



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

**Criminal Application (APPA) No. 404 of 2024
in
Criminal Appeal Stamp No. 3101 of 2024**

**Sanjay Rambhau Pimpale
Versus
State of Maharashtra, through the Police Station Officer, Hudkeshwar
Police Station, Nagpur (City)**

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Ms. Tejal Agre, Advocate for the applicants
Shri S.S.Doifode, APP for the respondent/State.
Shri S.D.Umredkar, Advocate for the respondent no.2.

**CORAM : SMT. VIBHA KANKANWADI &
MRS. VRUSHALI V. JOSHI, JJ.**

**Reserved on : 11th JUNE, 2024.
Pronounced on : 18th JUNE, 2024**

The present appeal has been filed by the original informant victim to challenge the acquittal of the respondent nos. 2 and 3. The respondent nos. 2 and 3 stood prosecuted in Sessions Trial No. 175 of 2018 before the learned Sessions Judge Court, Nagpur for the offence punishable under Sections 452 and 307 read with Section 34 of the Indian Penal Code.

2. The prosecution had come with the case that the present informant, who was examined as PW No.1 Sanjay is an Advocate by profession. The wife of the accused no. 1 was the client of PW No.1 Sanjay. Accused had gone to the house of appellant around 11 pm on 8th January, 2017. When he knocked the door of the house, accused no.2 was waiting on the road with his bike. The door was opened by PW No. 2 Ashwini, who is the wife of PW No.1 Sanjay. Accused no.1 pushed her aside and questioned PW-1 Sanjay as to why he helped wife Shweta and then stabbed him in his abdomen and face. Thereupon, PW No.2 Ashwini tried to rescue PW No.1 Sanjay. She had also received injuries of the knife. Upon hearing the clamour, the relatives of PW No.1 Sanjay came there, so also the people around gathered and they had nabbed the accused no.1 at the spot.

3. PW No.1 Sanjay then lodged the First Information Report while undergoing treatment. After the registration of the First Information Report, the investigation was carried out and after the investigation, the chargesheet was filed. After the committal of the case both the accused were tried. Prosecution has examined in all eleven witnesses to bring guilt of the accused. After considering the evidence and hearing both the sides, both the accused came to be acquitted on 6th January, 2024 from all the charges. Hence, the present appeal.

4. Heard Ms. Tejal Agre, learned advocate for the applicants, Shri S.S.Doifode, learned APP for the respondent/State

and Shri S.D.Umredkar, learned advocate for the respondent nos.2 and 3.

5. In order to cut-short it can be said that all of them made submissions to support their respective contentions.

6. Taking into consideration the scope at the stage of admission, the evidence is scrutinized *prima facie* or with a limited intention. PW Nos. 1 and 2 are certainly the injured persons. They have given the count of injuries sustained by them. The knife has been recovered from the spot by the Investigating Officer. The trial Court has disbelieved PW No.1 Sanjay and PW No.2 Ashwini, taking into consideration the alleged contradictions and omissions. Even PW No.3 Sunil who is the brother of PW No.1 Sanjay and PW No.5 Anchal who is wife of PW No.3 have supported the prosecution and stated that they had seen the accused no.1 inflicting blow on both the injured. However, their testimony is questioned by the learned trial Judge on the count that taking into consideration the duration whether it was possible that PW No.3 and PW No.5, would have witnessed the incident. Further the testimony of PW No.8 Dr. Mankar, Medical Officer has been held to be contradicting the ocular evidence of PW No.1 Sanjay and PW No.2 Ashwini, taking into consideration the dimensions of the injury.

7. A fact that is required to be noted that though there is simple denial to the fact by the accused no.1 that he was arrested from the spot, the fact is further required to be considered is that except professional relationship between the wife of accused No.1

and PW1 Sanjay, there was no occasion for the other witnesses to see accused no.1. Why they would depose against the accused no.1. Even if the testimony of Medical Officer PW8 Mankar may not attract ingredients of Section 307 of Indian Penal Code, it ought to have considered by the learned trial Judge as to whether any lesser offence has been proved against the accused no.1. Accused no.2 has also been identified though he might not have taken active part in inflicting the blow, but then his presence has been shown. Acquittal cannot be based only on the basis of contradictions and omissions. No other reasons have been assigned by accused no.1 for alleged false implication of himself. Therefore, the scrutiny of evidence deserves to be needed and therefore the appeal deserves to be admitted.

8. Further, in view of the notice issued against the accused nos. 1 and 2, they have appeared through Advocate. At two to three places the appellant has stated that the appeal is under Section 378(4) of the Code of Criminal Procedure, whereas in para 6 it is stated that the appeal is under Section 372 of the Code of Criminal Procedure.

9. The Division Bench of this Court in Criminal Application No. 1129 of 2012 in Criminal Appeal No. 1548 of 2011 (Smt. Pranita Prakash Navage Vs. State of Maharashtra and others) with connected matters decided at Principal Seat on 1st August, 2012 has held that

“One of the foremost considerations while exercising such power will be that an order of acquittal further strengthens the presumption of innocence of the accused. As in case of Section

390 of the Cr.P.C., it is not mandatory that at the time of admitting the appeal that power to arrest should be exercised in each case. The said power can be exercised at any stage of the appeal against acquittal. In the appeal under the proviso to Section 372, after appeal is admitted by this Court, notice of the appeal is required to be issued to the respondent accused. The question of exercising power as aforesaid, of issuing arrest warrant and detaining the respondent till disposal of the appeal or enlarging him on bail, will have to be exercised at appropriate stage after taking into consideration various aspects such as gravity of the offence, nature of the evidence adduced by the prosecution, background and criminal antecedents of the respondents, etc. No hard and fast rule can be laid down in that behalf. If after service of notice of the appeal under the proviso to Section 372, the respondent accused appears and is represented by an advocate and if there is an assurance given that the said respondent will appear at the time of final hearing, this Court can always postpone the action of issuing warrant against the concerned respondent. If this Court finds that, after service of notice of the appeal, the respondent does not cause appearance before the Court, at that stage, this Court can always issue warrant to the respondent and can either direct confinement of the respondent till disposal of the appeal or the release of the respondent on appropriate bail. It all depends on the facts and circumstances of each case. Suffice is to say that such a drastic power need not be exercised in every appeal at the stage of admitting the appeal, the reason being that in absence of applicability of Section 390, the exercise of the said power will be under Section 482 of the said Cr.P.C. The law is well settled that the power under Section 482 of the Cr.P.C. can be exercised sparingly and in rare cases.”

10. In view of the said observations, it is not necessary to direct the respondent nos. 2 and 3 to furnish the bail. However, they can be asked to file an undertaking that they will remain present before this Court as and when directed in future.

11. The Criminal Application is disposed of.

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Admit.

2. Call record and proceedings with paper book, returnable on 12th August, 2024.
3. The respondent nos. 2 and 3 to provide aforesaid undertaking within a period of 15 days from today in this Court.

[MRS. VRUSHALI V. JOSHI, J.]

[SMT. VIBHA KANKANWADI, J.]