



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

934 APPLN. FOR LEAVE TO APPEAL BY STATE NO. 76 OF 2018

The State of Maharashtra,
Through Police Station Officer,
Pathardi Police Station,
District: Ahmednagar

.. Appellant
(Ori. Complainant)

Versus

1. Shankar Laxman Dahiphale,
Age: 48 years, Occu.: Agril.,
2. Arun Shankar Dahiphale,
Age: 23 years, Occu.: Agril.,
3. Kiran Shankar Dahiphale,
Age: 18 years, Occu.: Agril.,

All R/o. Mohata, Tal. Pathardi,
District Ahmednagar

.. Accused
(Ori. Respondents)

...
APP for Appellant/State : Mrs. Chaitali Choudhari-Kutti
Advocate for Respondents : Mr. Ramesh Navanath Dhakane
...

CORAM : ABHAY S. WAGHWASE, J.

DATE : 20th JUNE, 2024

ORDER:

1. Aggrieved by the judgment and order passed by the learned Additional Sessions Judge, Ahmednagar in Session case No.162 of 2016, thereby acquitting the present respondents from offence under sections 324, 504, 506 read with 34 of IPC, 3(1)(x) of Scheduled Castes and

Scheduled Tribes (Prevention of Atrocities) Act (SC ST Act) and 37(1) (3)/135 of the Bombay Police Act, State has preferred this application seeking leave to file appeal.

2. Taking this court through the evidence of informant, learned APP pointed out that informant, who was selling papers, was assaulted by respondents, on 22.06.2015. She pointed out that there was use of iron rod. Said iron rod has been recovered. Learned APP further pointed out that there is supportive medical evidence of Doctor who examined the informant. There was eye witness account but the same has been disbelieved. According to the learned APP, learned trial court has not considered and appreciated the evidence in it's entirety and merely on the ground of previous enmity even when the occurrence has been substantiated, case of prosecution has not been accepted and acquittal is recorded. She points out that there is good case in appeal and State has hope of succeeding in the same and hence, she seeks leave.

3. In answer to above, learned counsel pointed out that prosecution miserably failed to establish the charges. He pointed out that there is apparently false implication in the backdrop of previous enmity. According to him, there is no independent evidence even when the alleged incidence took place in the early hours of the morning in a thickly populated locality. He states that learned trial court has correctly

appreciated the evidence. The prosecution could not show that offence under the provisions of the SC ST Act would be attracted. Lastly, it is his submission that the learned trial court has meticulously examined the evidence and has refused to accept the case of prosecution. Thus, according to him, the reasons and findings being in consonance with the evidence, there is no need to grant leave and he prays to dismiss the same.

4. After considering the submissions of both sides and on going through the papers, it emerges that present respondents no.1, 2 and 3 were tried for commission of offence under sections 324, 323, 504, 506 read with 34 of IPC, section 3(1)(x) of the SC ST Act, section 7(1)(d) of the Civil Rights Act and section 37(1)(3)/135 of the Bombay Police Act. It seems that in support of his case, prosecution has examined evidence of in all 4 witnesses.

5. Crucial evidence is that of informant. On going through his evidence, it seems that he has narrated that, on 22.06.2015, around 08:30 a.m., when he went for circulating and distributing newspapers, at that time present respondents Shankar, Kiran and Arun came towards him. According to him, accused Shankar was armed with iron rod. He took up quarrel and abused with reference to his caste. Informant has reported that blow of iron rod was given above his left eyebrow, resulting

in bleeding injury. According to him, accused Kiran assaulted him on mouth by stone and accused Arun abused him and assaulted him by kick and fist blows. Evidence of PW-1 Doctor shows that she had occasion to examine the complainant. She has stepped into the witness box and has deposed about complainant being referred by Police and after she examined she has issued medical certificate Exhibit 23. Therefore, though there is previous enmity, occurrence on 22.06.2015 is prima facie established by prosecution.

6. Though there was charge of section 323 of the IPC and 7(1)(d) of the Civil Rights Act, it is noticed that in the operative part of the judgment, learned trial court has not acquitted the accused for offence under section 323 of the IPC and 7(1)(d) of the Civil Rights Act, which could also be made out in view of the evidence on record. Consequently, case for granting leave is made out and hence, I proceed to pass following order:

ORDER

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

[ABHAY S. WAGHWASE, J.]