

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 97 OF 2018

THE STATE OF MAHARASHTRA
VERSUS

1. IQBAL S/O. OSMAN SAYYED
2. FIROJ S/O. OSMAN SAYYED
3. OSMAN S/O. IMAMSAB SAYYED

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Advocate for Appellant/State : Mr. R.D. Sanap
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**CORAM : SMT. VIBHA KANKANWADI &
Y.G. KHOBRAGADE, JJ.**

DATE : 31st March, 2023

ORDER :- (Per: Y.G. Khobragade, J.)

1. The prosecution has filed present application under Section 378(i)(b) of the Cr.P.C. seeking leave to file appeal against the order of acquittal of the respondent-accused for the offence punishable under Section 326, 323, 504, 506 read with Section 34 of the I.P.C. and under Section 3(1) (x) Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short the SC and ST Act) and under Section 7(1) (d) of the Protection of Civil Rights Act passed by the learned Special Judge and Additional Sessions Judge, Nilanga, District Latur. In fact, in view of Section 14(A) of the SC and ST Act, any order passed under the said Act should be challenged under the said provisions. The Atrocities Act is Code in itself and therefore, general provisions of Code of Criminal Procedure will not be applicable. Hence, the

learned APP seeks leave to amend cause title of the application. Accordingly, leave granted as prayed for. Amendment to be carried out forthwith.

2. With able assistance of the learned APP, we have gone through the record.

3. In nutshell, it is the case of the prosecution that, the informant injured Datta Gaikwad was admitted in Intensive Ward of Sarthak Hospital, Latur on 18.09.2012, after he had sustained injuries. After the receipt of information from the hospital authority, the Police Constable of MIDC Police Station visited the hospital and recorded statement of the injured wherein the informant-injured stated that he belongs to Matang community which is recognized as Scheduled Caste. He was proceeding towards Govind Naik School at about 10.00 a.m. on 12.09.2012 and at that time three persons came there from school side and without any reason abused him on his caste by saying "Matanga jastach majalai" and assaulted on his knee and hand with the sticks, due to which he sustained bleeding injuries. Thereafter, he informed said incident of assault to his relative Haribhau Kamble, who came to the spot of incident and brought him to the Govt. Hospital. He was then shifted to Sarthak Hospital, Latur. On the basis of said FIR a Crime No.87/2012 was registered against the accused but subsequently S.D.P.O. Nilanga conducted investigation. The spot panchanama was drawn, statements of witnesses were recorded and respondent-accused persons came

to be arrested. The Investigating Officer has seized sticks which were used in the commission of the crime at the instance of the respondent-accused. The Investigating Officer has collected caste certificate of the accused-injured and on completion of investigation a charge-sheet was filed. The learned trial Court framed the charge at (Exh.28) against the accused. The plea of the accused was recorded, however, they pleaded not guilty and claimed for trial.

4. In order to bring the guilt of the accused the prosecution examined PW1-Kumar Ekhande at Exh.34, PW2-Datta Gaikwad (informant) at Exh.37, PW3-Haribhau Kamble the brother-in-law of informant at Exh.42, PW4-Ramesh Telang at Exh.45, PW5-Gundappa Kapase panch witness at Exh.47, PW6-Medical Officer Dr. Meena Jadhav at Exh.58, PW7-Rajkumar Datal second Medical Officer at Exh.62, PW8-Yeshwant Bappusre panch witness at Exh.68 and PW9-Investigating Officer-Pandit Navsare at Exh.72. Besides oral evidence the prosecution proved spot panchanama (Exh.35), caste certificate of the informant (Exh.38), oral FIR(Exh.39), memorandum statement of accused (Exh.46), 48 and 49, injury certificate (Exh.59), five x-ray films (Exh.64) collectively, arrest panchanama of respondent-accused (Exh.73 to 75) and house search panchanama of accused (Exh.76).

5. The statements of accused were recorded under Section 313 of the Cr.P.C. The defence of the accused is about their false implication and that of total denial.

6. Learned trial Court passed the impugned judgment and order on 11.01.2018, and acquitted the accused for all the charges. Being aggrieved by the said order the prosecution has filed the present application.

7. The prosecution examined injured-victim PW2-Datta Gaikwad at Exh.37. The PW2 deposed that his father had scolded him for not doing work on 12.09.2012, therefore, in between 10.00 to 11.00 a.m., he went to a place near Govind Naik School where he was previously working. But then started playing game on the mobile. One lady passed by the said place near him, therefore he saw said lady. He continued to play the game on mobile, however, the accused persons came there and assaulted him. PW 2 thought that he was assaulted on suspicion as the said lady might have told the accused something against him. PW 2 deposed that the accused no.3-Osman Sayyed assaulted him with stick on his leg, due to which he fell down but again the accused no.3 gave another blow of stick on his right hand. He had shouted "Vachva, Vachva) (save save) but, no one came to rescue him. Thereafter, PW3-Haribhau Kamble came there on motorcycle with his friend and shifted him at Govt. Hospital, where he was initially treated and later he was referred to Sarthak Hospital.

8. The testimony of PW3-Haribhau Kamble at Exh.42 is partially hearsay and partially not corroborating PW 2. PW 2 himself has stated that PW 3 came to the spot after the incident was over. He is not reliable.

9. No doubt the prosecution proved spot panchanama (Exh.35). In order to prove Exh.46 seizure panchanama of stick, the prosecution examined PW4-Ramesh Telang at Exh.45. He has deposed about knowing the accused- Ismail and Iqbal and at the instance of accused no.1-Iqbal one stick was seized under seizure panchanama Exh.46. The prosecution examined PW5-Gundappa Kapse to prove weapon i.e. two sticks under seizure panchanama at Exh.48 and 49 but the PW5-Gundappa Kapse failed to identify said sticks and he simply signed panchanama without knowing the contents of the panchanama. These panchnamas are not believable as they do not corroborate with substantive evidence.

10. In order to prove the injuries, the prosecution examined PW6-Dr. Meena Jadhav the Medical Officer at Exh.58. She has deposed that, she examined the injured PW2-Datta Gaikwad on 12.09.2012, and found injuries viz. 1) contused abrasion on right arm and lateral side, size 2.x 2 x 1/4th it was simple in nature, 2) contusion over right forearm, size 4 x 6 x 2 cm, 3) contusion below left knee joint, size 5 x5 x 2 cm, 4) contusion over right leg, size 2 x 1 x 1/2 cm. Simple in nature, 5) contusion near right shoulder, size 2 x 4cm, simple in nature and 6) abraded wound over right leg size 2 x 1 cm simple in nature and issued injury certificate Exh.59. As per the opinion of the Medical Officer-PW6 the injury nos.2 and 3 were swelling and bit

deforming but the patient was complaining about severe pain, therefore, she opined and suspected about causing grievous hurt. PW6 has admitted in her cross-examination about over writing in respect of injury nos.3 and 4 in MLC register and injury certificate Exh.59 and not mentioned margins of injuries in injury certificate.

11. On perusal of evidence of PW6-Medical Officer it depicts about causing injuries on right forearm, left knee, right leg, right shoulder and abrasion wound over right leg of the injured and injured-PW2 deposed about fracture on left and right leg. The injured-PW2 further deposed about assault on him by the respondents-accused with sticks and belt. However, in report FIR Exh.39 the informant has not stated about assault with the belt. He has not deposed about abusing him in his caste by the accused. Therefore, the evidence of the prosecution's witnesses itself is contradictory and does not inspire confidence. No independent witness has been examined to prove that the accused-respondents are the authors of the injuries described in Exh.59 and abused him in his caste.

13. Learned trial Court passed the impugned judgment and order on 01.11.2018, and acquitted the respondents-accused for the offence punishable under Section 326, 323, 504, 506 read with Section 34 of the I.P.C. and under Section 3(1) (x) of the SC and ST Act and under Section 7(1) (d) of the Protection of Civil

Rights Act, holding that evidence lead by the prosecution is not sufficient to prove the offence against the accused persons beyond reasonable doubt. The reasons in the said judgment are justifiable. No ground emerges to grant leave to the prosecution to file appeal against the order of acquittal.

14. In view of the above discussion, the present application is dismissed.

[Y.G. KHOBRAGADE, J.]
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[SMT. VIBHA KANKANWADI, J.]