

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 5301 OF 2016

The State of Maharashtra,
Through Gajanan Vishwanath Suryawanshi,
Age : 26 years, Occu. : Nil,
R/o Yeshwant Nagar, Barshi Naka,
Osmanabad, Tq. & Dist. Osmanabad.

...Applicant

Versus

Mahesh Ramrao Mundhe,
Age : 19 years, Occu. : Nil,
R/o B & C quarter, Osmanabad,
Tq. & Dist Osmanabad.

...Respondents

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Mr. A. A. Jagatkar, 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 proceedings is filed for grant of leave to file appeal against the Judgment and Order in Sessions Case No. 87 of 2014 which was pending in the Court of Additional Sessions Judge, Osmanabad. The Trial Court has acquitted the respondent of the offences punishable under Sections 307, 149 etc. of I. P. C. Heard the learned A.

P. P. Seen the record of evidence. Seen the reasoning given by the Trial Court.

02. The F. I. R. was given by Gajanan. He and his friends including other injured Rajan were having talk at the place at about 7.30 PM. The allegations are made that boys like Lakhan, Vishwajeet and Dhananjay came there and picked up quarrel with Rajan. Then, they assaulted Rajan first with fist blows and kicks. The allegations are made that Dhananjay then went towards the shop and from there he fetched stick and gave blow of stick on the head of Rajan and due to that Rajan became unconscious. In the F. I. R. the name of the present respondent Mahesh was given by Gajanan.

03. The case of the prosecution shows that only respondent Mahesh had crossed the age of 18 years and others are juvenile accused. Charge was framed. The evidence of Gajanan shows that Dhananjay had fetched the stick from his shop and he had given a blow of stick to Rajan. Evidence of Rajan also shows that Dhananjay had fetched stick from shop and then Dhananjay had assaulted him by using the stick. Prosecution wanted to use provisions of Section 149 of Cr. P. C. For making out common object, it was necessary to show others and the

Dhananjay had common object of using stick and assaulting somebody like Rajan. Such inference is not possible on the basis of evidence given before the Trial Court. No evidence is given as against the respondent Mahesh that he actually assaulted either Gajanan or Rajan.

04. The evidence of doctor PW-8 who issued injury certificate in respect of Rajan shows that at the time of admission of Rajan one Amit had given history of accidental fall from motor cycle. Said Amit is not examined. There were two injuries found on the head of Rajan one is contused abrasion and another is fracture. Thus, there were 2 injuries and the evidence is not consistent with the substantive evidence given by either Rajan or Gajanan. All these circumstances are considered by the Trial Court for giving decision of acquittal. The injury certificate in respect of Gajanan shows that he was examined on 8.4. and not on the day of incident on 7.4. and he had given history that he was assaulted by using chain. Such is not the case of the prosecution. Due to all these circumstances, this Court holds that the view taken by the Trial Court is a possible view and Nothing can be achieved by granting leave to file appeal against the respondent.

05. In the result, proceeding stands dismissed.

[SMT. VIBHA KANKANWADI]

JUDGE

[T. V. NALAWADE]

JUDGE

Dahibhate/-