

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPA) NO.474/2021

State of Maharashtra through Police Station Officer, Police Station, Old City,
Akola, Dist. Akola .vs. Sk. Jabbar Sk. Mahboob and Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. N. R. Patil, A.P.P. for applicant-State.

CORAM : V.M. DESHPANDE AND AMIT B. BORKAR, JJ.
DATED : SEPTEMBER 27, 2021

1. Non applicant nos. 1 to 17 were acquitted by learned Additional Sessions Judge, Akola on 15.03.2021 after a full fledged trial conducted in Sessions Case No.235/2002. Learned Additional Sessions Judge acquitted the non applicants of the offence punishable under Sections 143, 147, 148, 436, 336, 332, 395, 307, 427 read with Section 149 of the Indian Penal Code and Section 4 read with Section 25 of the Arms Act and under Section 135 of the Bombay Police Act.

2. Being aggrieved by the judgment and order of acquittal, the State has filed the appeal and also present application under Section 378 of the Code of Criminal Procedure seeking leave to file appeal.

3. We have heard Mr. Patil, learned A.P.P. for the State in extenso. Also perused the impugned judgment.

4. On 29.03.2002, on account of Dhulivandan, some persons put colours on the door of Turup Shah

Masjid. A crime was registered in respect of the said with Old City Police Station, Akola. Due to the said incident, feelings of persons belonging to Muslim community were hurt. Therefore, there was a tension between Hindu and Muslim community. People from both the communities pelted stones at each others.

5. On 30.03.2002 at about 13:45 hrs. Pratap Singh Chavan (PW4) was patrolling with his staff. That time, he got information that person from these two communities have gathered at Bhadpur chowk. He, therefore, went there to disperse the mob. At about 14:15 hrs., wireless message was received that both the communities gathered near Mangeshwar Tea factory. He went there. He got information that nuisance is being created at Joglekar plots. Therefore, he went there. He noticed that mob had burnt the auto rickshaw parked on the road. The mob also set on fire the house and shop of Gajanan Borale. The riotous mob of Muslim community also set fire building of one Kakane and also house of Dadarao Binge. Staff of SRPF was requisitioned. The riotous mob was furious and aggressive. In spite of the repeated warning to the mob to disperse, it was difficult to control them. Therefore, Tahsildar gave order to open fire. Prior to that lathicharge was done. Thereafter, the riotous mob started running here and there. Police party found two persons in injured condition. Those were of Muslim community. They were taken to the Government Hospital, Akola.

6. During trial, 20 witnesses were examined by the prosecution. Rakesh Shaha (PW1) was examined. He did state in his evidence that 20-25 persons attacked on him and his vehicle and he fell down and got fracture. However, in the cross-examination, he admitted that he was not knowing the persons present in the mob by their faces or names. He did not identify any accused from the witness box.

7. Evidence of Dadarao Binge (PW2) would show that he was totally unaware of the names of the persons who damaged his property. His evidence would show that he did not identify any of the respondents from the witness box.

8. It would be useful to make a reference here that none of the prosecution witnesses has identified any of the non applicants as member of the unlawful assembly. Even the investigating officer (PW19), during the cross-examination, admitted that during investigation, he has not filed any document in respect of the seizure of any weapon from any of the accused persons. PSI Ganesh Tayade (PW11) also admitted in his evidence that he could not identify any person nor he was called for identification parade.

9. From the impugned judgment, it appears that since nobody identified that any of the respondents was member of the unlawful assembly, learned Judge of the trial Court has acquitted them.

10. By now, the law is well settled about interference by the appellate Court. Merely because another view is possible that itself is not sufficient to substitute the view in place of the view taken by the learned Judge before whom the trial is conducted. Unless it is pointed out to the appellate Court that the learned trial judge has done perversity while appreciating the evidence of the witnesses, resulting into miscarriage of justice, the appellate Court should not interfere with the finding recorded by the trial Court.

11. After perusal of the impugned judgment, we are of the view that the view taken by the learned Judge of the trial Court is possible in the light of the evidence that was adduced during trial, warranting no interference by this Court. Hence, following order is passed.

ORDER

The application is rejected. Leave to file appeal challenging the judgment and order of acquittal dated 15.03.2021 passed by learned Additional Sessions Judge, Akola in Sessions Case No.235/2002, is refused.

JUDGE

JUDGE