

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.103 OF 2016

THE STATE OF MAHARASHTRA)...APPLICANT

V/s.

TANAJI SHIVAJI KARADE AND ORS.)...RESPONDENT

Mr.S.V.Gavand, 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 filed by the State for challenging the judgment and order of acquittal of accused persons for offences punishable under Sections 143, 147, 148, 324, 323, 504 read with Section 149 of the IPC.

2 Heard learned APP appearing for the State and perused record and proceedings including deposition of witnesses.

3 The incident in question took place on 31st March 2013 and on the very same day, FIR came to be lodged by injured Pandurang Karade. His evidence shows formation of unlawful assembly by accused persons and consequent assault on him. Evidence of PW7 Dr.Ajit Pokale corroborates version of injured witness. Evidence of PW2 Aakash is also corroborating version of injured victim. Still, it is seen that the learned trial court has recorded acquittal by holding that medical evidence is not consistent with the evidence of injured. It is further held that there is delay in lodging FIR. *Prima facie*, this reasoning cannot be sustained as ocular evidence always gets precedence over the medical evidence. Hence the order :

- i) Leave granted.
- ii) The application is allowed.
- iii) Admit.
- iv) Issue notice to respondents, returnable after 8 weeks.
- v) In the meanwhile, action under Section 390 of the Code of Criminal Procedure.

(A. M. BADAR, J.)