

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

CRIMINAL APPLICATION NO. 6088 OF 2013

THE STATE OF MAHARASHTRA
VERSUS
NIKHIL SUDAMRAO KHOSE AND OTHERS

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APP for Applicant : Mr. S. B. Yawalkar.

Advocate for Respondents : Mr. S. R. Patil, h/f Mr. R. B. Temak.

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CORAM : **INDIRA K. JAIN, J.**

DATE : 14th 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 of acquittal passed by the learned Judicial Magistrate First Class, Washi, District Osmanabad in R.C.C. No.479 of 2008 for the offences punishable under Sections 143, 147, 148, 323, 504 and 506 read with 149 of the Indian Penal Code.

2 Heard Mr. A. B. Yawalkar, learned APP for the Applicant / State and Mr. S. R. Patil, holding for Mr. R. B. Temak, learned counsel for Respondents. Perused record.

3 Facts giving rise to present application may be stated in brief as under:

 According to prosecution on 24th January, 2006 at around 02:30 pm, PW-1 Complainant Shivaji was ploughing the agricultural land. His nephew Mahadeo accompanied him. It is alleged that Respondents and some unknown persons from village Bhoom came there. They asked Complainant to sign bond paper. Complainant refused to sign. Thereafter Respondents Rajendra, Amrut and Madhukar abused and assaulted him with stick, kick and fist blows. He sustained bleeding injury to left leg. Complainant was also threatened of dire consequences if he does not sign the papers.

4 Incident was then reported to Police Station Washi. Crime No.8 of 2006 was registered against Respondents. Investigation proceeded. On completion of investigation charge-sheet was submitted to the Court of Judicial Magistrate First Class, Washi. Charge was framed against the Respondents. They pleaded not guilty to the charge and claimed to be tried. During trial prosecution examined as many as 9 witnesses to substantiate the guilt of the Accused.

5 Trial Court on consideration of evidence of prosecution witnesses and facts elicited in cross-examination came to the conclusion that the evidence of material witnesses suffers from major contradictions and omissions and therefore it would not be safe to rely upon their testimonies. Another drawback which was noticed by Trial Court was the absence of medical certificate. Though it was the case of prosecution that injured sustained injuries with stick, kick and fist blows prosecution did not prove medical certificate of injured. Taking into consideration these lapses Trial Court held the Accused not guilty and acquitted them. Being aggrieved State has come up with this application for leave to appeal.

6 With the assistance of learned counsel for parties this Court has gone through the evidence of prosecution witnesses. It is a matter of record that medical certificate of injured has not been proved by the prosecution though it is admitted that injured was referred to the hospital. On perusal of FIR proved by star witness Shivaji it can be seen that there is major variance between FIR (Exhibit 101) and the evidence of Complainant Shivaji. Similar is

the case with other witnesses whose evidence is doubtful as the role assigned to each of the Accused differs from witness to witness. The defence could elicit material admissions in the cross-examination of witnesses which have been elaborately considered by the Trial Court and which completely demolish the edifice of prosecution case.

7 In view of the omissions and contradictions brought in the cross-examination of prosecution witnesses and absence of medical certificate this Court finds that no purpose would be served if leave is granted. Application deserves to be dismissed. Hence the following order :

ORDER

Criminal Application No.6088 of 2013 stands dismissed.

[INDIRA K. JAIN, J.]

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