

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

CRIMINAL APPLICATION NO.5312 OF 2014

The State of Maharashtra ... APPLICANT

VERSUS

Raju Limbraj Motole & ors. ... RESPONDENTS

.....
Shri S.B. Pulkundwar, A.P.P. for applicant/ State
Shri S.N. Patil, Advocate for respondents
.....

CORAM: A.I.S. CHEEMA, J.

DATED: 24th July, 2015.

ORAL ORDER :

1. Heard learned A.P.P. for the applicant/ State and Mr. S.N. Patil, learned counsel for respondents/ accused. Perused the record and reasonings recorded by the trial Court. Learned A.P.P. submitted that, the medical evidence and the evidence of doctor shows that the injury to P.W.1 was on back side of the head and as per the facts of the case, accused No.1 to 4 had

assaulted P.W.1. The evidence of P.W.3 made it clear that the accused No.1 had actually used the stone to cause hurt to P.W.1. Learned A.P.P. submits that, the trial Court wrongly reasoned that there was discrepancy, and gave benefit to the accused.

2. The learned counsel for the respondents – accused submitted that, there is material to show that there were property disputes between the parties and that the witnesses examined are all family members and no independent witness has been examined. According to the counsel, the alleged stone which was used as weapon of assault, has not been recovered. There is confusion regarding when the injured was examined by the doctor. As per certificate, he was examined at 9.30 a.m. whereas the F.I.R. registered subsequently mentioned that the injured was being referred to the hospital. Thus, according to the counsel, the reasons recorded by the trial Court are correct.

3. The learned A.P.P. was unable to show involvement of respondents No.5 and 6. However, the evidence regarding respondents No.1 to 4 – original accused No.1 to 4 needs to be reconsidered. In this view of the matter, the application is allowed as far as respondents No.1 to 4 and it is rejected as far as respondent No.5 – Nagnath Limbraj Karande and respondent

No.6 Laxmi Nagnath Karande are concerned. The application be registered as appeal against respondents No.1 to 4.

4. Appeal is **admitted** against respondents No.1 to 4.

5. Mr. S.N. Patil, learned counsel waives service for respondents No.1 to 4 after admission of appeal.

6. Paper Book be got prepared.

7. Action under Section 390 of the Code of Criminal Procedure be taken against respondents No.1 to 4 in the trial Court.

(A.I.S. CHEEMA, J.)

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