

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2537 OF 2015

The State of Maharashtra. ... Applicant
(Ori. Complainant)

VERSUS

Ramesh Laxman Matkar
and 12 others. ... Respondent
(Ori. Accused)

...
Mr.S.S.Dande, A.P.P. for Applicant / State;
Mr.S.N.Patne, Advocate, Advocate for Respondents.
...

CORAM : P.R.BORA, J.

Date of Reserving the order : 02.12.2015

Date of Pronouncing the order : 10.12.2015

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PER COURT :-

1) The State has filed the present application seeking leave under section 378(1)(3) of the Code of Criminal Procedure to file an appeal against judgment and order dated 19.01.2015 passed by the Additional Sessions Judge, Bhusawal in Sessions Case No.23/2014, whereby the learned Additional Sessions Judge has acquitted all the 13 accused prosecuted in the aforesaid Sessions Case for the offences under sections 143, 147, 148, 323, 324, 506 read with 149 of Indian Penal Code and under section 3(i) (x) of the Scheduled Casts and Scheduled Tribes

(Prevention of Atrocities) Act, 1988.

2) Shri S.S.Dande, learned APP submitted that despite there being sufficient evidence brought on record, proving the guilt of the accused beyond reasonable doubt, the learned Additional Sessions Judge, by drawing some far fetched inferences has acquitted the accused. Learned APP further submitted that on some unsustainable grounds, the learned trial Court has rejected the evidence of the prosecution. Taking me through the evidence of the prosecution witnesses, learned APP submitted that, the trustworthy evidence has come on record proving the complicity of the accused in commission of the offences alleged against them. Learned APP therefore, prayed for allowing the present application

3) Shri S.N.Patne, the learned Counsel appearing for the respondents vehemently opposed the submissions made by the learned APP. Learned Counsel submitted that a well reasoned judgment is passed by the learned trial Court and no interference is required in the finding of acquittal recorded by the trial Court.

4) I have carefully considered the submissions advanced by the learned APP and the learned Counsel appearing for the respondents. I have also perused the impugned judgment and the evidence adduced by the prosecution before the trial Court. On perusal of the impugned judgment, it is apparently revealed that some of the aspects have not been appropriately considered by the learned Additional Sessions Judge. The trial court has not made any discussion as about the presence of the accused persons on the spot of occurrence or has not recorded any finding in that regard. Medical evidence also need to be considered in the proper context. It further appears to me that, the observations made and the conclusion recorded by the learned trial Court that, 'no specific evidence has come on record about the particular role played by the accused in the alleged occurrence also need to be re-considered. The applicant has thus raised arguable issues. As such, I am inclined to allow the present application. Hence, the following order.

ORDER

- a) The Criminal Application is allowed;
- b) Leave to appeal as prayed for is granted;
- c) The Criminal Application so filed be treated as memo of appeal;
- d) The appeal be registered in accordance with law;
- e) The appeal is admitted;
- f) Action under section 390 of Cr.P.C. be initiated against respondents / original accused.

(P.R. BORA, J.)

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S.P.Rane