

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.822 OF 2022

Pandit s/o Navnath Saste
Age: 29 years, Occu.: Agriculture,
R/o. Tippiatwadi,
Tq. and Dist. Beed.

.. Appellant

Versus

1. The State of Maharashtra
Through Learned A.P.P.
2. Kalyan Babasaheb Saste
3. Rajesh Kalyan Saste
4. Bapu Babasaheb Saste
5. Shivaji Babasaheb Saste

.. Respondents

...
WITH

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.144 OF 2022

...
Mrs. J. S. Aute, Advocate for appellant.
Mr. A. M. Phule, APP for respondent No.1 - State in Criminal Appeal
No.822 of 2022 and for appellant in ALS No.144 of 2022.

...

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

DATE : February 22, 2023.

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

. Criminal Appeal No.822 of 2022 has been filed by the original
informant to challenge the acquittal of the respondents - original

accused by learned Additional Sessions Judge, Beed on 07.07.2022 thereby acquitting them from the offences punishable under Sections 307 and 323 read with Section 34 of Indian Penal Code in Sessions Case No.95 of 2015. The prosecution i.e. State wants to challenge the said judgment by seeking leave to appeal under Section 378(1)(b) of the Code of Criminal Procedure in Application for Leave to Appeal by State No.144 of 2022.

2. Heard learned Advocate Mrs. J. S. Aute for the appellant and learned APP Mr. A. M. Phule for respondent No.1 - State at the stage of admission and perused the documents and depositions, which were before the Trial Court.

3. In short the prosecution story was that the appellant - Pandit lodged report with Beed Rural Police Station on 17.08.2014, which came to be registered vide Crime No.118 of 2014. He has stated that he resides with his brother and parents. His elder brother Santosh resides separately from the entire family. Accused No.4 Shivaji is a teacher, so also accused No.3 Bapu is also a teacher. Accused No.1 Kalyan, accused No.3 Bapu, accused No.4 Shivaji all are brothers *inter se* of Navnath - father of the informant. Accused No.2 Rajesh is the son of accused No.1 Kalyan. There is dispute in respect of agricultural land since about 3 to 4 months prior to the FIR. On

17.08.2014, around 1.00 p.m., informant - Pandit had received phone call from his maternal uncle stating that accused persons want to settle the dispute and, therefore, Pandit, Satish and Navnath went to their agricultural land Gut No.414. The accused persons were already present and, at that time, injured Satish asked them as to why his younger brother and mother were assaulted in the last month. Thereupon accused No.4 came running towards Satish and slapped him and then caught hold of his neck, at that time, accused No.3 and accused No.1 came there. Out of them accused No.3 caught hold of both the hands of Satish and accused No.4 took out knife from his pocket. When Pandit went running towards his brother, at that time, accused No.4 had stabbed Satish with knife causing injury to his left and right side of abdomen. When Satish tried to raise defence by raising his hand, he received injury to his right hand. Accused Nos.1 and 2 took stones and started pelting it towards informant Pandit and his mother. Pandit and his mother received covert injury. Satish became unconscious and then all the accused persons fled away. Satish was shifted to Civil Hospital, Beed in unconscious state. After Satish had regained consciousness, it appears that his statement was recorded by police as well as by the Executive Magistrate. It is styled as dying declaration. After the investigation was over, charge-sheet came to be filed. After the committal of the case, the prosecution has

examined in all nine witnesses to bring home the guilt of the accused and after considering the evidence and hearing both sides, the learned Additional Sessions Judge has acquitted all the accused persons. Hence, these proceedings.

4. The main points on which learned Advocate for the informant as well as learned APP have stressed are the consistent statements of the injured persons i.e. P.W.1 Pandit and P.W.2 Satish. It is stated that the learned Trial Judge has not appreciated their evidence properly. Their testimony could not have been brushed aside only on the ground that they are interested witnesses. Their testimony was supported by the medical evidence as the injury certificate of Satish has been proved through P.W.6 Dr. Poonam. The testimony of these three witnesses was sufficient to hold that the accused persons have committed the offence. Though two persons have been examined by the defence as defence witnesses to prove the *plea of alibi*, even the learned Trial Judge has held that it has not been proved. Under such circumstance, re-appreciation of evidence is necessary requiring admission of both the proceedings.

5. At the outset, it is to be noted that P.W.1 Pandit and P.W.2 Satish are the only two persons, who have been examined to prove the incident. If we take the FIR as it is, it is stated in the FIR that when

the maternal uncle had given the information, Pandit, Satish and their father had gone to the field, but thereafter in the FIR it is stated that the mother has received injuries. From where the mother has come has not been explained by them. The prosecution ought to have then examined the parents. In the FIR itself as well as in the testimony, both of them have admitted that there is dispute in respect of common bandh between their family and the family of the accused. Therefore, there was reason for false implication and, therefore, in order to rule out the possibility, the other persons who were present at the spot ought to have been examined. Perusal of the deposition of P.W.1 Pandit and P.W.2 Satish would show that there are many contradictions and their testimony does not support the medical evidence. No doubt, the medical evidence shows that as per Exhibit-66 there were four injuries to Satish. Two of them were stab injuries and two were CLW. The CLW was on left forehead and right palm. At one place both of them have stated that accused No.3 had caught hold of both the hands of Satish and then accused No.4 had given the stab injuries, then how there could be injury to the right palm, is a question. To explain the said injury to the right palm, it is stated that when accused No.4 wanted to give blow, then in defence/resistance, the hand was raised by Satish. It is not stated by both of them that when once the stab injury was given by accused

No.4, accused No.3 had left the hands of Satish. Further, it has been rightly observed that the description of the stab injuries would show that none of the injuries were deep more than 1 cm. when the blade of the knife was 3.2 cm. Another aspect that has been noted is that though in the testimony the stab injury is stated at left side of chest and below abdomen, however, in the injury certificate, it is stated to be at left side of abdomen and right hypochondrium. So the place where the injury was received is also different. Injury to forehead has not been stated by anybody. All these are definitely important omissions. The maternal uncle, who had given the information to P.W.1 Pandit is not examined. Another fact is that if there would have been talks of settlement, then some other person, who is not connected to the families, would have been called or at-least, the maternal uncle would have present at that time. Therefore, when only the two brothers with whom admittedly there is enmity with the accused have been examined, therefore, with the inconsistencies noted, the learned Trial Judge was justified in holding that the offence is not proved. It is also doubtful as to where exactly the incident has taken place, because the spot panchanama does not disclose the signs of scuffle. As regards the discovery panchanama also P.W.8 Pramod has turned hostile. At the time of alleged recovery there was no blood stains on the blade of knife. Further it is doubtful

as to when exactly Satish regained consciousness. Though his two statements have been recorded, as if it is dying declaration, since he is alive, they will have to be taken as mere statements or rather a statement equivalent to statement under Section 161 of the Code of Criminal Procedure. Therefore, the scanning of evidence once again being the first Appellate Court would show that the Trial Court has not erred in acquitting the respondents - original accused persons. Prosecution had failed to prove the offences beyond reasonable doubt. Both the proceedings require to be dismissed at the threshold. Accordingly, Criminal Appeal No.822 of 2022 as well as Application for Leave to Appeal by State No.144 of 2022 stand dismissed.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm