

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

**CRIMINAL APPLICATION NO.287 OF 2018
(For Leave to file Appeal)**

Vitthal Atmaram Gawade

..Applicant

Versus

Haridas Vitthal Ghule and others

..Respondents

Mr. Dilip Bodake, Advocate for the Applicant.

Mrs. M. M. Deshmukh, APP for the Respondent No.12 - State.

**CORAM : B. R. GAVAI &
SARANG V. KOTWAL, JJ.
DATE : 10th JULY, 2018**

P.C.

1] This is an application seeking leave to Appeal against judgment and order passed by the learned Additional Sessions Judge, Satara dated 26th March 2018, thereby acquitting the Accused Nos.1, 2, 3 and 5 for the offences punishable under Section 307, 143, 147, 148, 504, 506 r/w 149 of the Indian Penal Code ("IPC" for short) and also acquitting the Accused Nos.4, 6, 7, 8, 9, 10 and 11 of all the charges, they were charged with.

BGP.

2] The Respondents/Accused were charged with the offences punishable under Section 307, 324, 323, 143, 147, 148, 504, 506 r/w 149 of IPC and under Section 37(1)(3) r/w 135 of the Bombay Police Act. As per the prosecution case, the accused persons had assaulted PW-1 - Vitthal, PW-9 - Dnyaneshwar and Ratnaprabha. The learned Trial Judge at the conclusion of the trial, acquitted Accused Nos.4, 6, 7, 8, 9, 10 and 11 of all the charges. The Accused Nos.1, 2, 3 and 5 were convicted for the offence punishable under Section 323, 324 r/w 34 of IPC, but acquitted for all the other charges. Being aggrieved thereby, the present application.

3] Mr. Dilip Bodake, learned counsel appearing on behalf of the Appellant submits that the learned Trial Judge has grossly misread the evidence. He submits that if the evidence is perused in the right perspective, it would reveal that the Accused Nos.1, 2, 3 and 5 had attempted to commit murder of the injured witnesses and ought to have convicted for the offence punishable under Section 307 of the IPC.

4] We have perused the judgment and order as well as BGP.

material placed on record. The learned Trial Judge has found that from the evidence of PW-11 – Dr. Raut, who had medically examined the injured witnesses, it could not be said that any of them had suffered serious injuries or they had attempted to commit murder of the injured witnesses. Insofar as the injuries on Ratnaprabha is concerned, there was only one serious injury of hairline fracture. However, the learned Trial Judge in paragraph 72 has discussed the reasoning as to why the evidence of Ratnaprabha of assault by Accused No.6 was not reliable.

5] None of the injuries suffered by any of the witnesses except hairline fracture suffered by Ratnaprabha would come within the definition of Section 323 of the IPC. In so far as hairline fracture is concerned, the learned Trial Judge has given cogent reasons in paragraph 72. The injured witnesses were admitted for 3, 7 and 10 days respectively. As such, none of them were admitted for 20 or more days. An interference in Appeal against acquittal would be warranted, only if order of acquittal is found to be perverse or impossible. The learned Trial Judge has given cogent reasons in support of the finding given in the order. In that view of the matter,

BGP.

we find that no interference is warranted in the judgment and order passed by the learned Trial Judge. The application is therefore rejected. Leave is refused.

Balaji
Govindrao
Panchal

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Balaji Govindrao
Panchal
Date: 2018.07.13
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[SARANG V. KOTWAL, J.]

[B. R. GAVAI, J.]