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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.469 OF 2015

Shantabai Babaji Bandpatte,

... Appellant

V/s.

1. The State of Maharashtra
2. Maruti Khandu Ambure
3. Umesh Ashok Dhumal
4. Nagesh Sahebrao Bhosale
5. Dattatraya Sakharam Waikar
6. Babaji Ashok Dhumal
7. Subhash Dattu Borkar
8. Ramesh @ Mukya Jaysing Pawar
9. Pinti Vasant Bhosale
10. Shalan Ashok Dhumal.

.... Respondents

Mr. Abhijeet A. Desai, for the Appellants.

Mr. H. J. Dedhia, A.P.P., for the Respondent-State.

CORAM : P.V.HARDAS &
DR. SHALINI PHANSALKAR-JOSHI, JJ.

DATE : 22ND APRIL, 2015.

P.C. :[Per Dr.Shalini Phansalkar-Joshi, J.)

1. This appeal is preferred under Section 372 of the Code of Criminal Procedure, by the mother of the first informant challenging the acquittal of respondent Nos 2 to 10, in Sessions Case No.43 of 2010, by the Additional Sessions Judge, Malshiras, District Solapur, by his judgment dated 6.12.2014, for the offences punishable under Sections 147, 148, 341, 324, 341, 307,302 read with section 149 of the Indian Penal Code and section 135 of the Bombay Police Act.

2. The appellant is the mother of first informant Laxman Bandpatte. The first informant is the brother of deceased Santosh, who has succumbed to the injuries sustained in the incident that has taken place on 31.12.2010 at about 7.30 p.m. As per prosecution case, in the said incident, both the first informant Laxman and his brother Santosh were assaulted with sword and iron pipes by respondent Nos 2 to 7 by forming unlawful assembly and in prosecution of their common object to the said assembly.

3. The submission of learned counsel for the appellant is that the prosecution has succeeded in proving the death of Santosh was

homicidal in nature. Though the prosecution has cited about 23 witnesses in the list alongwith chargesheet, the prosecution has not examined all these witnesses and led evidence of only four witnesses. Hence according to learned counsel for the appellant, the said fact has resulted into miscarriage of justice. Therefore, the impugned judgment of the trial Court, acquitting respondent Nos 2 to 10 is required to be quashed and set aside. Hence according to him leave to file appeal be granted and the appeal be admitted.

4. With the assistance of learned counsel for the appellant, the learned APP, we have perused the impugned judgment of the trial Court which reveal that the complainant/first informant P.W.1 Laxman whose evidence is recorded by the trial Court at Exh.36 has not supported the prosecution case. He has outrightly denied the occurrence of the incident in which he himself was injured and his brother has succumbed to death. He is cross examined at length by the learned APP, but as per observation of the trial Court, nothing incriminating was brought on record through his cross examination.

5. Similarly as regards the evidence of P.W.2 panch Shakti, he is also declared hostile and has denied recovery of weapons at the instance

of the accused under Section 27 of the Evidence Act. P.W.3 Shivaji, panch to the seizure of the blood stained clothes of the accused, has also turned hostile and not proved the said recovery. P.W.4 Anil, the alleged eye witness to the incident has also not supported the prosecution case and hence declared hostile. In view of this fact that all the witnesses examined by the prosecution have not supported the case, in the absence of any incriminating evidence brought on record, the trial Court acquitted respondent Nos 2 to 10. As observed by the trial Court in para 12, even seized weapons and C.A. Reports were also not produced nor Investigating Officer was examined, the reasons for the same appears to be the fact that the injured complainant himself has not supported the prosecution case. In such situation, we do not find that the trial Court has committed any error apparent on the face on record in acquitting the respondent Nos 2 to 10.

6. As regards the submission of learned counsel for the appellant that the remaining prosecution witnesses are not examined as cited in the list enclosed with the chargesheet, considering the fact that injured complainant who was the brother of deceased having not supported the prosecution case and one more eye witness examined by prosecution Anil, also having been declared hostile, no purpose was

going to be served by examining other formal witnesses.

7. To sum up, therefore, we do not find any error, much less any perversity, in the impugned judgment of the trial Court, acquitting respondent Nos 2 to 10. In view of this, the Appeal is dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[P.V.HARDAS, J.]