

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

**CRIMINAL APPEAL NO. 408 OF 2016
WITH APEAL/364/2016**

**ASHOK @ BALASAHEB S/O ABASAHEB GALDCHAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr.N.L. Jadhav, Advocate for the appellant.
Mr.R.V. Dasalkar, APP for respondent/State.
Mr.M.S. Karad h/f. Mr.S.S. Thombre, Advocate for
respondent Nos. 2 to 5.

**CORAM : T.V. NALAWADE &
S.M.GAVHANE, JJ.
DATED : 15.12.2017**

P.C. :-

1. This proceeding is filed to challenge the decision of acquittal given by the learned Additional Sessions Judge, Majalgaon, Dist. Beed in Sessions Case No.37 of 2013 in favour of original accused Nos.1,4 & 5. They are acquitted from offence punishable under sections 452, 392, 307, 427 read with section 149 of the Indian Penal Code.

2. Heard learned Counsel for the appellant, who is original complainant.

3. It appears that no separate leave is sought, but learned Counsel for the appellant submitted that this proceeding may be treated as the proceeding for grant of leave and the Court may hear for admission purpose also.

4. This Court has carefully gone through the evidence. This Court has also gone through the injury certificate in respect of two injured persons including the first informant.

5. There are some disputes between accused Nos.1 to 3 on one side and the first information on other side. The first informant was running one hotel and in the vicinity of the hotel, there was brick-kiln of accused No.3. Accused Nos.2 and 3 are sons of accused No.1. One litigation was also started by the first informant to stop the activity of brick-kiln in the vicinity of his hotel, as the brick-kiln was creating nuisance to his hotel. The allegations are made that the incident dated 01.06.2012 took place due to his said dispute. The allegations are made that accused persons, five in numbers, entered in the hotel with weapons like sword, iron-bar and stone and they assaulted the first information and his brother by using these weapons. The brother of the first informant sustained fracture injury to his head, which is described as grievous injury. The

first informant sustained some simple injuries like CLW, but there was fracture of little finger, proximal phalanx. The allegations as against accused Nos.1 and 5 were vague that they had assaulted together by using iron-bar and stone and there was allegation against Laxman that he was instigating other. It is contended that accused Nos.4 and 5 are relatives of accused No.1.

6. The Trial Court has considered direct evidence, medical evidence and also evidence of spot panchanama. The Trial Court has believed the evidence given as against accused Nos.2 and 3 - sons of accused No.1 and in view of the injuries caused to first informant and his brother, conviction is given even for offence punishable under section 307 of IPC by the trial Court but by using section 34 of the IPC.

7. After considering the entire record, this Court formed opinion that nothing can be achieved by granting leave to file appeal as against accused Nos.1,4 and 5. The view taken by the trial Court is a possible view and there is no material on the basis of which leave can be granted and appeal as against accused Nos.1,4 and 5 can be admitted. The State did not prefer to file appeal in view of the aforesaid circumstance. It is the original complainant, who has come to this Court.

8. Criminal Appeal No. 408 of 2016 stands dismissed.

9. List the other appeal for hearing on 29.01.2018.

[S.M.GAVHANE, J.]

[T.V. NALAWADE, J.]