

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4833 OF 2016

The State of Maharashtra, Through
Police Station Badnapur,
Tq. Badnapur, Dist. Jalna. ...Applicant

Versus

1] Prabhudas @ Pandya Ramchandra Pawar,
Age : 29 years, Occu. : Nil,

2] Nitin Arun Ovhal,
Age : 22 years, Occu. : Nil,

3] Vikram Jivan Khare,
Age : 19 years, Occu. : Nil,

All R/o Chhawani, Christ Nagar,
Aurangabad, Tq. & Dist. Aurangabad. ...Respondents

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Mr. M. M. Nerlikar, A. P. P. for Applicant-State.
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**CORAM : T. V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**
DATE : 10-12-2018.

JUDGMENT : [Per Shri. T. V. Nalawade, J]

01. The proceeding is filed by the State for grant of leave to file appeal against the Judgment and Order in Sessions Case No. 117 of 2013 which is pending before the Additional Sessions Judge-2, Jalna, Dist. Jalna. The

Trial Court has acquitted the respondents for the offences punishable under Sections 302, 149 etc. of I. P. C. and Section 135 of Bombay Police Act, 1951. Heard the learned A. P. P. Seen the record of evidence. Seen the reasoning given by the Trial Court for decision of acquittal. The prosecution examined some eye witnesses to the incident. It is the case of prosecution that there was quarrel between the some persons from a jeep and truck driver which took place near Dhaba situated on the main road. The Police patil of the village gave report on the basis of the information received by him in respect of the incident and he had informed that 15-20 persons had assaulted deceased Kishor Ambhore who was resident of his village. Thus, initially the crime was registered as against the 15-20 persons, who were present in the jeep.

02. Prosecution examined eye witnesses like PW-1 to 5. The incident took place in the afternoon after 6.30 to 7.00 PM according to the witnesses and most of them were at quite some distance, at the distance of around 100 feet from the spot where the incident was taking place.

03. PW-1 has given the evidence that around 15 to 20 persons together assaulted deceased Kishor and one of them gave blow by using tommy. He did not identify the

specifically the person who has used tommy for assault. PW-2 gave evidence that it is accused No. 2, who gave the blow of tommy. He did not know accused No. 1 prior to that incident. His Police statement is came to be recorded on the next day. Before the Police, he had not specifically informed that it is accused No. 2, who had used tommy, heavy weapon and he had informed 15-20 persons had assaulted deceased. This portion is marked as "A" in the previous statement and that portion is admitted by the witness during his cross-examination. Thus, there is clear inconsistency between the previous version of this witness and version given before the Court. Rameshwar has given evidence that one of the persons from the jeep had given blow on the head of the deceased and due to that blow deceased collapsed. It is not his evidence that many persons had assaulted the deceased or accused No. 1 had given many blows to the deceased.

04. The evidence of PM report shows that there were many injuries found on the dead body which includes 4 injuries on the head. Injury No. 4 which was inflicted on frontal region had caused depressed fracture and due to that there was hemorrhage in the brain. Death took place probably due to this injury. Thus, many injuries were caused to the deceased, but, the evidence of the so called

eye witness is of aforesaid in nature.

05. Thus, the case of prosecution is that more persons for more than 15 were involved in the assault. But, some witnesses have pointed finger only on the accused No. 1 to say that he gave one blow of the weapon on the head of the deceased. The prosecution wanted to prove that the accused No. 1 was on driver side in the jeep and as the quarrel took place between truck driver and jeep driver and the deceased had interfered in the quarrel as the driver of the truck was known to him, assault was made by accused No. 1 on the deceased by using tommy. It is also the case of the prosecution that only 3 persons ran towards field and others ran away in the jeep. If accused No. 1 was on driver seat, the question remains as to who took away the jeep from the spot of offence. All these questions are remained unanswered and due to serious infirmity and inconsistency in the evidence of the witnesses and belated statements of some witnesses like PW-4 before Police, the Trial Court has given the decision of acquittal. The view taken by the Trial Court in view of the aforesaid nature of evidence is a possible view. This Court holds that nothing can be achieved by granting leave to State to file appeal.

06. In the result, proceedings stands dismissed.

[SMT. VIBHA KANKANWADI]

JUDGE

[T. V. NALAWADE]

JUDGE

Dahibhate/-