

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

**Criminal Revision Application No.185 Of 2002.**

Sumanbai Radhakishan Pawar.  
Age : 50 Years., Occ.: Agriculturist.  
R/o.: Nipani Nimgaon, Tal. Newasa,  
Dist. Ahmednagar.

**:: Applicant.**  
[Ori.Complainant]

**Versus**

(1) The State of Maharashtra.

(2) Bapu Rakhmaji Pawar.  
R/o.: Nipani Nimgaon, Tal. Newasa,  
Dist. Ahmednagar.

**:: Respondents.**  
[Resp.No.2 is the Ori.accused]

**Appearance =>**

Mr. V.R. Bhoomkar, Advocate for the Applicant.

Mr. V.H. Dighe, Additional Public Prosecutor for Respondent No.1.

Mr. R.R. Sancheti, Advocate h/for Mr. R.R. Mantri, Advocate for Respondent No.2.

**CORAM : V.M. DESHPANDE, J.**

**DATE : 3<sup>rd</sup> FEBRUARY, 2015.**

**ORAL JUDGMENT :-**

Heard Mr. V.R. Bhoomkar, Advocate for the Applicant, Mr. V.H. Dighe, learned Additional Public Prosecutor for the State and Mr. R.R. Sancheti, Advocate h/for Mr. R.R. Mantri, Advocate for Respondent No.2.

[2] Exception is taken to the Judgment and Order of acquittal passed by the Judicial Magistrate, F.C., Newasa, Dist. Ahmednagar in Regular Criminal

Case No.130 Of 1998 whereby, the court below acquitted Non-Applicant No.2 for the offences punishable under Section 325, 504, 506 of the Indian Penal Code. The State has not preferred appeal against the said Judgment and Order of acquittal. It is the first informant, who is questioning the correctness of the Judgment and Order dated 29<sup>th</sup> June, 2002 passed by the learned court below.

[3] According to the prosecution case, the applicant and Non-Applicant No.2 are having their agricultural fields adjacent to each other. According to the prosecution, in the agricultural field of the applicant, at the relevant time, she was having ground-nut crop where-as; in the agricultural field of Non-Applicant No.2, sugarcane crop was standing. The dispute, according to the prosecution, arose due to watering the agricultural field of Non-Applicant No.2. The incident is alleged to have been taken place on 2<sup>nd</sup> July, 1998 at 2.30 p.m. It is alleged in the First Information Report that first informant was assaulted by Non Applicant No.2 on her back and hands. Due to said blow, her tooth was uprooted and she suffered bleeding injury and, therefore, she was referred to the hospital. Doctor examined her and issued injury certificate. Injury certificate is at Exh.No. 23.

[4] The learned Magistrate after considering the prosecution case vide his Judgment and Order dated 29<sup>th</sup> June, 2002, acquitted Non-Applicant No.2.

[5] According to the learned counsel for the applicant, the approach of the learned trial court is erroneous. According to him, the Judgment and Order of acquittal is outcome of perverse approach on the part of the court below. Hence, he submitted that the impugned Judgment and Order is liable to be set aside.

[6] First Information Report is at Exh.No.18. From the substantive evidence, the applicant claims that she has sustained injury on her head due to the stone. However, the injury certificate Exh.No.23 is completely silent about such injury. Further P.W. No.4 Dr. Vishwas Jagtap has specifically admitted in his cross-examination that, injury No.2 appearing on the person of the applicant is self-inflicted injury. Though the applicant claims that due to assault, she lost one of her teeth however, the Doctor did not notice any injury on the lip of the patient. This aspect is correctly appreciated by the learned trial court.

[7] What is material is that, the applicant claims that she suffered bleeding injury however, during the course of investigation, her clothes were not seized. Non-seizure of the clothes requires to draw adverse inference against the prosecution since, if really there was bleeding injury, it must have been noticed on her clothes, which could have been corroborative piece of evidence in favour of the prosecution. Therefore, the court could draw adverse inference against the prosecution.

[8] The impugned Judgment and Order shows that the learned Magistrate at the time of trial has verified the weapon i.e. stick which was alleged to have been used by Non-Applicant No.2. The learned Magistrate has discussed that, in the seizure panchnama, it is shown that weapon was seized on 3<sup>rd</sup> August, 1999. However, when said weapon was verified during the trial in the court, learned Magistrate found that, chit pasted on the said weapon shows that it was seized on 3<sup>rd</sup> July, 2001. Therefore, there is serious doubt about the prosecution case.

[9] On the evaluation of the prosecution case, the court below found that the prosecution has not proved its case against Non-Applicant No.2 beyond reasonable doubt. No fault can be located in such approach of the learned court below. Hence, Criminal Revision Application is dismissed. Rule discharged.

**(V.M. DESHPANDE, J.)**