

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

CRIMINAL APPEAL NO.933 OF 2015

Tarabai w/o. Subhash Kadam,
Age 30 years, Occu:Household,
R/o. Sangwi, Tq.Naigaon,
District Nanded.

APPELLANT

VERSUS

1. Satish @ Bablu s/o. Bhagwan Pawar,
Age 27 years, Occu: Agriculture.
2. Sujil @ Bhaiya s/o. Bhagwan Pawar,
Age 23 years, Occu: Agriculture.
3. Sudhir @ Balu s/o. Bhagwan Pawar,
Age 25 years, Occu: Agriculture.

All R/o. Hotala, Tq.Naigaon,
District Nanded.

4. The State of Maharashtra,
Through Police Station Officer,
Police Station Kuntur,
Tq. Biloli, District Nanded.

RESPONDENTS

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Mr. A.R.Magar, advocate holding for Mr.
G.P.Shinde, Advocate for the appellant
Mr. K.M.Nagarkar, Advocate for respondent
nos.1 to 3.
Mr. S.Y.Mahajan, Addl.P.P. for Respondent no.
4 – State

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**CORAM: S.S.SHINDE &
K.K.SONAWANE, JJ.**

Date: 27.04.2017

PER COURT:

1] Heard the learned counsel appearing for the applicant/appellant, learned counsel appearing for respondent nos.1 to 3 and the learned APP appearing for respondent—State.

2] The appellant preferred present Appeal against the impugned order of acquittal passed by the learned Additional Sessions Judge, Biloli in Sessions Case No.23/2013, dated 01.09.2015.

3] Appellant states that, respondent nos.1 to 3 assaulted victim namely Subhash Kadam and committed his murder. Pursuant to the complaint filed by Laxman Kadam, brother of the deceased, offence under Section 302 r/w. 34 of the IPC came to be registered. The police investigated into the allegations

and charge-sheet was filed against respondent nos.1 to 3 i.e. original accused nos. 1 to 3. The learned Sessions Judge framed requisite charges against original accused i.e. respondent nos.1 to 3. They pleaded not guilty and claimed to be tried. The learned Sessions Judge recorded the evidence of the witnesses and on appreciation of the entire evidence, arrived at a conclusion that the prosecution failed to prove the charges against the accused beyond reasonable doubt. Therefore, the original accused i.e. respondent nos.1 to 3 came to be acquitted for the charges leveled against them.

4] Being dissatisfied with the judgment and order of acquittal, the appellant preferred the present Appeal to redress his grievances, inter alia, appellant / applicant also prayed for leave to file present appeal in view of the guidelines of the Hon'ble Apex

Court in the case of **Satya Pal Singh vs. State of Madhya Pradesh and others, 2015 Cri.L.J.4929**. Therefore, we proceed to hear the appellant/applicant and Respondent for the prayer of seeking leave to appeal against the order of acquittal of the respondent nos. 1 to 3.

5] We have considered the submissions advanced on behalf of both sides. We have also perused the record and proceedings of the Sessions Case No.23/2013. Admittedly, the prosecution adduced the evidence of as many as 18 witnesses to bring home guilt of the accused / respondent nos.1 to 3. Unfortunately, except complainant and the Investigating Officer, rest of the witnesses turned hostile and did not support the prosecution case. The learned counsel appearing for the appellant gave much more emphasis on the circumstances of inimical terms between the deceased and other board of

trustees of the institution where the deceased was in employment as a Headmaster. The deceased was also nominated as one of the trustees of institution. It has been alleged that the deceased was instrumental for shifting the school from one place to another, which resulted into economical losses to the trust.

6] However, apart from the inimical terms between the deceased and other trustees of the institution, there is no cogent and convincing evidence produced on record to prove the charges leveled against Respondent Nos.1 to 3. Unfortunately, rest of the star witnesses of the prosecution other than complainant and investigating officer, turned hostile and did not support the prosecution. Hostile demoneur of the eye witnesses created serious flaw in the prosecution case. In such circumstances, we do not find any propriety to allow the applicant / appellant to proceed

for re-appraisal of the evidence of prosecution witnesses.

7] Considering the entire evidence on record, there are remote possibility of conviction of the accused in this case. It would be futile efforts and we do not permit to dissipate the valuable time of this Court for such cases where the chance of conviction is very bleak. The prayer seeking leave to file an appeal in such circumstances cannot be granted. Therefore, the application being devoid of merits, same stands rejected and consequently the proceeding of appeal filed on behalf of applicant / appellant is hereby disposed of.

[K.K.SONAWANE]
JUDGE

[S.S.SHINDE]
JUDGE