

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

**APPLICATION FOR LEAVE TO APPEAL BY STATE
NO.233 OF 2018**

The State of Maharashtra,
Through Police Inspector,
Shrigonda Police Station,
Dist-Ahmednagar.

...APPLICANT

VERSUS

- 1) Chandrabhaga Ambadas Ithape,
Age-40 years,
- 2) Janabai Santosh @ Yashwant Khobre,
Age-25 years,
- 3) Sonabai @ Geeta Govind Harpude,
Age-22 years,
- 4) Santosh @ Yashwant Rama Khobre,
Age-30 years,

Accused No.1 - R/o-Belwandi, Tq-Shrigonda,
Dist-Ahmednagar,

Accused Nos.2 to 4 - R/o-Kothrud,
Daund Road, Pune

**...RESPONDENTS
(Orig. Accused)**

...
Mr. A.M. Phule, A.P.P for Applicant - State.
...

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

DATE : 14th JUNE, 2023

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed by the prosecution seeking leave to appeal under Section 378(1)(b) of the Code of Criminal Procedure challenging the acquittal of the respondents by the learned Additional Sessions Judge, Ahmednagar in Sessions Case No. 31 of 2013 from the offence punishable under Sections 143, 147, 148, 149, 436, 323, 504, 506 of the Indian Penal Code, on 24th July 2018.

2. We have heard learned APP and with his able assistance we have gone through the entire material which was before the learned trial Judge.

3. The prosecution had examined in all six witnesses to bring home the guilt of the accused. Interesting point to be noted is that as per the First Information Report and testimony of PW-1 Sitaram – informant, one Ambadas Ithape is his paternal uncle who is having agricultural land. He says that one lady by name Chandrabhaga i.e. accused No.1 without any reason entered the uncle's house and there is dispute regarding the land. He does not say that he has any share in the said property. But in the

substantial evidence i.e. examination-in-chief he states that accused No.1 is the wife of his paternal uncle Ambadas and further states that dispute is between the uncle and accused No.1 regarding the agricultural land. Still then he says that at about 2.00 p.m. on 26th February 2006 one white coloured pick-up van came near their house from which 20 ladies and 3 gents alighted. All of them came towards his house. All 23 persons were armed with sticks. Informant's father was sitting in front of his house and one unknown lady, by saying that she is a police, threw chilly powder towards his father and when the informant went towards his father, the said lady sprinkled chilly powder at his eyes also and thereafter all 23 persons assaulted the informant, his father, mother, wife, brother, sister-in-law by the sticks. Thereafter accused No.2 took out match stick and accused Nos. 1 and 3 set the house of the informant to fire. Accused Nos. 1 and 3 gave threat to kill each one of them. Informant says that he had sustained loss of Rs.70,000/- due to the damage caused to the heap of the fodder, PVC pipes etc. In the entire examination-in-chief there is absolutely no reference as to what was the reason behind the said incident. The dispute was not between the informant, his parents on one side and accused No.1 on the other side. Further, why the other accused

persons would get themselves involved and what is their relationship with accused No.1 is absolutely not stated.

4. The evidence which is on record would show that prosecution has tried to support testimony of PW-1 Sitaram with the testimony of PW-3 Nandabai, wife of the informant, PW-4 Sahebrao – father of the informant. However, from their evidence also it has not come on record as to why the other accused persons would take part in the alleged incident. Such incident will not occur all of a sudden. That means all these witnesses were suppressing something.

5. Further, prosecution has examined PW-5 Dr. Shaila Dange, medical officer, who had examined PW-1 Sitaram, PW-3 Nandabai, Ambadas Govind Ithape as well as PW-4 Sahebrao. The first and foremost fact to be noted is that all of them had received only simple injuries and if 23 persons had assaulted them with sticks, there could not have been injuries in the nature of tenderness, abrasion and contused lacerated wound. Why Ambadas was not examined by the prosecution, is a question. No independent witness has been examined. Under such circumstance, the inference drawn by the trial Court and

disbelieving the prosecution story appears to be justified. No case is made out for grant of leave as the Judgment is not perverse and the Application deserves to be rejected.

6. The Application stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/JUNE23