

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.236 OF 2019

State of Maharashtra
Through Officer in charge Gangakhed
Police Station, Tq. Gangakhed,
District Parbhani.

.. Appellant

Versus

1. Bhimrao s/o Rama Wavhale
Age: 45 years, Occu.: Labourer,
R/o. Zola, Tq. Gangakhed,
Dist. Parbhani.
2. Yuvraj s/o Rama Wavhale
Age: 21 years, Occu.: Agri.,
R/o. Zola, Tq. Gangakhed,
Dist. Parbhani.
3. Rukhminibai w/o Bhimrao Wavhale
Age: 40 years, Occu.: Household,
R/o. Zola, Tq. Gangakhed,
Dist. Parbhani.
4. Prakash s/o Nivrutti Salwe
Age: 45 years, Occu.: Agri.,
R/o. Zola, Tq. Gangakhed,
Dist. Parbhani.
5. Ajay s/o Prakash Salwe
Age: years, Occu.: Agri.,
R/o. Zola, Tq. Gangakhed,
Dist. Parbhani.

.. Respondents

...

Mrs. V. S. Choudhari, APP for the applicant – State.

...

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

DATE : 3rd October, 2023.

ORDER [Per Abhay S. Waghware, J.] :-

. Vide instant application for leave to file appeal, State is keen in preferring appeal against the judgment and order passed by the learned Additional Sessions Judge, Gangakhed dated 20.07.2019 in Sessions Case No.22 of 2013, by which respondents herein have been acquitted from the charges under Sections 143, 147, 148, 341, 307 read with Section 149 of Indian Penal Code (IPC).

2. Learned APP for the applicant took us through the record and would submit that the above charges were cogently proved by prosecution by adducing evidence of in all ten witnesses. It is submitted that the alleged occurrence has taken place on 24.11.2012. There is injured eye witness account along with other direct eye witnesses and they have accordingly deposed in the witness box defining the role of each of the respondents herein. It is submitted that in spite of being cross-examined at length, their evidence has remained unshaken. That, apart from the ocular account, there is evidence of PW.8 Sarika Bade and PW.9 Dr. Prabhakar Tekale who had occasion to examine and see the injured. The doctors apart from deposing have identified the injury certificate issued by them. There

is seizure at the instance of accused. Thus, it is pointed out that there is ample evidence and prosecution had established its case. However, it is submitted that the learned Trial Court has not appreciated the said evidence in proper perspective. That, the settled law also has not been considered and applied. That, the learned Trial Court has erred in disbelieving the case of the prosecution and has reached to erroneous conclusion. Lastly, it is submitted that the judgment being not sustainable in the eyes of law, is now sought to be challenged by the State and hence, prays for leave.

3. In the light of above submissions, we have visited the prosecution evidence.

PW.1 Dnyanoba in his evidence at Exhibit-62 has deposed that there was quarrel and dispute on account of use of way. That, on 24.11.2012, when he was using the way at around 3.00 p.m., Rukhminibai blocked the way and intercepted the tractor. When she was questioned, this witness has stated that Bhimrao beat him with stick, Yuvraj beat him with iron rod, Dhanraj beat him with spade. Accused Prakash and Ajay also reached there and they too joined in abusing him saying that he should be set on fire. On hearing his shouts, his son Pravin, servant Babasaheb Salve and Chhabubai came there and separated the quarrel. He deposed that he was required to be admitted at Spandan Hospital, Parbhani and

there he gave statement.

In the cross-examination, above witness admitted that accused Bhimrao had lodged complaint - applications with Revenue Authorities as well as Police Authorities against him for erecting construction and blocking the way. He is unable to state the date on which his clothes were handed over to police. He answered that after his discharge from the hospital, police has confronted him with the weapons i.e. 4-5 days after his discharge.

P.W.2 Babasaheb does not seem to have supported the prosecution. In fact, he was independent witness and he seems to have arrived there and separated the quarrel.

P.W.3 Pravin seems to be the son of P.W.1, but he has deposed that he has reached the spot at later point of time. By that time, the assailants were not there and his father was lying on the ground. However, he still deposed that he saw Bhimrao, Yuvraj and Dhanraj holding sticks, iron rod and hoe. According to him Rukhminbai, Prakash and Ajay were beating his father by kicks and fist blows.

P.W.4 Chhabubai also claims that around 3.00 p.m. while she was planting sugarcane, she heard shouts and according to her, she went and saw Dnyanoba lying there with head injury. Even according to her,

Bhimrao, Dhanraj and Yuvraj were present there. Ajay and Prakash were abusing and they were instigating others to beat him. She has denied the suggestion put to her in cross.

PW.5 Prabhakar seems to be the panch to spot panchanama Exhibit-71. Spot panchanama seems to have drawn on 28.11.2012.

4. PW.6 Vitthal seems to have acted as panch to seizure of clothes of Dnyanoba on 30.11.2012.

PW.7 Vinayak has acted as panch to memorandum of disclosure at the instance of Bhimrao and Yuvraj and at their instance, there is said to be recovery of stick and iron rod, however, such memorandum and discovery is caused on 16.12.2012. Cross-examination of this panch witness renders his said testimony doubtful, because they are unaware as to in whose land and in whose house they went that day for causing seizure. He has stated that he does not remember what was noted in the panchanama. He has admitted that his signatures were obtained in the village.

5. PW.8 Dr. Sarika Bade and P.W.9 Dr. Prabhakar Tekale are the medical officers, who have examined Dnyanoba respectively. Both the medical officers in their cross-examination candidly admitted that the said injury is also possible by fall on rough and hard surface.

6. On going through the evidence of P.W.1, P.W.2, P.W.3 and P.W.4, we are of the opinion that they are not consistent. PW2 Babasaheb independent witness has not supported prosecution as he merely deposed that on hearing shouts he rushed to the farm house and saw his landlord lying in the pool of blood and he was lifted and shifted to the hospital.

P.W.3 very son of P.W.1 deposed that on hearing shouts they went to the farm house and saw his father lying in injured condition. He further added that he saw Bhimrao, Yuvraj and Dhanraj holding stick, iron rod and spade respectively, whereas Rukhminibai, Prakash and Ajay kicking and giving fist blows. Therefore, he has improvised the version and his deposing has not been stated by his injured father. He further deposed that when he tried to separate, at that time, accused Dhanraj threw hoe and ran away. On the contrary, his father deposed about Dhanraj beating with hoe. Therefore, father and son are not consistent. P.W.4 wife of P.W.1 Chhabubai also marked presence of Bhimrao, Dhanraj, Yuvraj, Rukhminibai, Prakash and Ajay, but according to her they were only holding articles like iron rod, hoe and stick. She does not attribute overt act to any of the accused. She has not stated about alleged utterance by Prakash and Ajay regarding setting P.W.1 on fire.

Therefore, *prima facie*, it is noticed that P.W.2, P.W.3, P.W.4 are not lending support to not only P.W.1, but are not lending support even to

each other in spite of claiming to have seen the occurrence and claiming to be direct eye witnesses.

7. Alleged occurrence has taken place in the afternoon on 24.11.2012, but statement of PW.1 is of 27.11.2012 for which there is no explanation. Therefore, there is inordinate delay also in reporting occurrence. Admittedly, animosity between the parties has already come on record. Evidence discussed above is unworthy of credence for above stated reasons. Resultantly, case of prosecution cannot be said to be beyond reasonable doubt. Hence, in our opinion, learned Trial Court has committed no error in refusing to accepting the case of prosecution. No case is made out on merits to grant leave. Resultantly, we proceed to pass following order :-

ORDER

. The Application for leave to file appeal by State is rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm