



This order has been corrected pursuant to Speaking to Minute order dated 28.07.2025.

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

CRIMINAL APPEAL NO. 736 OF 2024

1. Sujata Devidas Ambepwad,
Age : 33 Years, Occ. Household,
R/o. Siranjani, Tq. Himayatnagar,
District Nanded.

..Appellant
(Original Complainant)

VERSUS

1. The State of Maharashtra,
Through its Police Station
Himayatnagar, Dist. Nanded.
2. Ambadas S/o Parmeshwar Ambepwad,
Age : 33 years, Occ. Agriculture,
R/o. Bembar Taluka Bhokar,
District Nanded.
3. Baburao @ Shivdu S/o Sakharam Dautulwad,
Age : 43 Years, Occ. Agriculture,
R/o.Siranjani, Tq. Himayatnagar,
District Nanded.

Respondents
(Res. Nos. 2 and 3 ori. Accused)

...
Advocate for Appellant : Mr. Prashant Prabhuappa Dama
APP for Respondent/State: Mr. S. J. Salgare
Advocate for Respondent No.3 :Mr. I. K. Wagh (Appointed)
...

**WITH
APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 93 OF 2024**

The State of Maharashtra

.. Applicant

Versus

Ambadas S/o Parmeshwar Ambepwad
and others

.. Respondents

.....
A.P.P. for Applicant/State : Mr. S. J. Salgare

Advocate for Respondents : Mr. Prashant Prabhuappa Dama
Advocate for Respondent No.3 :Mr. I. K. Wagh (Appointed)

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**CORAM : NITIN B. SURYAWANSHI AND
SANDIPKUMAR C. MORE, JJ.**

DATED : 15th JULY, 2025

ORDER:-

1. Criminal Appeal No. 736 of 2024 is filed by the informant challenging the judgment and order of acquittal passed by learned Additional Sessions Judge, Bhokar, District Nanded in Sessions Case No. 2 of 2021.
2. Respondent Nos. 2 and 3/ accused were charged under Sections 302, 294, 506 read with Section 34 of the Indian Penal Code for committing murder of deceased Devidas Ambepwad on 25.07.2020, by assaulting him with stone.
3. Application for Leave to Appeal by State No. 93 of 2024 is filed by State seeking leave to file appeal against the said judgment of acquittal.
4. Heard learned Advocate for the appellant, learned A.P.P for the State and learned Advocate for the respondent No.3/ accused.
5. Learned Advocate for the appellant and learned A.P.P have assailed the judgment and order of acquittal contending that, in

spite of there being evidence of eye witnesses and other circumstantial evidence supporting the case of the prosecution, trial Court has failed to appreciate the evidence in proper perspective and has erred in acquitting the accused.

6. Learned Advocate for the accused, on the other hand, supported the judgment of acquittal.

7. In support of the case, prosecution has examined 12 witnesses, out of them P.W.6 and P.W.7 are the eye witnesses. Perusal of their evidence shows that statement of P.W.6 Dhammpal under Section 161 of the Code of Criminal Procedure (for short "Cr.P.C.") is recorded after three days of the incident and his statement under Section 164 of the Cr.P.C. is recorded after 23 days of the incident. In his police statement he has stated that he saw deceased Devidas covered with blood and accused Baburao was pushing deceased Devidas down and accused Ambadas was beating deceased Devidas by stone on his head. His statement under Section 164 of the Cr.P.C. corroborates his version only to the extent that he saw deceased Devidas covered with blood. In the evidence he has not stated that accused Baburao was pushing the deceased down. He admitted that before giving statement under Section 164 of the Cr.P.C., police gave him two statements for reading. There are omissions and contradictions in his statement. His evidence is not corroborated by

his statement under Section 164 of the Cr.P.C. He has given vital admissions in his cross-examination due to which and due to delay in recording his statement under Section 164 of the Cr.P.C. the trial Court has rightly held that no reliance can be placed upon the testimony of this witness.

8. Another eye witness P.W.7 appears to be a chance witness. On careful scrutiny of his evidence, it is clear that for the first time, he disclosed before the Court that he saw deceased Devidas and both the accused on road. He has admitted that he did not stop to see the dead body which he noticed on the road as there was darkness. He could not guess who was the person lying on the road. He also admitted that police told him about killing of Devidas. His statement was not recorded by police. He also admitted that he did not disclose anything to the police. In view of these admissions, the trial Court has held his version doubtful on the point that he saw the accused persons and the deceased and the dead-body of deceased Devidas at two different times on the same road.

9. Much is argued on the point of recovery of blood stained clothes of the accused. It has come in the evidence that accused Ambadas had sustained head injury and there was also injury to his knee. Therefore, finding of blood on his clothes would not help the case of prosecution. Fact remains that accused Ambadas as well as the

deceased, both have blood group “O”.

10. Statement of PW.11, who was examined on the point of subsequent conduct of accused Ambadas, was recorded after two days of preparing arrest panchnama of accused Ambadas. Though this witness was available to the police on the date of incident itself, he did not disclose the fact that he saw accused Ambadas with blood stained clothes. In this view of the matter, the said circumstance cannot be said to be supporting the prosecution case. There is delay in lodging F.I.R which is lodged on the hearsay version. Witnesses have admitted in their evidence that there was discussion in the village that both the accused have killed the deceased.

11. Trial Court has properly appreciated the evidence and has rightly acquitted the accused. We find no merit in the appeal as well as application for leave to file appeal. Both are, therefore, dismissed.

12. High Court Legal Services, Sub Committee, Aurangabd shall pay the fees of learned Advocate representing for respondent No.3, as per schedule, within four weeks from today.

(SANDIPKUMAR C. MORE)
JUDGE

(NITIN B. SURYAWANSHI)
JUDGE