

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 67 OF 2016
(for Leave to Appeal)**

The State of Maharashtra	Applicant
Versus	
Shivaji Raghunath Ghadage & Ors.	Respondents

Mr. V.V. Gangurde, APP for the applicant.

Mr. Shailesh D. Chavan with S.R. Ghanavat for resp. nos.1 to 9.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 31st OCTOBER, 2017

P.C. :

1. By this application, the State has sought leave to challenge the judgment dated 17th November, 2015 in Crime No. 54 of 2013 whereby the learned J.M.F.C., Court No.3, Waduj has acquitted the respondent nos.1 to 10 for offences under sections 143, 147, 148, 323, 324, 504, 506 r/w. 149 of the Indian Penal Code.

2. Heard the learned APP for the applicant and the learned counsel for respondent nos.1 to 9. Perused the record and considered the submissions advanced by the learned Counsels for the respective parties.

3. The charge against the respondent nos.1 to 10 was that on 27th August, 2013 at about 09:15 p.m., they had formed an unlawful

assembly with a common object of assaulting Shri. Devidas Rajaram Ghadge. It is alleged that the respondent no.1 was armed with iron rod and the other respondents were armed with sticks. In pursuance of the common object they assaulted the said Devidas Rajaram Ghadge. The respondents are also alleged to have abused and criminally intimidated said Devidas Rajaram Ghadge.

4. The learned Magistrate, after considering the evidence on record, held that there is discrepancy in the evidence of the first informant – Devidas Rajaram Ghadge and the other eye witnesses namely PW3 Ratnadeep and PW5 Ratnakalyan. The learned Magistrate has further held that the prosecution had not examined the independent witnesses who were allegedly present at the place of incident. The learned Judge further took note of the fact that the Civil Suit is pending between the first informant and the respondents herein and after considering the facts and circumstances of the case, the learned Judge held that the prosecution had failed to establish the guilt of the respondent nos.1 to 9/accused beyond reasonable doubt. The learned Judge, therefore, gave benefit of doubt and acquitted the respondents of the aforesaid offences.

5. It is to be noted that the first informant PW1-Devidas Rajaram Ghadge had alleged that the respondent no.1 had assaulted him with an iron rod and that the respondent nos.3 to 6 and 8 to 10 had assaulted him with kicks and blows. His testimony indicates that the respondent nos. 2 and 7 were armed with sticks, however he does not

claim that these respondents had assaulted him in any manner. The evidence of PW3 and PW5, who are the sons of PW1-Devidas Rajaram Ghadge had given a different version. They claim that the respondent nos.2 to 10 were armed with sticks and that all these respondents had assaulted PW1-Devidas Rajaram Ghadge by sticks.

6. It is thus evident that there is discrepancy in the evidence of these witnesses as regards the role played by these respondents in assaulting PW1-Devidas Rajaram Ghadge. Furthermore, the medical evidence indicates that PW1 had sustained only abrasions. The medical evidence does not corroborate the testimony of PW1 that he had sustained serious bleeding head injuries. PW2 and PW4, who are witnesses to the scene of offence as well as panchnama have also not supported the prosecution witnesses.

7. Considering all the facts and circumstances, the view taken by the learned Magistrate is a probable view. The evidence on record does not disclose the essential ingredients of the offence. Hence, the learned Judge was justified in acquitting the respondents/accused. The findings of the learned Judge are based on the evidence on record and are neither illegal nor perverse. The order does not warrant interference. Hence, application for leave to appeal is rejected.

(SMT. ANUJA PRABHUDESSAI, J.)