



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**APPLICATION FOR LEAVE TO APPEAL BY STATE NO.254 OF 2018**

The State of Maharashtra,  
Through Police Inspector,  
Parner Police Station,  
Dist. Ahmednagar.

**... Applicant**

**Versus**

1. Farukh Bashir Pathan,  
Age : 32 Years, Occu. : Business,  
R/o. Supa, Tq. Parner,  
Dist. Ahmednagar.
2. Nasir Bashir Pathan,  
Age : 38 years, Occu. : Business,  
R/o. Supa, Tq. Parner,  
Dist. Ahmednagar.
3. Adam Bhikan Sayyed,  
Age : 70 Years, Occu. : Agri.,  
R/o. Mungashi, Tq. Parner,  
Dist. Ahmednagar.

**... Respondents**  
(Orig. Accused Nos.1 to 3)

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

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

**RESERVED ON : 15<sup>th</sup> SEPTEMBER, 2023**

**PRONOUNCED ON : 25<sup>th</sup> SEPTEMBER, 2023**

**ORDER (PER ABHAY S. WAGHWASE, J.) :**

1. As State is keen in questioning the judgment and order passed by learned Additional Sessions Judge, Ahmednagar in Sessions Case No.45 of 2013, thereby acquitting accused persons /

proposed respondents from charge under Sections 307 read with 34 of the Indian Penal Code (IPC), instant leave application has been preferred.

2. According to learned APP, in support of the charge, prosecution had examined in all 9 witnesses. That, informant himself is a victim of assault and there was murderous assault on his wife in the night of 01.04.2012. That, apart from informant's own evidence, there is medical evidence. That, accused persons are uncle and cousins of informant. There was civil dispute and therefore accused persons had entered the house and inflicted injuries on informant as well as his wife. Wife has suffered injury on the head. That, learned trial court has also observed about occurrence and its prompt reporting. However, learned trial Judge has disbelieved informant's evidence and has acquitted accused. According to her, there is a good case on merits and therefore, she seeks leave to file appeal.

3. We have heard learned APP at length. We have also visited the evidence of informant (PW1 Balam) and other witnesses. According to informant, on the intervening night of 01.04.2012 and 02.04.2012 around 2:00 to 2:30 a.m. while he was sleeping with his wife on platform, he woke up after realizing that one person had kept foot on his neck. He claims that there were

two persons. He was hit on the shoulder and when he shouted, those persons ran away. He claims that he had seen a third person also with axe in his hand and according to him, they were his uncle and his cousins. He claims that his wife had suffered head injury in the same assault.

4. On going through the evidence of PW4 Dr. Bhosle, medical practitioner, it is found that he had examined Naina brought by relatives on 02.04.2012 at around 4:40 a.m. He stated that, the patient was unconscious and had suffered head injury. He spelt out and narrated all seven injuries noticed by him. According to him, the injuries were grievous in nature and were possible within six hours. He also stated about relatives of the patient disclosing history as assault at home. In para 3 of the evidence of doctor, he stated that injury nos.1 to 7 are sufficient to cause death of a person in an ordinary course of nature. He has also examined informant PW1 Balam, who had allegedly suffered four injuries including fracture injuries. Doctor has issued medical certificate and the same is on record.

5. We have *prima facie* gone through the judgment sought to be challenged. In para 20 of the judgment, learned trial Court has observed that evidence of informant finds support from PW7

Nabab and there is no reason to disbelieve his evidence. Likewise, learned trial court has held spot panchanama to be proved and medical evidence also proves that there was attack on informant and his wife and doctor's evidence has not been seriously challenged. However, surprisingly learned trial court seems to have held that there was civil dispute, but there is contradiction in FIR and substantive evidence of informant. It is held that informant also did not name the assailants while giving history to the doctor. Therefore, in the light of above observations, it is apparent that on one hand learned trial Judge seems to be convinced that the evidence of informant is finding support from medical evidence and that occurrence has taken place, but at the same time, learned trial court has acquitted the accused persons.

Therefore, there seems to be self contradictory opinion expressed by learned trial Judge. Resultantly, we feel that it is a fit case for re-appreciation and to meticulously deal and appreciate the evidence. Hence, leave deserves to be granted and accordingly we proceed to pass following order :

**ORDER**

- (i) Application stands allowed.
- (ii) Leave is granted to the prosecution to file Appeal.
- (iii) Registry to register the Appeal.

- (iv) Appeal stands admitted.
- (v) Call record and proceedings.
- (vi) Action under section 390 of the Code of Criminal Procedure be taken against the respondents to the satisfaction of the trial court.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)