

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.867 OF 2019

Lahu s/o Tatyaba Athwale

.. Appellant

Versus

1. The State of Maharashtra
(Through the SDPO, Beed
Police Station, Tq. Beed,
Dist. Beed.)
2. Sindhubai Prakash Gaikwad
3. Datta @ Vakradant Atmaram Gaikwad
4. Sushipal @Shishupal Atmaram Gaikwad
5. Prakash Dadarao Gaikwad
6. Akash Prakash Gaikwad
7. Sagar Prakash Gaikwad
8. Asaram Prakash Gaikwad

.. Respondents

...
Mr. Suhas R. Shirsat, Advocate for the appellant.
Mr. R. V. Dasalkar, APP for respondent No.1 – State.
...

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

DATE : February 08, 2023.

ORDER :-

. Present appeal has been filed by the original informant challenging the acquittal of original accused Nos.1 to 7 in Sessions Case No.111 of 2018 by learned Additional Sessions Judge, Beed on 02.05.2019 from the offences punishable under Sections 143, 148, 302, 326, 449 read with Section 149 of Indian Penal Code and under Section 3(2)(v) of the Scheduled Case and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Atrocities Act"). It will not be out of place to mention here that the learned Trial Judge has held the accused Nos.4 to 7 guilty of committing offence punishable under Section 324 of Indian Penal Code and thereby they have been sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.2,000/- each, in default to suffer rigorous imprisonment for six months.

2. Heard learned Advocate Mr. Suhas R. Shirsath for the appellant and learned APP Mr. R. V. Dasalkar for respondent No.1 – State, at the stage of admission.

3. The prosecution story in short is that informant - Lahu was admitted in Civil Hospital, Beed on 05.05.2015. He gave statement, on the basis of which the FIR came to be lodged. It was stated that his son Ganesh had been to Kukkadgaon for weekly market on his

motorcycle around 6.00 p.m. on 04.05.2015. Informant - Lahu received phone call stating that the accused persons were assaulting Ganesh by stick and stone. Therefore, he rushed towards the spot of incident. He saw that all the accused persons were assaulting Ganesh by stick and stone by encircling him. He entered the said circle to save his son and at that time, he received injuries by stick and stone. Thereafter, the accused persons fled away. Ganesh become unconscious. His wife as well as wife of Ganesh rushed to the spot. The informant's another son Babasaheb also came to the spot and brought ambulance and the injured were admitted to the Civil Hospital, Beed. Informant has received injuries to the left leg and right hand, however, Ganesh expired during the course of treatment.

4. The prosecution has examined in all five witnesses to bring home the guilt of the accused. P.W.1 Lahu is the informant. Though he has supported his FIR Exhibit-42, in his cross-examination, it has come on record as to how there was enmity between his family and the family of the accused on the point of elections. He has made several improvements. As regards the person who gave him phone call, it appears that he had not stated it in his FIR and then there was such statement that Ganesh had escaped from the clutches of accused and then he had made phone call to the informant and gave

information about the incident and asked the informant to come to the spot. If this statement is to be accepted as it is, then the question is, if Ganesh had escaped from the clutches of accused, why he stood at that place and why he could not have run away from there. If he would have managed to run away from there, there was no question of witnessing further incident and, injury to the informant. Therefore, that story itself is unbelievable. His rushing towards the spot, accused allegedly throwing big stones on Ganesh, assault to the informant by the accused, all these are improvements and they are material improvements. Those improvements have been specifically put to him and he could not assign any reason for the omissions thereof. Further, it has come in his cross that he had received the phone call around 6.00 to 6.30 p.m. on 04.05.2015 and then he went to Kukkadgaon Chowk, which was at a distance of about 3 to 4 kilometers. He admitted that after receiving phone call, he took about half an hour to reach Kukkadgaon Chowk. He has also admitted that when he went there, some persons had restrained him and assaulted him there and Ganesh was lying in front of house of one Dattatraya and Ashok at about 200 to 300 feet. When he went near Ganesh, he found that Ganesh was not in a position to talk. If these admissions are considered, then his status as eye witness to the incident goes away. P.W.3 Ashok Bhalekar and P.W.4 Dattatraya Lad,

who were examined as eye witnesses, have turned hostile. Therefore, except P.W.1 - Lahu, there is no other substantial evidence and for the aforesaid reasons, his testimony is untrustworthy. All these factors were taken into consideration by the learned Trial Judge and, therefore, we find that there is no illegality or error committed by the learned Trial Court in acquitting the accused. There is no merit in the appeal. It deserves to be dismissed at the threshold. Accordingly, it is dismissed.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm