

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.252 OF 2018

The State of Maharashtra
Through Police Inspector,
Police Station, Ashti,
Tq. Ashti, Dist. Beed.

... Applicant

... **Versus** ...

- 1 Rajaram Appanna Mane,
 Age 57 yrs., Occ. Agri.,
 R/o Bhogdewasti, Solapur.
- 2 Nitin Sampatrao Bharti,
 Age 33 yrs., Occ. Agri.,
 R/o Tanddla Taklewadi,
 Tq. Georai, Dist. Beed.
- 3 Prakash Pralhad Dongre,
 Age 37 yrs., Occ. Agri.,
 R/o Tanddla Taklewadi,
 Tq. Georai, Dist. Beed.

... Respondents

...

Mr. A.M. Phule, APP for applicant

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

DATE : 15th SEPTEMBER, 2023

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed by the prosecution seeking leave under Section 378 (1)(b) of the Code of Criminal Procedure, 1973 to file appeal challenging the judgment of acquittal dated 26.09.2018 passed by learned Additional Sessions Judge, Beed in Sessions Case No.50/2012, thereby acquitting respondent Nos.1 to 3 I.e. original accused Nos.1 to 3 from the offence punishable under Section 307 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned APP Mr. A.M. Phule for the applicant and with his help we have gone through the record which was available before the learned trial Judge.

3 Learned APP submits that the learned trial Judge has not appreciated the evidence properly. The prosecution has examined in all 09 witnesses to bring home the guilt of the accused. The dash to the motorcycle of the informant PW 1 Arun Kondiba Ovhal and PW 3 Ajit Mohan Ghule, who are the injured persons, has not been accepted. They both have categorically stated that accused No.1 was driving the car and he had given dash to the motorcycle driven by the informant from back side with the said car. The

panchnama of the car would also show that it was damaged and there was damage to the motorcycle also. There was intention on the part of accused No.1 to kill the informant. The informant and the injured had sustained simple injury but to the vital part and, therefore, the matter needs re-appreciation.

4 The prosecution had come with a case that informant Arun Ovhal lodged report with Police Station on 30.12.2011 stating that he was proceeding with his friend Ajit Ghule on his motorcycle around 2.00 p.m. When they came near Ashti market, a vehicle from back side gave dash to the motorcycle, as a result of which they fell down. 10-15 persons gathered at the spot, in which one Sachin Lokhande was also there. The Indica car was bearing No.MH 12-AU-7394. When they opened the door of the car from the driver side, they noticed that it was accused No.1 Rajaram Mane, who was the suspended Police Sub Inspector and two persons were sitting at the back side. Accused thereafter told the informant that “you are the witness in a murder case which is registered against him and in spite of the dash the informant is still alive”. Thereafter all the accused started beating informant and his friend. The people gathered came to rescue of the informant and even they had beaten accused at the spot.

5 Upon the said First Information Report, offence was registered
vide Crime No.191/2011 and it was investigated. The Investigating Officer
has carried out spot panchnama, seized the vehicles and arrested the
accused. The medical examination of the injured informant and injured
witness was got done. The statements of other witnesses were recorded and
after the completion of investigation charge sheet was filed.

6 After the committal of the case prosecution has examined in all
09 witnesses to bring home the guilt of the accused and relied on documents
proved. It is to be noted that the accused has admitted the panchnama of
motorcycle, however, that will not affect the defence of the accused. The fact
or story will have to be proved by the prosecution.

7 The testimony of PW 1 Arun, especially his examination-in-chief
is totally silent, as to in which case which is registered against accused No.1
he is the witness and where his evidence was over in the said matter on the
day of incident i.e. on 30.12.2011. The proximity between the said incident
of murder in which informant – PW 1 Arun was witness and the present
incident should be established by the accused to gather the intention. When
the offence is registered under Section 307 of the Indian Penal Code, the
prosecution has to prove the intention on the part of the accused to kill i.e.

attempted to kill PW 1. If the gap between the murder that had allegedly taken place and the present incident was very wide, then we may not be able to infer that there was intention in the mind of the accused, even if we accept the story of the accident/incident. Here, in this case, even if it is taken that accused No.1 has taken the defence of pure accident; yet, in order to prove that actual intention behind the act of dash to the motorcycle driven by the accused, accused No.1 intended to kill him. We do not find there is such evidence on record. In the cross-examination PW 1 Arun has admitted that he was not knowing accused Nos.2 and 3 earlier. Under the said circumstance, why accused Nos.2 and 3 would share a common intention to attempt to commit the murder of informant. Prosecution has not led any evidence as to whose car it was and how it went into the hands of accused No.1.

8 If we consider the impugned judgment, the learned trial Judge has harped upon the proof in respect of attempt to murder and it has been concluded that prosecution has failed to prove the same. The spot here is in front of the Bus Stand, that too, in village. It is admitted that there was rush in front of the Bus Stand. Therefore, the question arises, as to whether the accused would have chosen such a crowdly place to murder informant. It also gives a doubt regarding the speed of the vehicle for attempting to murder a

person who is on a moving vehicle. A dash would be sufficient, but it would depend on the speed of the vehicle which is then dashed. Unless the speed of both these vehicles is proportionate, it will not give the effect of throwing the driver of the two wheeler on the ground. Here, the medical evidence shows that the informant had sustained simple injury and even the injured witness i.e. the pillion rider Vijay also accepts the same that the injuries to him were also simple in nature. Of course, the nature of the injury will not be the deciding criteria, but it would be the situs chosen, to arrive at a conclusion that there was intention to commit murder. Merely because accused No.1 appears to be an accused in some other case, he cannot be blamed and unless it would have been shown specifically that the informant is connected with the said matter i.e. he is the witness in that matter, the motive is not complete. When intention is not proved the acquittal deserves to be upheld. Application, therefore, stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)