

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

66 CRIMINAL APPEAL NO.477 OF 2019

**SANJAY S/O. GANPAT JADHAV
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. Sarang P. Joshi, Advocate for the appellant
Mr. Manoj Shinde, Advocate h/f Mr. Avinash A. Khande,
Advocate for the respondent Nos. 2 to 4
Mr. P. M. Kulkarni, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 13th MARCH, 2023

P. C.

1. Heard the learned advocate for the parties for long.
2. This is an appeal against acquittal challenging the judgment and order passed by the learned JMFC, Khultabad dated 29-01-2019 in RCC No. 29/2012. By way of judgment the respondents are acquitted of the charges under Section 324, 337, 323, 504, 506 read with section 34 of the Indian Penal Code.
3. Story in short is that, the victim has approached this

court. Father-in-law of the victim lodged the FIR with the police station about the incident dated 13-11-2011. It is stated in the information that one Ambadas Jadhav was abusing on the person as someone had thrown the stones on the roof of his house. At that time respondents came there. They assaulted this victim and the informant. Respondent Nos.2 and 3 are alleged to have given blows by axe on the head of the informant on that Aakash-Respondent No.3 ran away. Respondent No.2 Keshav pelted stones on the right hand of the informant and also assaulted with fist and kicks. On that offence was registered. RCC was lodged for the offences. Learned JMFC after holding the trial held that none of the prosecution witness describes the weapons in the evidence. Though panchanama was admitted, even the panch witnesses were not examined. There is no recovery from the spot. Alleged weapon i.e. axe and stones were not seized by the police from the respondents. Even the blood stained clothes of the informant were not seized by the police. No circumstantial evidence is brought before this court to corroborate testimony of the PW-3. As such prosecution could

not prove the link between the accused and the offence. The court came to conclusion that presence of the accused at the spot was natural and there is nothing on record by which conclusion can be drawn that it is only these respondents who have committed act.

4. Learned advocate for the appellant tried to submit that Doctor is examined to prove the injuries. He also invites attention to the deposition of PW-2 and 3 who have clearly stated in their evidence that accused persons have assaulted the victim and injured. He also pointed out that on the basis of this evidence certainly a case was made out to convict the accused persons.

5. Learned APP invites attention to the observations of the courts below. The learned Advocate for the respondent Nos. 2 to 4 submits that at the most this can be said to be a case of lack of evidence and it can be said that prosecution has failed to collect the sufficient evidence. However, that itself is not

sufficient to admit the appeal. No fault can be found in the judgment delivered by the trial court. There is nothing to point out that it is only these accused who have committed the alleged offence. Unless there is absolute assurance of the guilt this court need not entertain the appeal. After hearing of the parties this court finds that certainly this can be said to be a case where the prosecution has failed to collect the evidence. However, this will not be sufficient to admit the appeal against acquittal. For admitting/entertaining the appeal against acquittal various grounds are required. It would take the court to the conclusion that it is accused persons who have committed offence and that there is no other possibility than to hold the accused persons guilty. This court finds that no such case is made out therefore the appeal deserves to be dismissed and same is dismissed.

[KISHORE C. SANT, J.]