



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PRIVATE PARTY NO.237 OF 2018

Ashabai Fulchand Nagargoje,
Age: 50 years, Occu.: HH,
R/o.: Sangam,
Tq.: Parli, Dist.: Beed

.. Appellant / Ori. Complainant

Versus

1. Gopinath Vaijanath Nagargoje,
Age: 47 years, occu.: -
R/o.: Sangam, Tq.: Parli Vaijanath,
Dist.: Beed
2. Vaijanath Shankar Nagargoje
Age: 68 years, Occ and r/o as above
[Abated as per order dated 10.06.2024]

3. The State of Maharashtra .. Resp.Nos.1&2 / Ori. Accused

...
Advocate for Appellant: Mr. Vivek V. Bhavthankar
Advocate for Respondent No.1: Mr. Arun V. Rakh
...

CORAM : ABHAY S. WAGHWASE, J.
Reserved on : 18.06.2024
Pronounced on : 20.06.2024

ORDER:

1. This leave application is at the instance of original complainant, who is aggrieved by judgment and order dated 28.09.2018 of acquittal passed by the learned District Judge-2 & Additional Sessions Judge, Ambajogai in Criminal Appeal No.65 of 2015, arising out of judgment and order dated 04.09.2015, passed by the learned Judicial

Magistrate First Class at Parli Vajnath in R.C.C. No.422 of 2012. The lower appellate court allowed the appeal filed by present respondents.

2. Mr. Vivek V. Bhavthankar, learned counsel for the applicant pointed out that original complainant - Ashabai was assaulted by accused persons, on 28.09.2012. It is pointed out that her son PW-3, when came to her rescue was also beaten. That, the complainant, her son and other 6 witnesses were examined by prosecution in support of the case. That, in support of injuries suffered by Ashabai, PW-7 Doctor was examined. That, evidence of all material witnesses was inspiring confidence. Thus, charges were cogently proved and, therefore, according to him, learned trial judge – JMFC, correctly appreciated the evidence and by applying the correct law, recorded guilt of present respondents for offence under section 324 read with 34 of IPC and rightly held them guilty and convicted them by it's judgment and order dated 04.09.2015.

3. He further pointed out that said judgment was taken exception to by present respondent by filing Criminal Appeal No.65 of 2015 before learned District Judge-2 & Additional Sessions Judge, Ambajogai. However, the learned District Judge-2 & Additional Sessions Judge, allowed the appeal by setting aside the judgment of learned trial court without assigning sound and proper reasons. That, learned appellate court has failed to consider and appreciate the evidence of

original complainant, her son and medical expert. There is improper appreciation of both evidence as well as law. There was no need to interfere in well reasoned judgment of the trial court. Resultantly, as approach of the learned appellate court was not just and legal, the complainant, is intending to question the judgment and order of the appellate court and hence he seeks leave to file appeal.

4. Per contra, learned counsel for the respondents pointed out that there was apparently false implication. There was previous enmity and several proceedings between the parties. Therefore, with ulterior motive false and concocted version recording occurrence on 28.09.2012 has been setup. He pointed out that testimonies of prosecution witnesses including that of the complainant were not inspiring confidence and were rather shaky. That, medical evidence expressed possibility of injuries due to fall. He pointed out that there was no incident of assault by stick. He further pointed out that only one stick has been recovered when there are assault to original complainant. Therefore, learned appellate court correctly re-appreciated and re-analysed the entire evidence and found that the complaint is motivated and prosecution evidence was not inspiring confidence and hence according to him learned appellate court correctly overturned the judgment. It is his submission that there is no

need to allow the instant application as the judgment of the appellate court is based on sound reasons.

5. On the light of above submissions, this court has perused the evidence before the trial court. It seems that occurrence is on 28.09.2012. In support of the charges prosecution seems to have examined 8 witnesses. Crucial evidence is of original complainant Ashabai and her son PW-3. Apart from complainant and her son evidence of other three witnesses namely Walchand, Vivekanand and Pralhad are also adduced by prosecution. It seems that there are allegations of assault by means of stick. The complainant seems to have promptly approached the police station and has lodged the report. Even PW-7, who had occasion to examine, treat and issue injury certificate has been examined by prosecution.

6. Prima facie, it seems that learned appellate court has doubted that occurrence is on 11:00 a.m. but medical certificate reflected time as 03:45 p.m. It also appears that considering the previous enmity, learned trial court has opined that there is possibility of false implication. Even, learned appellate court seems to have doubted the presence of PW-2, who partly supported prosecution and partly did not support. Therefore, taking the said observations in the judgment of the appellate court as well as going through the findings and reasons assigned by the

learned trial court, it is the considered opinion of this court, it is a fit case for hearing the matter in full fledged appeal. Two contrary views are re-appreciated in light of available evidence. Therefore, case being made out for grant of leave. 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.]

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