

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

**CRIMINAL APPLICATION NO. 70 OF 2016
(for Leave to Appeal)**

The State of Maharashtra

....Applicant

Versus

Mohan Gujaba Jagtap & Ors.

....Respondents

Mrs. N.S. Jain, APP for the applicant.

None for the respondents.

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 15th June, 2015 whereby, the learned Additional Sessions Judge, Satara in Sessions Case No. 2 of 2013 had acquitted the aforesaid respondents/accused nos.1 to 5 of offences under Sections 143, 147, 148, 324, 323, 504, 506 r/w. Section 149 of the Indian Penal Code and 3 (1) (x) of S.C. and S.T. (Prevention of Atrocities Act), 1989 and under Section 7(1) (d) of Protection of Civil Rights Act.

2. The case of the prosecution in brief was that on 23rd September, 2012, at about 3:30 p.m., the respondents herein formed an unlawful assembly with a common object of assaulting Tanaji Tukaram Shinde and his brothers Sambhaji and Shivaji Tukaram Shinde. The respondents were armed with weapons and that in pursuance of the

common object, they assaluted and caused injuries to Tanaji Shinde, Sambhaji and Shivaji. It is further alleged that the respondents also insulted them by calling them as '*Chambhar*'.

3. The learned Sessions Judge, upon considering the evidence on record, held that there is a material discrepancy in the evidence of the first informant and the other injured witnesses. The learned Judge also took note of the fact that even prior to the registration of first information report, the respondents herein had lodged a first information report against Tanaji Shinde and his brothers for assaulting them. The learned Judge also held that there was no medical evidence to corroborate the testimony of the first informant-PW1 and the other injured witnesses. The learned Judge had also observed that there was no evidence on record to prove that the accused had intentionally insulted or humiliated the PW1-Tanaji Shinde and his brothers by referring to them as '*Chambhar*'. The learned Judge has further observed that there is a civil dispute between the first informant-Tanaji Shinde and the respondents herein. Upon analysing and appreciating the evidence on record, the learned Judge also held that the prosecution had failed to establish the charges levelled against the accused and therefore, acquitted them.

4. I have perused the records and considered the submissions advanced by the learned APP for the applicant.

5. The case of the prosecution is that on the relevant date i.e. on

23rd September, 2012, while PW1-Tanaji Shinde and his brothers were ploughing the paddy field, the respondents came armed with weapons and assaulted and abused them. In this regard, the prosecution had examined PW1-Tanaji Shinde who had deposed that the accused nos.1 to 5 had came to the paddy field and that the accused nos.2 to 4 had dragged Sambhaji and further, the accused nos.1 to 5 had assaulted them. It is alleged that the accused no.3 had hit a stone on the head of Shivaji. In this regard, there are material contradictions in the testimony of PW1 which have been recorded in paragraph 14 of the impugned judgment. The evidence on record also reveals that there is a total variation between the testimony of PW1-Tanaji Shinde and PW3-Shivaji Shinde. Though the witnesses have claimed that they have sustained injuries, there is no medical evidence to corroborate the said statement. The prosecution had also not examined Sambhaji, who was also allegedly injured in the said incident. The evidence as regards the criminal intimidation and humiliation is also not trustworthy.

6. Considering all the facts and circumstances, the view taken by the learned Sessions Judge 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.)