

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 12 OF 2021
(For Leave to Appeal)**

The State of Maharashtra	...	Applicant
Versus		
Vilas Parasu Kamble and Ors.	...	Respondents

.....

Ms. Gauri S. Rao, APP, for the Applicant.

None for the Respondents.

.....

CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 24th JULY, 2024

P.C.

By this application, the State seeks leave to appeal under Section 378(3) of the Code of Criminal Procedure r/w Rule 19 of Chapter XXVI of the Bombay High Court Appellate Side Rules, challenging a judgment of acquittal rendered by the lower Appellate Court against the judgment and order of conviction rendered by the Magistrate's Court for the offences punishable under Sections 324, 323, 143 r/w 149 of the Indian Penal Code.

2 I heard the learned APP. I have perused the impugned judgment of acquittal rendered by the Sessions Judge, Kolhapur, in Criminal Appeal No. 213 of 2014.

3 The complainant and the accused are neighbours and closely related having some dispute in respect of land. The alleged incident occurred on 16th December, 2012 at about 14:00 hours. It is alleged that the respondents' formed an unlawful assembly and with the common object of the said assembly, voluntarily caused hurt to the witness namely, Sambhaji Bhima Kamble by means of stick which was used as a weapon of offence.

4 Learned trial Court, after recording evidence of the witnesses and hearing the respective sides, convicted the respondents against which an appeal was preferred before the Sessions Court, Kolhapur. The learned Sessions Judge has rightly reversed the judgment of conviction by acquitting the respondents, mainly on the ground that the respondents have not been charged under Section 34 of the Indian Penal Code and, therefore, they could not have been convicted by taking aid of Section 34 of the Indian Penal Code. It was not at all a case of common meeting of their minds before the alleged incident. The prosecution invoked Section 149 of the Indian Penal Code which has not been proved by it.

5 The learned Sessions Judge made following observations in paras 21 to 26, which read thus;

“21 Though the learned Trial Court has discussed evidence and convicted all the accused persons for the offence punishable under Sections 324, 323,143 of the Indian Penal Code. It appears from the record that the evidence of all the eye witnesses is not consistent with each other. The evidence of P.W. 3 Avubai is not reliable as there are improvements in her statement. Whatever she has stated in her examination-in-chief is improved version. P.W.1 has stated about the two persons. Vilas, Gopal and Parsu came there with sticks which contradicts as the P.W.4 has stated that Deelip Kamble and Vikas Kamble which contradicts with the version of P.W.1.

22 P.W.1 and 4 have stated that people were gathered there, but P.W.3 has stated that nobody was there except the family of accused persons and the P.W.1 and his brothers.

23 The act of assaulting Sambhaji is by accused–Deelip as per statement made by 3 eye witnesses. But the learned Trial Court has convicted all the accused persons for the offence punishable under Section 324 of the Indian Penal Code. Section 34 in their common intention cannot be said to be proved as the charge was for offence under Section 34 is not there. For offence under Section 149 the common object is required to be proved. The accused persons are from one family, therefore, at the most common intention can be considered, but the charge under Section 34 is

not proved.

24 *The injured was having simple injury as per the injury certificate. But the Trial Court has considered it as it was with stick by which the death is possible. As the nature of injury is simple and though the allegations about giving fists and kick blows to P.W. 4 and P.W.1. Though P.W. 4 was examined, no tenderness or body pain is mentioned to PW 4 Aubai by the medical officer. Offence under Section 323 can be proved if the person who is assaulted says that he was having bodily pain. Nothing is there in evidence of P.W.4 except the allegations about assaulting with kick and blows. Though the kick and blows were given to P.W.1, he was not referred for treatment and doctor has not examined him which creates doubt in the mind about the incident itself.*

25 *The unlawful assembly is also said to be proved by the learned Trial Court because there were five persons. The learned Trial Court has observed that the offence of unlawful assembly is proved. All the accused persons are family members. There was dispute between both the families. No other reason or intention can be gathered if there is any incident about assault by family members out of dispute, it cannot be termed as unlawful assembly.*

26 *As the evidence on record does not corroborate the evidence of each other, none of the offence against any of the accused is proved. I do not agree with the observations made by the learned Trial Court. The counsel for the accused, while arguing has stated that while conducting*

cross-examination before Trial Court the counsel for the accused has not properly conducted it and because of the fault of the lawyer accused cannot be convicted. He has relied on judgment of Hon'ble Bombay High Court in 2015 All MR (Cri) 975 [Anantram @ Moru s/o Babulal Bawankar Vs. The State of Maharashtra]. After going through the evidence I found that the cross-examination is properly conducted, it was not properly appreciated by the learned trial Court. There is no need to remand the matter for proper trial. However, the acquittal order passed by the learned Trial of the accused for the offences punishable under Section 504,147,148 r/w Sec. 149 of IPC is maintained.”

6 I have given due weightage to the evidence as well as the view of the trial Judge as to the credibility of the witnesses. The presumption of innocence in favour of the accused has not weakened by the fact that he has been acquitted at his trial. It is a settled principle of law that an order of acquittal shall not be interfered with only on the ground that on a fresh scrutiny and reappraisal of the evidence and other material on record, the High Court is of the opinion that there is another view which can be reasonably taken, than the view which favours the accused.

7 Learned APP is fair enough to concede that the findings

arrived at by the learned lower Appellate Court need no interference.

8 As such, leave to appeal is refused.

9 Application is disposed of.

[PRITHVIRAJ K. CHAVAN, J.]