



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

**APPLICATION FOR LEAVE TO APPEAL BY STATE
NO. 17 OF 2023**

THE STATE OF MAHARASHTRA
VERSUS
DATTATRAY S/O LAXMAN GURJAR AND OTHERS

...
Mr. D.J. Patil, APP for Appellant/State
Mr. Satyajit S. Bora, Advocate for Respondent No.1 To 3
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 03rd SEPTEMBER, 2024

PER COURT :

1. By this application filed under Section 378(1) of Code of Criminal Procedure, appellant/State seeks leave to file appeal against judgment and order of acquittal dated 11/11/2022, passed by learned Additional Sessions Judge-4, Jalna, in Criminal Appeal No.13/2018.

2. In short, the prosecution case is that informant Shantabai Chavhan was running grocery shop in her house situated at Laxminarayan pura, Jalna. On 20/03/2011, at about 02:00 to 02:30 p.m. when she was present in the shop, all accused persons came in front of her house and started abusing her. When she asked as to why they are abusing, all accused persons entered in her house and brought her out of the house and started beating her by fists and kick blows. Her son was also beaten by accused persons. They threatened to kill her by sword. People residing nearby have

rescued informant and her son from accused persons. Informant, therefore, lodged report at Kadim Jalna Police Station. Accordingly C.R. No.162/2011 was registered. On completion of investigation, charge-sheet was filed and charge was framed against accused under Sections 323, 452, 504, 506 r/w 34 of the Indian Penal Code.

3. Trial Court after recording evidence of six prosecution witnesses convicted accused persons for offence punishable under Sections 323 and 452 r/w 34 of I.P.C. and sentenced them to suffer simple imprisonment for six months and to pay fine of Rs.2,000/- each and in default of payment of fine simple imprisonment for further 10 days. Being aggrieved by the judgment and order of conviction accused persons preferred Criminal Appeal No.13/2018 which is allowed by the appellate Court and accused are acquitted. Hence, this application for leave to file appeal.

4. Heard learned APP for State and learned advocate for respondent Nos.1 to 3 accused. Perused the impugned judgment and order of acquittal and the judgment rendered by the Trial Court.

5. Documents placed on record indicates that informant has improved her version on material particulars in her evidence. Informant on her accord has gone to the hospital and has obtained injury certificate. She has suffered abrasion and contusion. Expert witness has stated in her cross-examination that informant was not

referred by police to the Civil Hospital and the injuries of informant are possible by fall. Even PW2 son of informant has improved his version in Court. Considering the long standing enmity between informant and accused, appellate Court has rightly refused to rely on the evidence of informant and her son. As per prosecution informant was examined at Hospital at 04:00 p.m. and in the spot panchanama prepared at the same time informant is shown to be present. In this view of the matter, the acquittal given by Trial Court cannot be faulted with.

6. Appellate Court has properly appreciated evidence on record. View taken by the appellate Court is a possible view, no case is made out by prosecution to interfere in the impugned judgment and order of acquittal. Application is, therefore, rejected.

(NITIN B. SURYAWANSHI, J.)