapon which was allegedly pointed out is not sufficient to attract above charges. Evidence of PW3 PI Bharat Kakade, PW4 PSI Amitkumar Bagul and Investigating Officer PW7 API Ravindra Bagul is not consistent. Exh.74 also further renders story of prosecution doubtful.

8. In our opinion, all these aspects are correctly appreciated by the learned trial court and as story of prosecution does not have sufficient independent corroboration apart from several lacunas, learned trial court has committed no error in acquitting the accused. Learned APP also could not satisfy us that there was otherwise evidence warranting conviction. Taking all above discussed material into consideration, finding no merits in the same, we refuse the leave.

9. Application stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)