

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

911 CRIMINAL APPEAL NO.778 OF 2019

ARUNA W/O DINKAR GAVANE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Mr. P.K. Palve, Advocate (appointed) for the appellant

Mrs. V.S. Choudhari, APP for respondent No.1

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 14th FEBRUARY, 2023

PER COURT :

1 Present appeal has been filed by the informant challenging the acquittal of original accused Nos.4 and 5 in Sessions Case No.134/2012 by learned Additional Sessions Judge, Ahmednagar on 17.08.2017 from the offence punishable under Section 143, 147, 148, 307, 324, 325, 326, 504, 506 read with Section 149 of the Indian Penal Code and under Section 37(1) (3) punishable under Section 135 of the Bombay Police Act.

2 Heard learned Advocate Mr. P.K. Palve for the appellant and learned APP Mrs. V.S. Choudhari for respondent No.1, at the stage of

admission.

3 Taking into consideration the scope of the present appeal the evidence is scanned with the help of learned Advocate representing the original informant as well as learned APP. The informant i.e. present appellant had given the First Information Report on 27.09.2011 in respect of incident dated 22.09.2011. It appears that the delay point was also considered by the learned Trial Judge and, therefore, we do not want to consider that at this stage. Since we are considering the role attributed to original accused Nos.4 and 5, it is to be noted that their role has been stated by the informant in the First Information Report and also in her examination-in-chief. It is stated that original accused Nos.4 and 5 were the members of the unlawful assembly along with accused Nos.1 to 3 and they had called the father of the informant out of the house. They were abusing the father/deceased and were also beating them. She then states that when she as well as her mother came out to intervene the matter, they were also abused and beaten. She has then attributed the role to each of the accused and then stated that the father was beaten by accused Vishnu with the help of iron rod. One Yadav severely beaten her mother with the help of wooden stick. Accused Ajinath also assaulted the mother. Then as regards accused Nos.4 and 5 is concerned, she has stated that they had pulled her hair as well as the

hair of her mother. It is to be noted that she has made the statement as if both were conjointly pulling hair of her as well as her mother at one and the same time, which is rather impossible. The main reason given by the learned Trial Judge while acquitting the accused Nos.4 and 5 is that the said attribution of role by the informant to accused Nos.4 and 5 is that, that her First Information Report as well as testimony is not corroborative by her own mother PW 3 Ashabai. We have gone through the testimony of Ashabai and we could not find that there is statement that her hair were pulled by either accused No.4 and/or accused No.5. She also does not say that accused Nos.4 and 5 were pulling hair of the informant. Though for other facts the learned Trial Judge appears to have believed the informant, since the said role attributed to the original accused Nos.4 and 5 was not corroborated by the eye witness and she had not claimed herself to be injured, we find that the reasons given by the learned Trial Judge were based on sound principles and appreciation of evidence. No case is made out for interfering with the findings of acquittal of original accused Nos.4 and 5. Therefore, appeal stands dismissed.

(Abhay S. Waghware, J.)

(Smt. Vibha Kankanwadi, J.)