

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 230 OF 2019

THE STATE OF MAHARASHTRA
VERSUS
RAM @ RAMRAO S/O. NARSINGRAO KADAM & 17 OTHERS

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Advocate for Appellant/State : Mr. R.V. Dasalkar
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CORAM : SMT. VIBHA KANKANWADI &
Y.G. KHOBRADE, JJ.
DATE : 23rd March, 2023

ORDER :- (Per: Y.G. Khobragade, J.)

1. The present application under Section 378(i)(b) of the Cr.P.C. is filed by the prosecution seeking leave to file appeal against judgment and order dated 06.07.2019 passed by the learned Additional Sessions Judge, Parbhani in Sessions Trial No.11/2012, thereby the respondent-accused nos.1 to 18 are acquitted for the offence punishable under Section 302, 325, 326, 324, 504 read with Section 149 of the I.P.C. and under Section 135 of the Bombay Police Act in Crime No.43/2009 registered with Police Station Palam, District Parbhani.

2. With able assistance of the learned APP, we have gone through the record and we have considered the evidence which was before the learned

trial Court for considering the application on the point of whether leave can be granted to the prosecution to file appeal.

3. In nutshell it is the case of prosecution that, informant-Bhimrao Galande (PW1) lodged FIR with Palam Police Station, District Parbhani at about 21.40 hrs. on 03.06.2009, alleging that when he along with Shivaji Malge, Damodar Kadam, Dhanaji Ganar were sitting near Maroti temple at about 7.00 p.m., accused persons came there holding sticks, axes. Accused persons assaulted them on the ground of citing them as witnesses in the report lodged by one Dhanaji Ganar with Palam Police Station. According to the informant, the accused no.15-Laxman Kadam had assaulted him with stick on his head. Accused no.1-Ram @ Ramrao Narsingrao Kadam assaulted on his head and back. The accused no.2-Prahlad Kadam assaulted the victim-Shivaji Malge with axe and stick on his head and hand; whereas, the accused no.5-Shamrao Kadam, accused no.6-Maroti Kadam and accused no.12-Keshavrao Kadam assaulted Damodar Kadam with axe and katti. When Ankush, Manohar Khedkar, Hanumant Potpole came there to pacify the quarrel, the accused no.2-Prahlad Kadam and others assaulted them by stick, stone, axes, katti. On the basis of said report a Crime No.43/2009 registered against the respondent-accused for the offence punishable under Section 302, 325, 326, 324, 504 read with Section 149 of the I.P.C.

4. The Investigating Officer-PW12-Ramchandra Adkine conducted investigation and recorded spot panchanama and seized blood stained clothes of accused persons. However, the injured Damodar Kadam died during treatment at 9.30 p.m. on 03.06.2009, therefore offence under Section 302 of the I.P.C. came to be added in said crime. The Investigating Officer had drawn inquest panchanama of dead body of Damodar Kadam and referred it for autopsy. Thereafter, the Investigating Officer recorded the statements of the witnesses and seized weapons i.e. stick, axe, katti, stones. He has collected injury certificates of the injured persons and post mortem report of the deceased. On completion of investigation, charge-sheet came to be filed. On compliance of Section 207 of the Cr.P.C., the learned Magistrate passed an order under Section 209 and committed the trial to the Court of Sessions.

5. After the committal of the case, the learned trial Court has framed charge at Exh.29 against the respondents-accused. The accused persons have pleaded not guilty and claimed for trial.

6. In order to bring home the guilt of the accused, the prosecution has examined informant-Bhimrao Galande (PW1) at Exh.103, Shivaji Narayan Malge (PW2) at Exh.109, Vitthal Vyankatrao Kadam (PW3) at Exh.123, Dhanaji Bapurao Ganar (PW4) at Exh.126, Manohar Sambhaji Khedkar (PW5) at Exh.136, Vithal Hari Saudagar (PW6) at Exh.145, Sudhakar Kashinath Hamne (PW7) at Exh.160, Gangadhar Deorao Shinde (PW8) at Exh.166,

Kiran Namdeorao Bidwai (PW9) at Exh.171, Uttam Marotrao Ingle (PW10) at Exh.190, Mangesh Krishanrao Nachankar (PW11) at Exh.194, Ramchandra Sakharam Adkine (PW12) at Exh.19, Vikram Manikrao Shinde (PW13) at Exh.203 and Kundankumar Bapurao Waghmare (PW14) at Exh.232. Besides oral evidence the prosecution has proved Report-FIR Exh.104, injury certificate of injured-Bhimrao Galande at Exh.175, injury certificates of the injured Exh.171, 172, 173, 176, 177, 178, seizure panchanama, spot panchanama-Exh.161, inquest panchanama Exh.128, post mortem report Exh.191, memorandum statement of accused no.1-Ram @ Ramrao Kadam at Exh.146, seizure panchanama of axe at Exh.148, memorandum statement of accused no.2-Prahlad Kadam and seizure panchanama of axe at Exh.149, memorandum panchanama at Exh.150, seizure panchanama of wooden log at Exh.151, memorandum statement of accused no.5-Shamrao Kadam and seizure panchanama Exh.153 in respect of seizure of katti, memorandum panchanama at Exh.154 (Maroti Kadam) accused no.6 and seizure panchanama of axe at Exh.155.

7. After evidence was over the learned trial Court recorded statements of the accused persons under Section 313 of the Cr.P.C. at Exh.278 to 295. The defence of the repondents-accused is that they have been falsely implicated in the crime on the basis of false report lodged by the informant.

8. Learned trial Court has passed the judgment and order on 06.07.2019 and acquitted the respondents-accused for the offences punishable under Section 302, 325, 326, 324, 504 read with Section 149 of I.P.C. and under Section 135 of Bombay Police Act. Being dissatisfied with findings, the prosecution seeks leave to file appeal.

9. The learned APP canvassed that, the respondents-accused have not disputed about presence of witness namely PW2-Shivaji Malge and PW4-Dhanaji Ghanar at the spot of incident and both the witness are injured in assault. The PW3-Vithal Vyankat Kadam, who is eye witness has categorically described role of each of the accused and the accused-Ram Kadam, Maroti Kadam and Shyam Kadam assaulted with axe, however, the learned trial Court failed to appreciate evidence of the eye witness as the injured. Therefore, the prosecution has made out substantial ground to file appeal.

10. Informant-PW1 has supported the prosecution story in his examination-in-chief. In his cross-examination he has stated that, when he visited Maroti temple at about 9.30 a.m. on 03.06.2009, with Shivaji Malge-PW2, Damodar Kadam (deceased) and others at that time accused nos.1, 2, 5, 6 and 11 had also come there. Dhanaji Ganar (PW4) was coughing at that time and therefore accused asked him as to why he is coughing by looking towards them? Thereafter they had beaten Dhanaji Ganar by kicks and fist

blows. PW4 Dhanaji Ganar had lodged a report about the said incident to the police in which his (name of the accused no.1) as well as name of PW2-Shivaji Malge, Damodar Kadam (deceased) were cited. The testimony of this witness is broadly supported by PW2-Shivaji Malge and Dhanaji Ganar-PW4. However, the sequences given are different. FIR [Exh.104] does not describe the exact role of each and every accused and their intention as detailed in the evidence of the prosecution witness. As per report Exh.104 the incident occurred in the evening time showing presence of PW2-Shivaji Malge, and Damodar Kadam (deceased) at the spot by Dhanaji Ganar-PW4 while filing his report. He had cited some of the accused persons as witnesses. In evidence the PW4-Dhanaji Ganar has stated that he had not cited the name of Damodar Kadam (deceased) in his report Exh.104. The report Exh.104 does not appear about assault by the accused no.1 on head of the deceased-Damodar Kadam by way of axe. So also, the prosecution witnesses have not attributed any role of accused no.1. Therefore, though these witnesses are corroborating the prosecution story, they are not corroborating each other on material particulars.

11. Prosecution has examined Medical Officer PW9-Dr. Kiran Bidwai at Exh.171 to prove the medical reports of all the injured persons. He has given all the injuries noted by him on the person of each of the injured in

detail. He has also stated that those injuries are possible by axe, stick, katti etc.

12. It is not in dispute that the injured Damodar Kadam died on 03.06.2009 at about 9.30 p.m., while undergoing treatment. Therefore, it is necessary to scrutinize the evidence of the Medical Officer-PW10-Uttam Ingle who conducted autopsy on the dead body of Damodar Kadam. He had found following injuries:

- i) Incised wound over right frontal region of the head below right eye brow, size 4 x 2 cm by civility(oblique)
- ii) Incise wound, over right parietal region of the head, size 6 x 2 x bone deep.
- iii) Incised wound over right occipital region of the head size 6 x 2 x bone deep.
- iv) Left black eye (complete).
- v) Contused abrasion over right cheek size 3 x 2 cm.
- vi) Contused abrasion over right clavical region size 4 x 2 cm.
- vii) Incised wound over right shoulder size 6 x 1 x 1 cm.

He found following injuries A, B, C upon the internal examination:

- (a) Hematoma over right frontal region on the head corresponding to injury No.1 of external injury size 3 x 3 cm.
- (b) In skull there was depressed fracture right frontal bone size 4 x 1 cm, brain matter came out.

- (c) In brain there was manganese tear over right frontal lobe size 4 x 2 cm. Brain matter came out from external injury No.1. intracellular hemorrhage and blood clots seen.

13. As per the opinion of PW10, the death of deceased was caused due to hemorrhagic shock due to head injuries. The external & internal injuries were sufficient to cause death. He has thereafter issued post mortem report Exh.191. The Medical Officer-PW10 further opined that the injuries described in post mortem report Exh.191 are possible due to assault with article 16 and article 29 axes as well as article-26 katti. However, in cross-examination, PW10 admitted that all the three external injuries appearing on the deceased were separate from each other and in column of inquest panchanama (Exh.128) shows single injury on head of the deceased. All the three external injuries, which were appearing on the head of the deceased, if taken together were fatal but single injury may not have proved fatal. The PW10 further admitted that the injury nos. 1, 3 and 7 described in column 17 of post mortem report (Exh.191) are incise wounds and would have been caused by hard and blunt object. Those injuries were not possible by one and the same weapon. The PW10 further admitted that the Investigating Officer had not referred the weapons to him for his opinion about possibility of causing injuries. The PW10 admitted in his cross-examination that the external injury no.4 back eye is just a line injury and injury nos. 5 and 6 can

be caused by sharp and blunt object which are of simple nature. Therefore, we can see that the medical evidence is not fully supporting ocular evidence.

14. On perusal of evidence of the prosecution witnesses PW1 to PW3 appears that they used to visit Maroti temple for worship, however, presence of both these witnesses is not supported in the evidence of the PW2-Shivaji Malge, PW4-Dhanaji Ganar, PW5-Manohar Khedkar. There are inconsistencies, contradictions and omissions in the oral evidence of all the witnesses. The chemical analysis report is supporting the fact as the weapons axe and katti had no blood stains of the deceased.

15. As per the evidence of PW6-Vithal Saudagar axe and katti (articles 19, 29 & 26) are seized under memorandum panchnama with blood stains and said articles were referred by the Investigating Officer for chemical analysis; but the chemical analysis report is not supporting the said fact.

16. Thus, it can be concluded that material brought on record was not sufficient to hold the accused persons guilty of the crime. Learned trial Court passed the judgment and order on 06.07.2019 and acquitted the respondents-accused for the offence punishable under Section 302, 325, 326, 324, 504 read with Section 149 of the I.P.C. and under Section 135 of the Bombay Police Act. Therefore, findings recorded by the learned trial Court

does not appear to be perverse and no grounds are made out to grant leave to file appeal.

17. In view of above discussion, the present application is hereby dismissed.

[Y.G. KHOBRAGADE, J.]

[SMT. VIBHA KANKANWADI, J.]

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