

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 533 OF 2015
WITH
CRIMINAL APPEAL NO. 32 OF 2015

The State of Maharashtra **....Applicant.**

Versus

Ramesh s/o. Uttam Kaldade & Ors. **....Respondents.**

Mr. B.L. Dhas, APP for State/applicant.

Mr. M.P. Kale, Advocate for appellants.

**CORAM : T.V. NALAWADE &
SMT. I.K. JAIN, JJ.**

DATED : 26th March, 2015.

ORDER :

1. The application is filed for grant of leave to file appeal against the judgment and order of acquittal in Sessions Case No. 20/2009, which was pending in the Court learned Additional Sessions Judge, Parbhani. The learned APP is heard. The learned counsel for appellant from appeal, who is representing the original complainant, is also heard.

2. This Court has gone through the original record. The submissions made show that the counter-cases were filed in respect of incident dated 4.3.2007 which took place after 5.00

p.m. in the village itself. The report was given by one Govind against respondents Ramesh, Subhash, Udhav, Sudhir and Madhav immediately after the incident. One Vithal, nephew of Govind was murdered in the incident. Namdev, complainant and Vijaimala sustained injuries in the incident. Allegations are made that these aforesaid persons and some other persons, who had come from Parbhani on motorcycle, had made the assault and had committed the murder and had attempted to commit murder of others. Crime was registered for the offence punishable under section 302, 34 etc. of I.P.C. in respect of murder of Vithal and crime was registered under other sections of I.P.C. as others were injured.

3. The evidence and the other material show that supplementary statement of PW 2 - Govind was recorded on 10.3.2007 and the statement of Vijaimala was recorded on 8.3.2007. Other statements were recorded late. The name of Parmeshwar and Rupesh were taken by Vijaimala on 8.3.2007. but the name of Satish was not taken by Vijaimala even on 8.3.2007. The names of Satish, Parmeshwar and Rupesh were added by Govind in supplementary statement dated 10.3.2007.

4. There was political rivalry and it is contended that on

that day, the incident started as liquor was being sold from the shop of Ruesh. There are injury certificates in respect of some accused on the record and their names are mentioned in the F.I.R., Exh. 79. It appears that accused Parmeshwar and Satish are from Parbhani and their names were not mentioned immediately after the incident. No test identification parade was held during investigation. Allegations against them were vague and the evidence given as against them in Court is also vague in nature. The State wants to file appeal against all the six persons mentioned in the F.I.R. and also against Parmeshwar, who is from Parbhani. On the other hand, the appeal is filed by original complainant against all the six accused mentioned in the F.I.R. and two persons from Parbhani.

5. This Court has gone through the reasoning given by the Trial Court. There is sufficient material to show that Vithal was murdered and many persons of both the sides were injured during incident. Some incident did take place and there is substantive evidence. In view of these circumstances, this Court holds that there is arguable case in appeal as against all the six accused mentioned in the F.I.R. But, there is no such arguable case as against Parmeshwar and Satish, who are from Parbhani.

6. In the result, Criminal Application No. 533/2015 is allowed only in respect of respondent Nos. 1 to 6 and is rejected in respect of respondent No. 7 – Parmeshwar. The appeal as against respondent Nos. 1 to 6 only is **admitted**. Comply the provisions of section 390 of Cr.P.C.

7. In view of the aforesaid discussion, Criminal Appeal No. 32/2015 as against respondent Nos. 1 to 6 only is **admitted**. Both the appeals are to be tagged together and compliance is to be made in the appeal filed by the State.

[SMT. I.K. JAIN, J.]

[T.V. NALAWADE, J.]

ssc/