

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

Criminal Application No. 1771 of 2015

The State of Maharashtra,
Through PSO,
Police Station, Lohara,
District : Osmanabad.

.. Applicant
(Original complainant)

versus

1. Shivhari s/o. Namdev Salunke,
Age : 58 years,
Occupation : Agriculture.

2. Narhari s/o. Shivhari Salunke,
Age : 23 years,
Occupation : Agriculture.

.. Respondents
(Original accused)

.....

*Mr. A.G. Magare, Additional Public Prosecutor, for
the applicant.*

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CORAM : A.M. BADAR, J.

DATE : 26TH OCTOBER 2015

PER COURT :

1. Heard the learned Additional Public Prosecutor appearing for the applicant - State.

2. This is an application under Section 378(1)(3) of the Code of Criminal Procedure, 1973, seeking leave of this Court to file appeal

against the judgment and order dated 15-12-2014, passed by the learned Additional Sessions Judge, Omerga (District : Osmanabad), in Criminal Appeal No. 2/2009, thereby acquitting the respondents / accused of the offence punishable under Section 323 read with Section 34 of the Indian Penal Code.

3. The respondents / accused were prosecuted for the offences punishable under Sections 325, 323, 504, 506 read with Section 34 of the Indian Penal Code, vide Regular Criminal Case No. 265/2008 and after its due trial, the learned Judicial Magistrate (F.C.), Lohara, by judgment and order dated 5-2-2009, was pleased to convict them for the offence punishable under Section 323 read with Section 34 of the Indian Penal Code. However, they were acquitted of the offences punishable under Sections 325, 504, 506 read with Section 34 of the Indian Penal Code. That judgment and order of conviction was carried in appeal by accused persons and said Criminal Appeal bearing No. 2/2009 came to be allowed by the impugned judgment and order dated 15-12-2014, passed by the learned Additional Sessions Judge, Omerga, and the appellants therein came to be acquitted.

4. Heard the learned Additional Public Prosecutor appearing for the applicant - State and perused the impugned judgment and order in Criminal Appeal No. 2/2009.

5. *Prima facie* it is seen that the injured witnesses have attributed role of the respondents / accused in causing injury to them. Their evidence appears to have been corroborated by the medical evidence

adduced on record. However, conviction for the offence punishable under Section 323 read with Section 34 of the IPC appears to have been set aside by the impugned judgment by the learned Additional Sessions Judge, Omerga, with a reasoning that the prosecution has failed to explain the injuries sustained by accused no.1 Shivhari in the very same incident. This case and counter case appears to have been tried simultaneously and the counter case was resulted in acquittal. It is well settled that the prosecution is not bound to explain each and every injury to the accused if the injury is minor in nature. Perusal of the impugned judgment *prima facie* shows that the learned appellate Court has taken perverse view in acquitting the accused of the offence punishable under Section 323 read with Section 34 of the IPC.

6. Hence, the Application is allowed.

- (a) Leave granted. The Application stands disposed of.
- (b) This Application itself shall be treated as memo of appeal.
- (c) Appeal **Admit.**
- (d) Issue notices to the respondents / accused after admission of the appeal.
- (e) Action under Section 390 of the Code of Criminal Procedure, 1973, to follow against the respondents / accused in the trial Court.

(4)

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(f) Call for record & proceedings.

(A.M. BADAR)
JUDGE

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