

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

CRIMINAL APPEAL NO. 215 OF 2015

Laxman S/o Umaji Borude

... Appellant

VERSUS

Shashikant Balu Karale & Ors.

... Respondents

.....
Mr N. C. Garud, Advocate for the appellant
Mr Mahesh K. Bhosale, Advocate h/f Mr P. V. Barde,
Advocate for respondents No. 1 to 4
Mr A. A. Jagatkar, APP for respondent No. 5
.....

**ALONG WITH
CRIMINAL APPLICATION NO. 1101 OF 2015**

CORAM : V. L. ACHLIYA, J.
DATE : 6TH MARCH, 2017.

PER COURT:

1. The appellant (victim) has preferred this appeal u/s 372 of the Code of Criminal Procedure, seeking leave to file an appeal against acquittal on the grounds as set out in detail in the memo of the appeal.

2. Heard learned counsel for the appellant, counsel representing the respondents no. 1 to 4 and APP for the State and further perused the record & proceedings of the case called for deciding the application seeking leave to file appeal.

3. Mr Garud, learned counsel for the appellant strenuously contended that the reasons & findings recorded by the trial Court in acquitting the accused are based upon improper appreciation of evidence, which has resulted into causing serious miscarriage of justice to the appellant-victim. He submits that the complaint in respect of the incident was lodged by Vitthal Karale (PW1), who too sustained injury in the incident and also examined by the prosecution to corroborate the testimony of appellant. He submits that, testimony of the appellant-victim finds due corroboration from testimony of complainant (PW1). He further submits that the testimony of both the injured find due corroboration from the medical evidence. The axe used in the commission of offence was recovered at the instance of the accused No. 1. By referring the evidence on record, the learned counsel submits that the reasons & findings recorded by trial court are perverse and there is a case to be considered in appeal. He therefore urged to grant leave to file an appeal.

4. On the other hand, learned counsel for the respondent Nos. 1 to 4 supported the Judgment & Order passed by the trial Court. He submits that, the reasons & findings recorded by the trial Court are based upon due appreciation of evidence on record. There is absolutely no perversity in the impugned Judgment & Order passed by the trial Court. He submits that, though the incident is alleged to have occurred in the day time and that too in the crowded locality, not a single independent witness was examined by the prosecution. The testimony of PW1 & PW2 was found to be full of omissions & contradictions. It is further pointed out that in respect of the injuries caused to the complainant and the present appellant, serious discrepancy was noted in the injury recorded at civil hospital and the

injury certificates issued from Private Hospital. He therefore urged, not to entertain the appeal.

5. In order to appreciate the submissions advanced, I have perused the impugned Judgment & Order as well as the depositions of the witnesses and the injury certificate as referred during the course of the submissions.

6. In my view, the reasons & findings recorded by the trial Court are fully in consonance with the evidence on record. There is absolutely no perversity in any of the reasonings & findings recorded by the trial Court. As per the case set out, the incident was alleged to have occurred at 3:00 PM on 02.07.2012. As per the facts deposed by the present appellant/victim, who was examined as PW2, the respondent No. 1 along with 35-40 people came to his house and asked to vacate the house and thereafter they have assaulted. It is pertinent to note that, the complainant has lodged the complaint wherein he has referred only 4 persons i.e. respondent Nos. 1 to 4 to be involved in commission of offence and there is no reference of involvement of 35-40 person in the commission of offence. It is further pertinent to note that, in the complaint lodged on 02.07.2012 as well as the statement of the complainant recorded, there was no reference that accused hurled abuses referring to the caste of the present appellant/victim. However, on the next day i.e. on 03.07.2012, after due discussion and involvement of one Popat, the leader of community to which the appellant belongs, the representation was made to apply the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter shall be referred to as "the Atrocities Act"). Subsequently, the supplementary statement was recorded after a

period of one month from the incident and the offence u/s 3(i)(x) of the Atrocities Act was attracted. In the complaint made as well as the statement of the complainant, the accused alleged to have assaulted them by means of kick, fist-blows, axe & handle of the axe. In the facts deposed before the court, besides the axe, the complainant and the injured have alleged that the assault was made with the help of wooden log which was never stated in the complaint as well as statement recorded u/s 162 of Cr.P.C. By noting various omissions and contradictions and tendency on the part of the witnesses to make exaggerations, the trial Court has refused to place reliance upon the testimony of PW1 & PW2 to base the conviction. Upon considering the fact that the incident was occurred in a day time and that too in a crowded locality, the trial Court observed that in absence of any independent witness, it is unsafe to convict the accused. In the judgment, the trial Court has observed that, immediately after the incident the complainant and injured were taken to Civil Hospital. No certificate of injury noted on the person of injured in Civil Hospital produced before the court. The certificates of injury produced at Exh. 38 & 39 were issued by Dr. Veer, running private hospital at Ahmednagar, wherein the appellant claims to have got admitted.

7. Considering the reasons & findings recorded by the trial Court in the light of the evidence on record, I am of the view that same are in consonance with the evidence on record. It is quite a settled position in law that while dealing with appeal against acquittal if two views are possible and the view taken by the trial Court found to be possible view then the appellate Court is not expected to interfere with such Judgment & Order and substitute its own view in the matter. Keeping in mind the broad principles to be

followed while dealing with appeal against acquittal, I am of the view that no case is made out to grant leave to file an appeal. I am therefore not inclined to grant leave to file appeal against the impugned Judgment & Order. Accordingly, the appeal is dismissed.

8. Connected Criminal Application No. 1101 of 2015 seeking action u/s 390 of Cr.P.C. stands disposed of in terms of order in Criminal Appeal No. 215 of 2015.

9. Original Record & Proceedings be sent back to the trial Court.

[V. L. ACHLIYA, J.]