

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 932 OF 2015

THE STATE OF MAHARASHTRA
VERSUS
RAMDAS DADA BOBADE AND OTHERS

...
APP for Applicant : Mrs. R. K. Ladda.
Advocate for Respondents : Mr. D. G. Nagode.
...

CORAM : **INDIRA K. JAIN, J.**
DATE : 29th March, 2016.

P.C.:

. This application under Section 378 (1) (3) of the Code of Criminal Procedure is for grant of leave to appeal against the judgment and order dated 19th November, 2014 passed by the learned Judicial Magistrate First Class, Karjat, District Ahmednagar in R.C.C. No.190 of 2009. By the said judgment and order learned Judicial Magistrate First Class acquitted the Accused of the offences punishable under Sections 143, 147, 148, 323, 324, 504 and 506 read with 149 of the Indian Penal Code and Section 37 (1) (3) read with 135 of the Bombay Police Act.

2 Heard the learned counsel for parties. Perused record and judgment of Trial Court.

3 It is the case of prosecution that on 8th October, 2009 at about 05:00 p.m. Complainant with the help of JCB machine was inserting pipe under road for drain water. Accused persons came there resisted the act of Complainant and assaulted him with an axe, iron pipe and stick. Wife of Complainant and one Mubarak Shaikh intervened to rescue the Complainant. Accused did not spare even wife and Mubarak Shaikh and assaulted them. After the incident Accused fled away from the spot. Complainant and injured were taken to hospital. On the FIR lodged by Complainant Nana crime was registered against the Accused.

4 After investigation charge-sheet came to be filed. Charge was framed against the Accused vide Exhibit 35. They pleaded not guilty and claimed to be tried. Prosecution examined in all 7 witnesses to substantiate the guilt of Accused. PW-1 Complainant Nana Maruti Deshmukh Bobade, PW-4 Manisha, PW-7 Mubarak and PW-3 Dr.Khude were the material witnesses. On appreciation of their evidence Trial Court observed that witnesses had not assigned specific role to each of the Accused. They were held not guilty and consequently acquitted. Being aggrieved thereof State has filed this application for grant of leave to appeal.

5 With the assistance of learned APP and learned counsel for Respondents this Court has gone through the evidence of prosecution witnesses. It appears from the evidence of PW-3 Dr.Khude that on 8th October, 2009, he examined Complainant Nana Maruti Deshmukh, Manisha wife of Nana and Mubarak Shaikh at Sub-District Hospital, Karjat. Dr. Khude was attached to said hospital as medical officer. On examination several injuries were found on the person of Nana, Manisha and Mubarak. Those injuries have been described by medical officer in his evidence. Medical certificates have been proved vide Exhibits 78, 79 and 80.

6 PW-1 Nana is the Complainant. He stated that Accused Ramdas, Balu and Mohan assaulted Mubarak and Vilas. Mubarak was assaulted with axe whereas Vilas was assaulted with steel rod. Specific role is assigned by Nana to Accused No.1 Ramdas, Accused No.2 Balu and Accused No.3 Mohan. According to Nana, Mohan also assaulted Vilas with steel rod.

7 PW-4 Manisha is the wife of Complainant. She is a crucial witness and an injured. She intervened in the assault to rescue her husband. It is stated by Manisha that Accused Ramdas assaulted

Mubarak with an axe. She also implicates Accused No.4 Gorakh and states that Gorakh assaulted with steel pipe and stick to Mubarak. It is further stated by Manisha that Accused No.5 Dattu delivered a blow with steel pipe to Mubarak. Though she named all the Accused she has assigned specific role only to Accused Nos.1, 4 and 5.

8 PW-7 Mubarak is an injured witness. He stated that Accused No.1 Ramdas assaulted him with an axe on his head. Considering the evidence of PW-1 Nana, PW-4 Manisha, PW-7 Mubarak and PW-3 Dr. Khude this Court finds that prosecution has an arguable case against Accused Nos.1 to 5. Application to that extent deserves to be allowed.

9 So far as Accused Nos.6 to 11 are concerned, though PW-4 Manisha named them no specific role is attributed to each of them. For want of sufficient evidence leave in respect of Accused Nos.6 to 11 deserves to be refused. Hence the following order -

ORDER

- I. Criminal Application No.932 of 2015 is partly allowed.

- II. Leave to appeal against Accused Nos.1 to 5 is granted.
- III. For Accused Nos.6 to 11 leave refused.
- IV. Appeal is **Admitted** to the extent of Accused Nos.1 to 5.
- V. Action under Section 390 of the Code of Criminal Procedure against Accused Nos.1 to 5.

[INDIRA K. JAIN, J.]

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