

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 6882 OF 2016

The State of Maharashtra, Through Police
Station, Mantha, Tq. Mantha, Dist. Jalna. ...Applicants

Versus

- 1] Santosh Apparao Kale, Age : 30
years,
- 2] Dattatraya Apparao Kale, Age : 25
years,
- 3] Apparao Kundlik Kale, Age : 60
years,
- 4] Mandabai Santosh Kale, Age : 27
years,
- 5] Ashok Sahebrao Aatole, Age : 33
years,
- 6] Murlidhar Sahebrao Aatole, Age : 30
years,
- 7] Mahadeo Sahebrao Aatole, Age : 30
years,
- 8] Vitthal Shriram Aute, Age : 45
years,
- 9] Nagorao Shriram Aute, Age : 50
years,
- 10] Gajanan Suryabhan Aatole, Age : 32
years,
- 11] Ananda Piraji Dole, Age : 30 years,

- 12] Gajanan Sakharam Dhakne, Age : 25
years,
- 13] Bhanudas Malhari Dhakne, Age : 50
years,
- 14] Sakharam Malhari Dhakne, Age : 65
years,
- 15] Vijay Suryabhan Aatole, Age : 25
years,
- 16] Uttam Shivram Kale, Age : 65 years,
- 17] Kamalbai Sarjerao Kale, Age : 50
years,
- 18] Nandabai Sukhdeo Kale, Age : 33
years,
- 19] Latabai Eknath Kale, Age : 35 years,
- 20] Santosh Trimbak Dole, Age : 26
years,

...Respondents

All R/o Pashta, Tq. & Dist. Jalna.

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Ms. V. S. Chaudhari, A. P. P. for State.
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**WITH
CRIMINAL APPLICATION NO. 1177 OF 2017**

Dilip Bhanudas Ilag,
Age : 39 years, Occu. : Agri.,
R/o Pasta, Tq. & Dist. Jalna.

...Applicant

Versus

- 1] Santosh Apparao Kale, Age : 37
years, Occu. : Agri.,

- 2] Dattatraya Apparao Kale, Age : 25
years, Occu. : Agri.,
- 3] Apparao Kundlik Kale, Age : 60
years, Occu. : Agri.,
- 4] Mandabai Santosh Kale, Age : 27
years, Occu. : Agri.,
- 5] Ashok Sahebrao Aatole, Age : 33
years, Occu. : Agri.,
- 6] Murlidhar Sahebrao Aatole, Age : 30
years, Occu. : Agri.,
- 7] Mahadeo Sahebrao Aatole, Age : 30
years, Occu. : Agri.,
- 8] Vitthal Shriram Aute, Age : 45
years, Occu. : Agri.,
- 9] Nagorao Shriram Aute, Age : 50
years, Occu. : Agri.,
- 10] Gajanan Suryabhan Aatole, Age : 32
years, Occu. : Agri.,
- 11] Ananda Piraji Dole, Age : 30 years,
Occu. : Agri.,
- 12] Gajanan Sakharam Dhakne, Age : 25
years, Occu. : Agri.,
- 13] Bhanudas Malhari Dhakne, Age : 50
years, Occu. : Agri.,
- 14] Sakharam Malhari Dhakne, Age : 65
years, Occu. : Agri.,
- 15] Vijay Suryabhan Aatole, Age : 25
years, Occu. : Agri.,

- 16] Uttam Shivram Kale, Age : 65 years,
Occu. : Agri.,
- 17] Kamalbai Sarjerao Kale, Age : 50
years, Occu. : Agri.,
- 18] Nandabai Sukhdeo Kale, Age : 33
years, Occu. : Agri.,
- 19] Latabai Eknath Kale, Age : 35 years,
Occu. : Agri.,
- 20] Santosh Trimbak Dole, Age : 26
years, Occu. : Agri.,

All R/o Pashta, Tq. & Dist. Jalna.

- 21] The State of Maharashtra Through
Police Station Officer, Mantha
Police Station, Tq. Mantha, Dist.
Jalna.

...Respondents

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Mr. N. B. Narwade, Advocate for Applicant.

Ms. V. S. Chaudhari, A. P. P. for Respondent No. 21-
State.

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**CORAM : T. V. NALWADE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 27-11-2018.

JUDGMENT : (Per Smt. Vibha Kankanwadi, J.)

01. Criminal Application No. 1177 of 2017 is filed by the original informant to assist A. P. P. There is no hurdle to allow the same. Hence, the said application is allowed and disposed of.

02. Criminal Application No. 6882 of 2016 has been filed by the prosecution under Section 378(1)(b) of Code of Criminal Procedure to grant leave to challenge the acquittal of the respondents, who were the original accused No. 1 to 3 and 5 to 21 before the learned Trial Court in Sessions Case No. 221 of 2010 by learned Additional Sessions Judge-1, Jalna. They have been acquitted of the offences punishable under Sections 147, 148, 307, 326, 323, 504, 506 read with 149 of I. P. C. on 20.9.2016.

03. The prosecution has come with the case that when the informant Dilip was an indoor patient in Civil Hospital, Jalna on 18.2.2009, since it was MLC police had recorded his statement. In his statement he told that he was going from his cattle-shed towards village carrying milk in can with his friend Ganesh at 7 to 7.30 A. M. on 17.2.2009. When they came in front of the house of accused Santosh, at that time, Santosh and accused Dattatray rushed towards them. They were holding knife and sticks. They asked informant as to why he had filed complaint against them to Tahsildar pertaining to the fair price shop and why he is remaining in the company of Sarpanch. It is stated that accused Santosh gave blow of knife with intend to commit murder of informant. However,

informant resisted the blow by his hand, due to which he has sustained the injury to his left hand finger. In the meantime, Dattatray and Apparao came with sticks with intention to beat him. Then they assaulted on the back and right hand of the informant, as a result of which he had sustained fracture to his right hand. When witness Ganesh and Badri came to save him, at that time, accused Santosh, Dattatray, Apparao and Banabai assaulted those witnesses also by means of sticks, fists and kick blows and thereafter, witnesses Dnyandeo, Dilip, Amol, Ambadas, Bhagwan and Santosh came who separated the quarrel. The other accused persons also came abused the witnesses and assaulted the informant and witnesses by stick.

04. On the basis of the said statement, the offence came to be registered and investigation was carried out. Panchnama of the spot was carried out. Accused persons came to be arrested. Statements of witnesses came to be recorded. It appears that the discovery of the weapon used in the commission of the offence has been made by the accused. The seized articles were sent to chemical analyzer for analysis. Medical reports were collected and after completion of the investigation, charge-sheet was filed.

05. After the committal of the case all the accused persons appeared before the Additional Sessions Judge. They pleaded not guilty. Trial has been conducted. Taking into consideration the evidence on record and after hearing both the sides, the learned Trial Court has acquitted all the accused from all the charges. Hence, this application challenging the said acquittal.

06. Heard learned A. P. P. Ms. V. S. Chaudhari for State-Applicant. She was assisted by learned Advocate Mr. N. B. Narwade for original informant. After hearing learned A. P. P., it can be said that there is absolutely no necessity to issue notice to the respondents.

07. The learned A. P. P. has submitted that the learned Trial Court has not appreciated the evidence properly and thereby acquitting all the accused persons. It is further argued that prosecution witnesses are supporting the prosecution story. The weapons have also been seized which has been used in the commission of the crime. It shows that the accused persons had formed unlawful assembly and with a common object they had assaulted informant and the other witnesses. The medical evidence is also on record which shows that informant had sustained injuries. The learned Trial Court ought to have

therefore convicted the accused persons.

08. The perusal of the evidence of informant would show that in his examination-in-chief by and large he has stuck to his F. I. R. However, it is to be noted that we are required to consider as to whether there is corroboration to his testimony or not from the other evidence. A fact is very much certain that initially as per the informant only accused No. 1 and 2 were present and thereafter one after other the other accused persons came. Under such circumstance, it is hard to appreciate that they had formed unlawful assembly. Basically what was the common object of all the accused persons has also not been clarified by the prosecution. The testimony of the informant would give a clear picture that there was political rivalry between the informant and the accused persons. They both have actively taken part in election process. So also there was rivalry on account of Fair Price Shop owned by accused No. 1 to which the informant has raised certain objections. It is therefore also necessary to see as to whether the informant had a reason to implicate the accused persons. Informant has not assigned any role to other accused persons in specific. The role of the other accused persons is vaguely stated as instigating the other accused. Now, as regards the injury

sustained by the informant is concerned, according to him the accused No. 1 had given blow of knife which informant had resisted, because of which he sustained injury to his left hand index finger. If the medical evidence is perused, there were only 3 injuries. One was CLW on index finger, another was contusion over right elbow posteriorly, third was injury like abrasion over right elbow posteriorly. The medical opinion is given that all the injuries are possible by hard and blunt object. A knife can not be said to be a hard and blunt object. Interestingly, the Medical Officer has given opinion in his examination-in-chief that injury No. 1 to the index finger of the informant can be caused by hard and blunt object. When there is contradiction between oral evidence and medical evidence, then the oral evidence is required to be given more importance. However, it is to be noted that as per the informant the blow was given, but he had resisted that blow. In fact it ought to have been got clarified from the Medical Officer as to whether those injuries are possible as a defence injury.

09. As regards the other injuries on the person of informant by sticks are concerned, as per the testimony of the informant because of the blow of stick on hand by accused Dattatray he had sustained fracture to the right

hand. Prosecution has examined PW-4 Dr. Ritesh Agrawal. However, as per his statement though he examined informant on 28.2.2009, history was given by the patient that there was assault 10 to 12 days prior to that date. When the informant was examined immediately on the same day by PW-12 Dr. Mahaveer, he had not noted any injury like fracture to the right hand of the informant. Under such circumstance, the possibility of causing the said injury between 17.2.2009 to 28.2.2009 can not be ruled out. We can not merely rely on the oral history given by the informant to PW-4 Dr. Agrawal. As regards fracture is concerned, it can not be said that it would have been left un-attended by the Medical Officer from 17.2.2009 to 28.2.2009. Therefore, the evidence in that respect is also unbelievable. Another fact that is required to be noted that if so many persons would have assaulted the informant then the nature of the injuries which he would have sustained would have been more. Therefore, it casts every kind of doubt over the veracity of the informant. Same is the case as regards the other eye witnesses are concerned. Taking into consideration the political rivalry, the possibility of false implication can not be ruled out. The other witnesses have made exaggeration by saying that blood was oozing out of the injury sustained

to the hand of the informant by means of knife. Under such circumstance, we do not find that the learned Trial Court has not appreciated the evidence properly. In fact, after proper appreciation of evidence the accused persons have been acquitted. No case is made out to interfere. Hence, Criminal Application No. 6882 of 2016 is dismissed.

[SMT. VIBHA KANKANWADI]

[T. V. NALAWADE]

JUDGE

JUDGE

Dahibhate/-