

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.9 OF 2024  
[LEAVE TO APPEAL]

|                              |   |             |
|------------------------------|---|-------------|
| Atish Janardan Kamane        | ] | Applicant   |
| Vs.                          |   |             |
| Soham Padmakar @ Malhar Kale | ] |             |
| and another                  | ] | Respondents |

.....  
Mr. Anil Lalla i/b Lalla & Lalla, for Applicant.

Mr. Priyal Sarda a/w Mr. Shubham Sane a/w Ms. Seema Dighe a/w  
Mr. Rajesh Ranglani, for Respondent No.1.

Dr. D.S. Krishnaiyer, A.P.P, for Respondent No.2 – State.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATE : 22<sup>nd</sup> January, 2025.

P.C:

1. By the impugned judgment and order dated 15<sup>th</sup> March, 2023 passed in Sessions Case No. 91 of 2019, learned Additional Sessions Judge, *Raigad* at *Alibag* acquitted the sole accused for the offences punishable under sections 307, 326, 504, 506 and 201 of the Indian Penal Code.

2. I heard learned Counsel for the applicant, learned Counsel for the respondent No.1 and the learned A.P.P.

3. With the assistance of the learned Counsel for the parties, I have gone through the evidence of the victim and another witnesses meticulously. The impugned judgment is *ex facie* perverse for the following reasons.

4. Essentially, it was a case of attempt to murder. The accused was then a boy aged about 19 years who had been to *Murud* on 18<sup>th</sup> June, 2019 for excursion. Around 4.30 p.m, accused and his friends had been to Hotel Sai Prasad at *Borli Naka, Murud*. P.W.1 – Atish Kamane – victim was the owner of the Hotel. The accused and his friends placed some order and after taking the lunch, they left without paying bill of Rs.2100/-. Rather, it is the case of the prosecution that the accused entered into a quarrel with P.W.-1 first informant on account of payment of bill and even abused him. Hearing the commotion, first informant's wife came out of the kitchen. The accused were abusing the first informant and also threatened him. They started running towards *Murud* direction. They were followed by the first informant. When the first

informant reached at the *Borli* bridge, the accused had two broken beer bottles with which he assaulted the first informant, resulting into several injuries over his left cheek which were bleeding profusely.

5. During trial, the first informant testified about the incident by giving all the detailed particulars. The learned Additional Sessions Judge though observed in paragraph 9 that on very face of it, evidence of the first informant was consistent with the prosecution story, however, surprisingly he went on observing some technical things by making observations that there was only one broken beer bottle in the hand of the assailant and not two as stated by the prosecution. There was also corroboration to the testimony of the first informant by P.W. 2 - Bharat Ramkrushna Moti, who has in so many words, testified that he had noticed one boy i.e the assailant assailing the first informant with broken bottle in his hand and inflicting blows on the face resulting into bleeding injuries. One Altaf Wankar took the first informant in his vehicle to the hotel. Later on, he was taken to the Hospital. Even P.W. 4 - Altaf Wankar has corroborated the testimony of the first informant and other witnesses.

6. The learned Additional Sessions Judge has also failed to appreciate the evidence of the medical officer – P.W.6 – Dr. Atul Kotekar who had noted the following injuries on the face of the first informant.

*“1. Multiple linear abrasion over dorsum of right forearm. There were multiple abrasions having sizes 6 cm x 1/2 cm, 3 cm x 2 mm, 1 cm x 2 mm and 2 cm x 1mm;*

*2. Contused Lacerated Wound over left Pre-auricular region 3 cm x 2.5 c.m x 2.5 cm deep the injury was extending from the level of inferior crus and extending to external auditory canal;*

*3. There was profuse bleeding of left both venous and arterial in Pre-auricular region. It were deep wounds;*

*4. Contused lacerated wound extending from inferior crus into the concha deep of left ear inside the external auditory canal of size 5 cm x 5 cm x 1.2 c.m x 1/2 cm with injury to cartilage of left ear;*

*5. Cut wound over outer margin of left helix 1 cm x 1/2 cm x 1/2 cm.;*

*6. Contused Lacerated Wound over left cheek 5 cm x 1 cm x 1 cm;*

*7. Contused Lacerated Would over left mandibular region 2 cm x 1/2 cm x 1/2 cm.*

8. *Contused lacerated wound over left cheek 1 cm x 1/2 cm;*

9. *Contused lacerated wound over scalp above the left ear 1 cm x 1/2 cm x 1/2 cm;*

10. *Ecchymosis with haematoma over left mastoid and surrounding lobule having size 2 cm x 3 cm;*

The Doctor had specifically testified being an expert that those injuries would have been fatal since they were deep and there was profuse bleeding. Those were fresh injuries.

7. It is not the case of the prosecution or the defence that someone else or even there is a possibility of the first informant inflicting injuries on his own self. It would be interesting to extract paragraph 10 of the impugned judgment, which reads thus;

*“10. The informant deposed that he chased accused. It is not the prosecution case that when accused and his friend came in the hotel they had consumed alcohol and they ordered any alcohol or drinks. The informant did not state that when accused quarreled, he had any bottle in his hand. But the informant tells that at Borli Bridge accused was armed with bottles in his both hands. But, he did not give account as to when and how these bottles came in the hands of the accused. As per informant accused has beer bottles in his both hands, but his evidence lacks*

*corroboration on his point. Here I may note that informant Atish no where deposed that when he was assaulted by accused any other person had witness the assault, any known person took him back to the hotel and to the hospital. According to the informant he on his own returned to the hotel and then went to the hospital. Here we need to read the evidence of P.W .-2 Bharat Moti and P.W. 4 - Altaf Vankar who according to prosecution are the eye witnesses”.*

The findings returned by the learned Additional Sessions Judge are *ex facie* perverse. He has failed to appreciate the evidence of the victim *vis-a-vis* other independent witnesses in consonance with the provisions of law of evidence. When a clear-cut, clinching and unimpeachable evidence was before the learned Additional Sessions Judge, he ought not to have acquitted the accused in a very serious case of this kind.

8. For the reasons stated hereinabove, leave to appeal needs to be granted and accordingly, it is granted.

9. Registry is directed to register the appeal.

10. The accused shall appear before the learned Additional Sessions Judge. The learned Additional Sessions Judge shall exercise his judicial discretion as provided in Section 390 of the Cr. P.C. either by committing the applicant to prison or admitting him to bail.

11. The application is disposed of.

12. List the appeal for final hearing in the week commencing from **3<sup>rd</sup> March, 2025**.

13. Call Record and Proceedings.

**[PRITHVIRAJ K. CHAVAN, J.]**