

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

**APPLICATION FOR LEAVE TO APPEAL BY STATE
NO.239 OF 2018**

The State of Maharashtra,
PI Tophkhana Police Station,
Dist-Ahmednagar.

...APPLICANT

VERSUS

- 1) Prashant @ Kalu Dhiraj Suryawanshi,
Age-25 years, R/o-Nagapur,
Ahmednagar,
(**Abated**),
- 2) Sachin Dhondiba Sonwane,
Age-21 years, Occu:Private Job,
R/o-Mangalgate, Ahmednagar,
- 3) Dadasaheb Bhausahab Borude,
Age-23 years, Occu:Labour,
R/o-Nagapur, Dist-Ahmednagar,
- 4) Vilas @ Bapu Dhiraj Suryawanshi,
Age-30 years, Occu:Labour,
R/o-Nagapur, Dist-Ahmednagar.

**...RESPONDENTS
(Orig. Accused)**

...
Mr. S.D. Ghayal, A.P.P for Applicant - State.
...

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

DATE : 17th JULY, 2023

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed by the prosecution seeking leave to appeal under Section 378(1)(b) of the Code of Criminal Procedure challenging the acquittal of respondent Nos.2 to 4 by the learned Additional Sessions Judge, Ahmednagar in Sessions Case No.60 of 2013 of the offence punishable under Section 395 of the Indian Penal Code, on 7th June 2018.

2. We have heard Mr. Ghayal, learned APP appearing for the State. With the able assistance of the learned APP, we have gone through the entire record which was before the learned trial Judge.

3. The prosecution story, in short, is that the informant Kailas Mahamine was working as supervisor in water supply department of Savedi Ward of Ahmednagar Municipal Corporation. One Rajesh Kamath is his friend, who was running a refreshment stall (hand cart) by name and style "*Sairaj Amlet-Pav Center*". Informant had habit of sitting in the stall of Rajesh during night time. Informant was sitting, as usual, at the stall around 11.45 p.m. on 28th March 2010 when original accused No.1 Kalu Dhiraj Suryawanshi came there. He started asking

Rajesh as to, by whose order he has kept the stall there. Informant tried to calm down accused No.1 by saying that since Rajesh is a poor man, he should be allowed to run the stall. Accused Kalu then threatened informant that he would see him and went away. On the next day i.e. 29th March 2010, around 00.15 a.m. when informant was in front of the said stall, accused Kalu with co-accused Bapu came along with 4 to 5 persons, started abusing and threatening the informant. Accused Kalu inflicted blow of knife below the right eye of the informant causing bleeding injury. Co-accused Bapu assaulted the informant by fighter on his jaw, because of which three teeth of the informant fell. Unknown accused assaulted informant by wooden log. Rajesh tried to intervene, who was assaulted by accused Bapu and Kalu. Accused Bapu took away the mobile and cash of Rs.4000/- from the informant. Accused Kalu snatched the gold chain weighing two Tolas from the neck of the informant. Persons nearby took the informant to Police Station and then he was referred to Civil Hospital. He was then shifted to Noble Hospital, Ahmednagar and police recorded his First Information Report (for short "the FIR") on 3rd April 2010.

4. After the investigation, charge-sheet was filed and after committal of the case, trial was conducted. Prosecution

examined in all eight witnesses to bring home the guilt of the accused. Considering the evidence on record and hearing both sides, the learned trial Judge has acquitted accused Nos. 2 to 4. Original accused No.1 Kalu had expired during the pendency of the case and therefore, case abated as against him. The said acquittal of the other accused persons has been challenged by way of this Application.

5. Perusal of the evidence would show that the informant has supported his FIR, but in the cross-examination it has been brought on record that test identification parade was not conducted. It also shows that there are material improvements made by the informant. He has stated that his friend Rajesh was at the spot. Rajesh Kamath has been examined as PW-3 but he has turned hostile. Questions in the nature of cross-examination were put to Rajesh but nothing favourable was transpired for the prosecution. PW-4 Sunil Bhandare is the panch to the discovery panchnama of discovery by accused Bapu. It is to be noted that it is stated that accused Bapu has discovered fighter and knife. The question is that when Bapu had allegedly used only fighter how he could have discovered the knife which was allegedly used by accused Kalu. In the cross-examination, PW-4 Sunil has admitted that PW-1 - informant Kailas is his friend, therefore, he

cannot be said to be an independent witness. The medical evidence has been brought on record but unless it is shown that it is due to the acts of the accused, they cannot be held liable. The incident is stated to be taken place in the crowded locality and no independent witness has supported the prosecution story and therefore, benefit of doubt has been given to accused No.4 Bapu. It is held by the learned trial Court that as against accused Nos.2 and 3 there is absolutely no evidence. We do not find any illegality or error on the part of the learned trial Judge to acquit accused Nos. 2 to 4 and therefore, the Application deserves to be rejected.

6. The Application stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE