

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.172 OF 2014

THE STATE OF MAHARASHTRA)...APPLICANT

V/s.

ROSHAN SOMA KOLI AND ORS.)...RESPONDENTS

Mr.Deepak Thakre, APP for the Applicant- State.

None for the Respondents.

CORAM : ABHAY M. THIPSAY, J.

DATE : 2nd FEBRUARY, 2015.

P.C. :

1 By this application, the State of Maharashtra is seeking leave to appeal from the judgment and order of acquittal dated 20th May, 2014, passed by the Judicial Magistrate, First Class, Panvel, in Regular Criminal Case No.616 of 2009, acquitting the respondents herein, who were accused in the said case. The respondents were prosecuted on the allegation of having

committed the offences punishable under Sections 143, 144, 147, 148, 427, 324, 504 and 506 of Indian Penal Code (IPC) read with Section 149 thereof.

2 I have heard Mr.Thakre, the learned APP, in support of the application. With his assistance, I have gone through the impugned judgment and also through the notes of evidence that was adduced during the trial.

3 The learned Magistrate has noted the facts of the case in paragraph 2 of the impugned judgment. It is clear that the injured persons and the respondents (hereinafter referred to as the accused) are relatives and the incident started over a petty quarrel. The case against the accused was that they had assaulted the first informant Sumeet Ambaji Dolkar, his father Ambaji Dolkar and his uncle Rupesh Dolkar.

4 The learned Magistrate observed that the evidence adduced by the prosecution witness was full of contradictions and

omissions (paragraph 29 of the impugned judgment). The learned Magistrate was of the view that the discrepancies in the prosecution evidence were not properly explained or accounted for, and that, therefore, there arose a doubt about the truth of the prosecution version.

5 On going through the evidence, it does appear that the possibility of the witnesses having given an exaggerated account of what had happened, cannot be ruled out.

6 Mr.Thakre contended that the medical evidence indicate that injuries had been sustained by Sumeet Dolkar, Ambaji Dolkar and Rupesh Dolkar. Dr.Sanjay Choudhary, who was examined as PW8, had mentioned this in his evidence. Mr.Thakre submitted that the existence of these injuries had not been considered by the learned Magistrate at all. He submitted that, these injuries, if taken into consideration, would assist the case of the prosecution against the accused.

7 Though there is some substance in the contention advanced by the learned APP, I find that the injuries are of a very minor nature. Though, that some incident indeed might have been taken place can be accepted, it also appears that, what had happened was, in all probability, not as per the prosecution case. The injuries are not consistent with the theory of assault by more than seven persons by weapons.

8 Considering all the relevant aspects of the matter, including the minor nature of the injuries, the admitted dispute between the parties and the discrepancies in the prosecution evidence, as noted by the Magistrate in his judgment, it cannot be said that the order of acquittal passed by the Magistrate is incorrect, or contrary to law. The view of the matter, as taken by the Magistrate, is certainly a possible view.

9 It is well settled that when such is the case, grant of leave would be futile.

10 Leave refused.

11 The application is rejected.

(ABHAY M. THIPSAY, J.)