



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.270 OF 2019

The State of Maharashtra,
Through Police Station Officer,
Police Station, Talwada, Tq. Georai,
District Beed.

... Applicant

Versus

1. Gajanan S/o. Keshav Khote,
Age : 35 years, Occu. : Agri.,
R/o. Kat-Chincholi, Tq. Georai,
Dist. Beed.
2. Sambhaji W/o. Keshav Khote,
Age : 29 years,
Occu. and R/o. As above.
3. Rameshwar S/o. Keshav Khote,
Age : 23 years,
Occu. and R/o. As above.

... Respondents.
(Orig. Accused)

...
Mr. S. D. Ghayal, APP for Applicant – Appellant.
...

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

DATED : 12th OCTOBER, 2023

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

1. By way of instant application State is seeking leave to question the judgment and order passed by learned Additional Sessions Judge, Beed in Sessions Case No.71 of 2018, acquitting respondents from charges under sections 307, 325, 504 and 506 read with section 34 of Indian Penal Code (IPC).

2. Criticizing the judgment sought to be challenged, learned APP submitted that, trial was conducted with full proof case comprising of injured victim account. That, there was assault by means of sword, iron rod and grievous injuries have been caused. Treating doctor has been examined, but still learned trial court has acquitted accused on flimsy grounds and so it is submitted that, there being strong case in appeal for re-appreciation, leave is prayed for.

3. In the light of above submissions, we have *prima facie* taken stock of the prosecution evidences, which comprises of testimonies of in all ten witnesses. Crucial evidence seems to be of victim Popat (PW5), Narsing (PW7) and Narayan (PW8). PW5 Popat is examined at Exh.73 and PW8 Narayan is examined at Exh.85. They both have deposed about occurrence taking place on 02.03.2018 around 5:00 p.m. Popat has named accused Gajanan, Rameshwar and Sambhaji coming armed with sword, iron rod respectively and mounting assault.

Likewise, PW8 Narayan in his evidence, stated that, accused no.1 Gajanan armed with sword, accused no.2 Sambhaji armed with iron rod and accused no.3 Rameshwar armed with iron

Pahar. PW7 Narsing also claims that, on hearing quarrel, he went and saw the incident of assault by accused on Popat. This witness claims that he and one Narayan (PW8) also tried to intervene.

4. PW6 Dr. Hashmi, who examined above witnesses and he has narrated injuries noticed by him. He has also identified the injury certificate and has opined about possibility of injuries by use of articles sword and iron rod. According to him, Popat had suffered grievous injury, whereas Narsing and Narayan had suffered simple injuries. Therefore, body offence has been shown to be committed.

5. Therefore, though offence of section 307 of IPC was not made out, in our opinion, other offences of Penal Code are made out, but learned trial Judge seems to have rejected the case of prosecution in entirety, and therefore, we deem it a fit case for re-appreciation and reanalysis of evidence. Hence, 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.)