

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

**CRIMINAL APPLICATION NO. 513 OF 2015**

The State of Maharashtra,  
Through Police Station,  
Dist. Jalgaon.

...Applicant

versus

1. Sambhaji Dhondu Mahajan,  
Age: 45 years,
2. Tribhuvandas Devidas Mahajan,  
Age: 40 years,
3. Ghanshyam Waman Gadhari,  
Age: 24 years,

All R/o. Mehunbare, Tq. Chalisgaon,  
District Jalgaon.

...Respondents

.....  
Ms. R.P. Gour, A.P.P. for applicant  
Mr. Ujwal S. Patil, Advocate for respondent  
.....

**CORAM : N.W. SAMBRE, J.**

**DATE : 10th MARCH, 2016**

**ORAL ORDER :**

This State appeal is preferred against the judgment delivered by learned Judicial Magistrate, First Class, Chalisgaon on 29/09/2014, whereby the respondents-accused are acquitted of the offence punishable under Sections 448, 323, 504, 506 read with Section 34 of Indian Penal Code with Section 7(1)(d) of the Protection of Civil Rights Act, 1955 read with Section 34 of Indian

Penal Code.

2. Learned A.P.P., while trying to make out a case for grant of leave to appeal, would urge that learned Magistrate has failed to appreciate the factual matrix of the case and evidence that was brought on record so as to bring home the guilt of the accused. She has invited my attention to the evidence of witnesses namely Janabai Chhagan Shirsath and Tulsabai Dhondu Sonawane so as to submit that the prosecution story was in its entirety supported by the said witnesses and learned Magistrate has committed error by declaring them as interested witnesses.

3. With the assistance of learned A.P.P., I have scanned the entire evidence in the light of judgment delivered by learned Magistrate. Learned Magistrate declared these witnesses namely Janabai and Tulsabai as interested witnesses, Janabai, wife of complainant and Tulsabai was accompanied her at the time of incident in question. It is claimed that they rushed on the spot after hearing call from the complainant. It is required to be noted that the complaint is at Exhibit-66. The said witnesses in their evidence though have stated that they were present when the incident in question took place, however, in the cross examination, the said witnesses have stated that on various dates, they have attended the

Court along with the complainant. Apart from above, it is required to be noted that Tulsabai in her evidence has admitted that the complainant had helped her financially in the marriage of her daughter. It is further required to be noted that while considering evidence of Janabai, it is noted that Janabai though claimed to eye witness to the incident, however, subsequent to the incident in question, Janabai and Tulsabai have not intervened when the complainant was assaulted by the accused persons, which appear to be complete unnatural act on their part. Apart from above, panch witness namely Sanjay Vishvanath Bhosale, in clear terms, in his evidence has stated that spot panchnama was drawn by the police and he has signed the same, as he was asked by the police accordingly. Though it is claimed that accused No.1 has produced iron rod Article-D, however, it is required to be noted that independent panch in support of the same was not examined and as such, there is no corroboration to the evidence of Investigating Officer to that effect.

4. So far as the offence punishable under Protection of Civil Rights Act is concerned, it is required to be noted that the evidence as is available for an offence under Atrocities Act cannot be equated and considered for the purpose of seeking conviction under the said provisions. No independent witness in the matter was examined so

as to substantiate the case under the provisions of Protection of Civil Rights Act. It is also required to be noted that in between the complainant and the accused persons, admittedly there was no money transaction and record to that effect was produced before the Court below.

5. In this back ground, in my opinion, leave, as is sought by State Government, to file appeal is sans merit and as such, leave is refused. The appeal, as such, fails, stands dismissed.

**[ N.W. SAMBRE, J. ]**