

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.626 OF 2022

Abhaysingh s/o Balwantsingh Rathi .. Appellant

Versus

The State of Maharashtra and others .. Respondents

...

WITH
APPLICATION FOR LEAVE TO APPEAL BY STATE NO.105 OF 2022

The State of Maharashtra .. Appellant

Versus

Ravikiran Vithoba Barde and others .. Respondents

...

Mr. N. B. Narwade, Advocate for appellant in Criminal Appeal No.626 of 2022.

Mr. R. D. Sanap, APP for respondent - State in Criminal Appeal No.626 of 2022 and for appellant - State in ALS/105/2022.

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CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.

DATE : 8th March, 2023

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

. Both these matters challenge the acquittal of the original accused persons. Hence, considered together. Criminal Appeal No.626 of 2022 has been filed by the victim - informant under Section

372 proviso of the Code of Criminal Procedure, whereas the State has filed Application for Leave to Appeal under Section 378(1)(b) of the Code of Criminal Procedure to challenge the acquittal of the respondents in Sessions Case No.83 of 2016 by learned Additional Sessions judge, Ahmednagar on 16.04.2022 from the offence punishable under Sections 143, 147, 148, 326, 324, 323, 504, 506 read with Section 149 of the Indian Penal Code and under Section 37(1)(3) read with 135 of the Bombay Police Act.

2. Heard learned Advocate Mr. N. B. Narwade for the appellant in Criminal Appeal No.626 of 2022 and learned APP Mr. R. D. Sanap, for respondent No.1 - State in Criminal Appeal No.626 of 2022 and for applicant - State in ALS No.105 of 2022, for the purpose of admission.

3. With the able assistance of the learned Advocate for the appellant, we have gone through the evidence which was before the learned Additional Sessions Judge in Sessions Case No.83 of 2016.

4. For the limited scope, we have considered the evidence and during the submissions, it was pointed out that there was cross case which was before the same Judge, that was under the special enactment. But, it has been registered as Sessions Case No.303 of 2014. It was for the offences punishable under Sections 143, 147, 148, 149, 307, 326, 324, 323, 504, 506, 354A of Indian Penal Code and under

Sections 3(1)(3), 3(1)(5), 3(2)(5), 3(1)(10), 3(1)(11) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989 (for short "Atrocities Act") and under Sections 7 and 8 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act"). Judgments in both the cases were pronounced on 16.04.2022, however, as regards cross case is concerned, which was against seven persons, all those seven persons have been convicted on one or the other Sections. Therefore, the question arises as to whether there is proper appreciation of evidence or not. It is required to be considered as to which party was aggressive. No doubt, as per the decisions in *Anil Bhaskar Sonavane Vs. The State of Maharashtra*, [(1976) 78 BOM. L.R. 325], *Nathilal Vs. State of U.P.*, [1990 SCC (Crl.) 638] and *State of M.P. Vs. Mishrilal (Dead) and others*, [AIR 2003 SC 4089], the cross complaints and cross cases arising out of incident of riot, though may be one triable by Court of Sessions or another is triable by Magistrate, then they should be decided by the same judge and this ratio has been adhered to in this case, but when it comes to the cross case, it requires minute scrutiny of the evidence. The accused in Sessions Case No.303 of 2014 have challenged their conviction before this Court in Criminal Appeal No.325 of 2022. Under such circumstance, we are of the opinion that the Criminal Appeal No.626 of 2022 deserves to be admitted, so also

leave is required to be granted to the State to file appeal challenging the acquittal of the accused persons. Hence, the following order :-

ORDER

- I) Criminal Appeal No.626 of 2022 stands **admitted**.
- II) Application for Leave to Appeal by State No.105 of 2022 stands allowed.
- III) Leave is granted to the State to file appeal.
- IV) Registry to register the appeal.
- V) The said appeal stands **admitted**.
- VI) Action under Section 390 of the Code of Criminal Procedure be taken against respondent Nos.2 to 5 to the satisfaction of the Trial Court.
- VII) Matter to come up as per its turn.

[Y. G. KHOBRAGADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm