

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4475 OF 2014
**(The State of Maharashtra Vs. Mahadeo @ Ashish
s/o Venkatrao Mogale and others)**

Mrs. B.B. Gunjal, A.P.P. for the applicant/State
Mr. Joydeep Chatterji, Advocate for the respondents

CORAM : M.T. JOSHI, J.

DATE : 10/06/2015

ORAL ORDER :

1. Heard both sides.
2. Aggrieved by the acquittal of the respondents of the offences punishable under section 354, 323, 504 read with section 34 of the I.P. Code and under sections 3 (1) (x) and 3 (1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the State wants to prefer an appeal and therefore, the present application for grant of leave to file appeal is filed.
3. The prosecution case, in short, is that on 27th December, 2012, complainant PW2 has lodged the FIR with Police Station, Ausa, alleging that on that day, in a

fair, called as 'Tembi Fair', the present respondents No. 2 and 3 alongwith 4 to 5 others, residents of village Khuntegaon, had gathered around her and her mother. Out of them, respondent No. 3 Ajay was drunk. He attempted to molest her. Upon questioning, he abused her on her caste. When her mother tried to rescue her, he assaulted her and snatched her ear-rings of five grams and cash of Rs. 450/-. Her maternal uncle's son tried to rescue them, but the father of respondent No. 3Ajay, namely, Respondent No.2 Navnath started beating him. Four others also joined him in beating. As all the respondents are known gundas in the village, nobody tried to intervene. The complainant sustained injuries on her stomach and left eye brow. Her mother has sustained injuries on her left foot. After making enquiry, another complaint came to be recorded on 29th December, 2012, on the basis of which crime was registered.

4. After filing of the chargesheet in the court of learned Judicial Magistrate First class, Ausa, the case was committed before the learned Special Judge, Latur for trial. Before the learned Special Judge, the

Medical Officer – PW1 Dr. Sachin Balkunde, the complainant – PW2 and her mother were examined. The caste certificate was also produced. The learned Special Judge, however, acquitted the respondents.

5. According to the learned Special Judge, the cross-examination of the complainant would show that the complainant was not regularly residing in the village and therefore, the respondents may not be aware of the caste of the complainant. Further, there were omissions as well as contradictions in the evidence.

6. Upon hearing both sides, it appears that the learned Special Judge has committed mistake by observing that the respondents may not have the knowledge regarding the caste of the complainant and her mother, as for the offence punishable under section 3 (1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, there is no need to have the knowledge about caste of the victim. Further, the learned Special Judge has alternatively taken the incident as a mere happening in a fair. In the circumstances, without making further comment on the

merit of the case, as the arguable case is made, the leave to file appeal needs to be granted. Hence, the following order:-

7. The application for grant of leave to file appeal is hereby allowed. The appeal be registered. Upon registration of the appeal, it stands **admitted**. Mr. Joydeep Chatterji, learned counsel for the respondents waives service of notice for the respondents upon admission of the appeal.

8. Action under section 390 of the Code of Criminal Procedure be taken.

9. The respondents be released on bail on their executing P.R. bond in the sum of Rs. 10,000/- each and also upon furnishing surety each in the like amount, within a period of four weeks from the date of this order.

Hamdast granted.

[M.T. JOSHI]
JUDGE