

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

CRIMINAL APPLICATION NO. 575 OF 2014

The State of Maharashtra
Through Police Station Officer,
Deopur West Police Station,
Dhule, Ta. And Dist. Dhule ...Applicant

versus

Ashok Shankar Deore (Patil)
Age : 57 years, Occu. Service,
R/o Plot No. 25, Subham
Housing Society, Deopur,
Dhule, Tq. & Dist. Dhule ...Respondent

.....

Mr. D.V. Tele,A.P.P for Applicant - State
Mr. R.S. Pawar, Advocate for respondent.

.....
CORAM : A.I.S. CHEEMA, J.

DATED : 5th MARCH, 2015

Order :-

1. Heard learned Additional Public Prosecutor for applicant - State and learned counsel for the respondent. Perused record.
2. It appears that complainant Subhash and respondent-accused are real brothers and are residing side by side. The complainant appears to have started construction of the wall between their houses and the same was obstructed by the respondent - accused on 07-11-2012.

3. Learned Additional Public Prosecutor submits that about the said incident the N.C. case was filed. The complainant again on 08-11-2012 started the work of construction and the incident took place wherein the respondent - accused assaulted the complainant with kick and fist blows. According to the complainant, this incident was witnessed by Sudam (P.W.2), Sandip Patil (P.W.4) who is tenant of the complainant as well as Dhanraj Chaudhari (P.W.3). According to learned Additional Public Prosecutor, there was evidence available on record about the incident, but the trial Court wrongly acquitted the accused.

4. Learned counsel for the respondent - accused submitted that the trial Court rightly appreciated the evidence and acquitted the accused. According to him, the complainant was forcibly trying to build the wall and simple exchange of words was converted into complaint of assault. The complaint was not supported by medical evidence.

5. Going through the material available on record. Although there was incident dated 07-11-2012 for which N.C. case was filed, the complainant instead of moving Civil Court to establish his right to construct wall, had again

started construction on 08-11-2012. Learned counsel for respondent has submitted that Sudam (P.W.2) is friend of complainant, Dhanraj Chaudhari(P.W.3) was father-in-law of son of the complainant and Sandip Patil (P.W.4) is tenant of the complainant who claimed to have witnessed the incident.

6. The trial Court discussed the evidence and noticed that P.W.2 Sudam admitted to have grudge against accused. The trial Court also noticed that evidence of P.W.2 is silent on the point of assault at the hands of accused. It recorded that evidence of P.W. 2 Sudam did not inspire confidence. In respect of evidence of P.W.3, the trial Court noticed that with regard to incident dated 07-11-2013 he deposed that he only marked the portion of construction and the accused was not present. Thus, the trial Court observed that there was contradiction in the version of the complainant as well as witnesses with regard to incident dated 07-11-2012. The trial Court also observed that evidence of P.W.3 Dhanraj showed that at the time of incident accused was present in the premises, which was in possession of accused himself. Considering the evidence, the trial Court found that there

were contradictory versions and discarded oral evidence.

7. Evidence of alleged assault by kick and blows is not supported by medical evidence. The trial Court has taken a view of the evidence to acquit the accused. I do not find any reason to interfere in the acquittal, as view appears to be a possible view.

8. As such, there is no substance in the application. The criminal application stands disposed of.

Sd/-
(**A.I.S. CHEEMA, J.**)

MTK