

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 226 OF 2018

The State of Maharashtra
through Parner Police Station,
District Ahmednagar.

... Applicant

Versus

Khandu Mahadu Yeole,
Age: 40 years; Occupation: Driver,
R/o Renwadi, Taluka Parner,
District Ahmednagar

... Respondent
[Ori. Accused]

.....
Mrs. V. S. Choudhari, APP for the Applicant-State.
.....

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

DATED : 13.06.2023

ORDER [ABHAY S. WAGHWASE, J.] :

1. This is a leave by State to enable them to assail the judgment and order dated 21.07.2018 passed by learned Additional Sessions Judge, Ahmednagar in Sessions Case No. 157 of 2015 which was tried on the charge filed by Parner Police for the offence under Sections 307, 323 and 504 of the Indian Penal Code [IPC] and Section 4 r/w 25 of the Arms Act.

FACTUAL MATRIX

2. Present respondent-original accused Khandu was chargesheeted on allegations that informant Jaising had been towards Maruti temple for darshan. Around 8.30 p.m. he heard accused Khandu abusing loudly in front of his house. Therefore he was questioned and it was realized that he was under influence of liquor. Accused Khandu caught hold of hand of informant's wife Haranabai and twisted it. Seeing this, when informant went to her rescue, accused initially shoved him as a result of which he fell down and thereafter accused took out a knife from his pocket and gave blow on informant's left side ribs as well as left side of chest. Informant's wife Haranabai and other villagers, namely, Shridhar, Bhausahab and Hanumant took him to hospital and there he gave statement, on the strength of which crime bearing no. 91/2015 for the above offence was registered.

3. After investigation and completing all formalities, accused was chargesheeted and his case was committed for trial before learned Additional Sessions Judge, who conducted trial, recorded evidence adduced by prosecution, heard both sides and after appreciating the evidence of prosecution, acquitted the accused by judgment and order dated 21.07.2018.

4. Such judgment and order is proposed to be taken up in appeal and hence the leave application.

5. Learned APP would point out that prosecution had opened the trial by examining very informant-injured Jaising (PW1) who had narrated the entire occurrence. His wife Haranabai (PW2), who was present with him, has also been examined. Another independent witness Shridhar (PW4), who was also present and had shifted injured to hospital, is also examined and thereby prosecution had adduced evidence of direct eye witnesses. Therefore, case of prosecution was strong enough to be accepted for proving guilt. That, medical evidence is also on record which is categorically about injury to be possible by knife. Learned APP submitted that there is recovery at the instance of accused. Pancha to that extent is also examined by prosecution. All witnesses have withstood the extensive cross-examination and their evidence has remained unshaken and therefore, it is her submission that, case of prosecution ought to have been accepted as established and guilt ought to have been recorded. That precisely has not happened and therefore it is submitted that State intends to prefer appeal and hence, as there is every hope of succeeding in the appeal, it is prayed that leave be granted.

6. We have carefully sifted the evidence on record. We have carefully gone through the so-called star witnesses of prosecution i.e. injured informant, his wife, and witnesses who lifted and shifted injured to hospital.

7. PW1 injured Jaising in his cross-examination has stated that article no.1 knife is meant for cutting radium and the blade is 2½ inches in length and ½ inch in width. Further he denied that the said article is not a knife. He admitted that there are no blood stains over it. In para 7 of the cross-examination, he has answered that he stated before police on 11.03.2015 that accused was abusing all of them, but he is unable to assign reason why it is not mentioned in his statement. He admitted that it is from his wife he learnt about arrival of Shridhar, Hanumant and Bhausahab. He claims that he had stated before police about accused inflicting blow on his left rib but he is unable to state why it is not appearing in his statement.

8. PW2 Harahabai is another witness. She too narrated that on 11.03.2015 when her husband was returning from temple, accused was abusing in front of their house and on being questioned by her husband to that extent, accused twisted her hand and when her husband came to her rescue, accused pushed him, made him fall and

gave him two blows of knife on his chest and ribs on left side and ran away.

9. PW4 Shridhar is the witness who even according to PW1 was present at the spot. However, on carefully examining his evidence at Exhibit 39, it is evident from his examination-in-chief itself that whatever information he had about the actual occurrence, is learnt by him from PW2 Haranabai ie. wife of informant.

10. Though informant also names PW5 Hanumant to have reached the spot but in his testimony Exhibit 40 he has not whispered about seeing the occurrence. On the contrary, he merely speaks about occurrence taking place on 11.03.2015 and taking informant to hospital. He seems to have acted as pancha to seizure of shirt of injured. Therefore he cannot be said to be an eye witness to the occurrence.

11. Therefore, what is emerging on analyzing the evidence of so-called eye witnesses is that firstly, what were the abusive words hurled by accused has not been stated either by PW1 informant Jaising and his wife PW2 Haranabai, who only appear to be present when the alleged incident took place. Injured himself as well as his

wife have admitted that the article with which injury was inflicted, is not a knife at all. Rather it is a blade meant and used for cutting radium.

12. Another important witness is PW6 Dr. Swapnil and his testimony is at Exhibit 43. In substantive evidence he spoke about examining PW1 Jaising at 11.30 p.m. and according to him, the injury was grievous. He stated that if immediate treatment would not have been provided, there would have been danger to the life of patient. He identified injury certificate Exhibit 44 issued by him.

While facing cross, doctor has stated that Exhibit 44 is not in the name of Dhande Hospital where he claims to be working as consulting doctor. Nor there is any seal or serial number over the said certificate. He admitted that injury no.1 noted in Exhibit 44 is not a stab wound. He candidly admitted that muddemal article no.1 is not a sharp edged weapon and that injury no. 2 is not possible by article no.1. To a question whether injury nos.1 and 2 would cause death, he has answered that wound itself will not cause death but complications may lead to death.

Therefore, the above medical evidence also is drifting the case of prosecution away from attempt to murder.

13. Other witnesses which are examined are PW3 Shivaji, a pancha to spot panchanama. There is no serious dispute about the same. PW5 Hanumant, whose evidence is already discussed above, has identified article shirt but there is variance in the colour stated by PW1 and PW2 and this witness. Apparently it was seized on 20.03.2015 even when alleged occurrence has taken place on 11.03.2015 and at such time, said shirt was on the very person of injured. In spite of police visiting hospital on 11.03.2015, no seizure of shirt appears to have been done.

14. PW7 Goraksha, pancha to memorandum of disclosure and seizure done on 16.03.2015, has admitted that he has acted as pancha to various other panchanamas and that sometimes police used to obtain his signature in the police station itself. He has admitted in cross-examination that it is not noted in panchanama Exhibit 48 about accused producing knife from upper side of door frame of his house, about which he had already stated in chief. Therefore, even his testimony cannot be safely relied.

15. consequently, in the case in hand, firstly what was the intention or *mens rea* for accused to abuse and inflict injury has not clearly come on record. Why accused was allegedly hurling abuses in front of house of PW1 informant Jaising is not clarified. What was the nature of abuse has also not come on record. Above discussed evidence shows that article put to use is not a knife as is alleged by prosecution's own witness. There are variances and contradictions as regards to colour of shirt and its seizure is concerned. So called independent witness PW4 Shridhar seems to have mere hearsay information. Therefore in this case, there is no corroboration from independent corner. Medical evidence is also not free from doubt. Consequently cumulative effect of above quality of evidence, it cannot be said that case has been proved against the accused beyond reasonable doubt. Therefore, learned trial court has also refused to act upon such evidence for recording conviction. Resultantly, there being no merit in the case, we refuse leave. The application for leave to appeal by State is dismissed.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]