



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.80 OF 2018

The State of Maharashtra,
Through Police Station Officer,
Police Station Dindrud,
Tq. Majalgaon, Dist. Beed.

... Applicant
(Orig. Complainant)

Versus

1. Rameshwar Shrirang Bade,
Age 38 years,
2. Parmeshwar Madhukar Bade,
Age 28 years,
3. Madhukar Shrirang Bade,
Age 50 years,
4. Sudhakar @ Bandu Shrirang Bade,
Age 40 years,
5. Shrirang Ganpati Bade,
Age 70 years,
6. Uttreshwar Madhukar Bade,
Age 24 years,
All R/o Badyachiwadi, Tq. Majalgaon,
Dist. Beed.
7. Mahadeo Rajaram Kekan,
Age 48 years,
8. Keshav Vitthal Kekan,
Age 38 years,
9. Dhanraj Pralhad Sangale,
Age 38 years,
All R/o Chatgaon, Ta. Dharur,
Dist. Beed.
10. Ishwar Rameshwar Bade,
Age 19 years,
R/o Badyachiwadi, Tq. Majalgaon,
Dist. Beed.

... Respondents
(Ori. Accused)

...
Mr. S. M. Ganachari, APP for Applicant – State
Mr. R. G. Hange, Advocate for Respondents
...

CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 07 FEBRUARY 2024
PRONOUNCED ON : 20 FEBRUARY 2024

ORDER :

1. State has preferred instant application praying to grant leave to assail Judgment and order of acquittal passed by Additional Sessions Judge, Malegaon dated 30.11.2017 in Sessions Case No.3 of 2015, acquitting respondents from offence under sections 147, 148, 324, 323, 504, 506 read with section 149 of Indian Penal Code (IPC).

2. In favour of relief, learned APP submitted that, respondent accused were charge-sheeted for above offence. Above offence which was fall out of dispute over land. It is submitted that, as many as as six persons are injured. There are also allegations of using sword and sticks. There are injured eye witness account and two independent eye witness account. Learned trial court has not considered said evidence and has accused holding that there is no seizure of weapon and there is delay in recording statements. That, there is doctor's evidence proving injury, but still accused are acquitted and hence it is submitted that there is a good case on merits and evidence needs to be re-appreciated in the appeal and hence prays to grant the leave.

3. While opposing the above relief, learned counsel for respondents accused pointed out that, evidence of prosecution was weak and case was not proved beyond reasonable doubt. Evidence of witnesses are contradictory to each other and there are material omissions. There is delay and all such crucial aspects contributed to the weakness of prosecution case and hence according to him there is no need to interfere with the judgment and he prays to refuse leave.

4. In the light of above submissions and on going through papers, it seems that, in all 10 persons were booked for offence under sections 147, 148, 323, 324, 504, 506 read with section 149 of IPC. Occurrence seems to be of 02.07.2012. Apparently, it seems that there is dispute over planting cotton crop in the field. Allegations are that, around 11:00 a.m. of 02.07.2012, Rameshwar and 09 others came armed with sword and sticks to the field of Laxman. He is injured and he has deposed that accused Rameshwar assaulted by means of sword on the right side of his head, whereas others beat him by sticks on his right thigh, right hand and back and there was also beating his brother by means of sticks. Even said brother PW5 Ram Late deposed about he being beaten by sticks and his brother Laxman suffering bleeding injury

to the head. Doctor PW9 Dr. Ramesh Ghumre is also examined to issue injury certificate. However, all accused are acquitted by judgment and order dated 30.11.2017.

5. Taking above material into consideration, leave as prayed deserves to be granted as case is made out for dealing in appeal. Hence, I proceed to pass the following order :-

ORDER

- (i) Application stands allowed.
- (ii) Leave is granted to the prosecution to file Appeal.
- (iii) Registry to register the Appeal.
- (iv) Appeal stands **admitted**.
- (v) Call record and proceedings.
- (vi) Action under section 390 of the Code of Criminal Procedure be taken against the respondents to the satisfaction of the trial court.

(ABHAY S. WAGHWASE, J.)