IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.51 OF 2016

THE STATE OF MAHARASHTRA)...APPLICANT

V/s.

BALKRUSHNA GOPAL MOHITE AND ORS.)...RESPONDENTS

Ms.V.S.Mhaispurkar, APP for the Applicant - State.

CORAM : A. M. BADAR, J.

DATE : 3rd FEBRUARY 2017

P.C. :

1 This is an application for leave to appeal by the State for challenging the judgment and order of acquittal of five accused persons in Regular Criminal Case No.43 of 2014 for offences punishable under Sections 143, 147, 504, 506 read with 149 of the IPC recorded by the learned JMFC, Dapoli, on 1st January 2016.

2 Heard learned APP appearing for the State and perused the record made available.

3 In submission of the learned APP, prosecution has proved charges levelled against accused persons by examining injured witness as well as by adducing medical evidence on record, and therefore, acquittal awarded by the learned JMFC is illegal.

4 According to prosecution case, prosecuting party as well as accused persons were on inimical terms because of their rivalry which was also reflected in the meeting of the Gram Sabha. On 2nd September 2013, at about 9.00 a.m., accused persons are stated to have an unlawful assembly and indulged in rioting, thereby assaulting members of the prosecuting party including PW2 Sudhir. It is seen that, in all six prosecution witnesses including injured PW2 Sudhir have deposed that all accused persons assaulted him by means of stick, kicks and fist blows. The learned trial court, upon scrutiny of the evidence on record, concluded that PW2 Sudhir has sustained only one injury in the nature of swelling of size 2 x 3 cm over occipital region and discarded evidence of prosecution because of contradictions and improvements made by the witnesses of the prosecution.

5 It is seen that prosecuting party is on inimical terms with accused persons. Injured witness as well as alleged eye witnesses have added embellishments to their testimony and evidence of those witnesses is inconsistent with the medical evidence adduced on record. In such situation, it is difficult to separate grains from the chaff, and as such, the entire story of prosecution was disbelieved by the learned trial court.

6 The view taken by the learned trial court cannot be said to be a view which is not plausible on the basis of evidence adduced on record. Therefore the order :

i) Leave refused.

ii) The application is rejected.

(A. M. BADAR, J.)