

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

CRIMINAL APPLICATION NO. 3896 OF 2014

The State of Maharashtra
Through MIDC Police Station,
Ahmednagar.

...Applicant

versus

1. Dattu Narayan Shewale,
Age 55 years, Occu. Agri.,
2. Popat Narayan Shewale,
Age 48 years, Occu. Agri.,
3. Namdeo Popat Shewale,
Age 25 years, Occu. Agri.,
4. Dnyandeo Popat Shewale,
Age 22 years, Occu. Agri.,
5. Sambhaji Dattu Shewale,
Age 25 years, Occu. Agri.,
6. Kantabai Dattu Shewale,
Age 45 years, Occu. Agri.,
7. Suman Popat Shewale,
Age 40 years, Occu. Agri.,

All R/o Vadgaon – Gupta,
Ta. & Dist. Ahmednagar.

...Respondents

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Smt. S.D. Shelke, A.P.P. for Applicant

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

DATED : 2ND FEBRUARY, 2015

Order :-

1. Heard learned Additional Public Prosecutor.
2. Learned Additional Public Prosecutor submits that there was evidence available of eye witnesses regarding accused persons forcibly cultivating the land claimed by the informant. The medical evidence was available to show that P.W.2, who is brother of the informant, was grievously injured, still the trial court wrongly ignored the medical certificate by observing that injury was on the shoulder whereas witnesses had referred the injury on right arm. According to learned Additional Public Prosecutor, judgment of the trial court needs to be interfered with and leave needs to be granted.
3. From the judgment, it appears that the informant filed complaint that accused No. 1 - Dattu Shewale along with others came in the field and started ploughing with the help of tractor and when the informant, his brother P.W.2 Mahadev, father - P.W.3 Karbhari and mother Lilabai asked him not to plough the field, the incident took place. It was claimed that the accused persons assaulted the informant,

his brother, father and mother by means of kick and fist blows. It was claimed that accused No. 3 – Namdeo Popat Shewale and accused No. 6 - Sambhaji Dattu Shewale caught hold of Mahadev and pulled on stone, because of which he received injury to his right arm. Thereafter, the villagers came there.

4. The trial court has considered the case of the prosecution and found that medical certificate mentioned that injury was on the shoulder and appears to have impressed by the fact that witnesses had referred to arm and not shoulder. Reasoning is not very good. Still fact remains that the medical certificate is proved on the basis of evidence of Dr. Dhiraj Zine, who has stated that it was Dr. Badhe, who had issued the medical certificate. Dr. Badhe has not been examined. Dr. Dhiraj Zine admitted that he has not examined the person. Apart from this, it appears that admission of informant discloses that he was not sure of his land. He appears to have admitted that the accused had ploughed land of their share. Father of informant appears to have deposed that he asked the accused about their share. Thus, there was dispute regarding share.

Informant was not sure as to whether the land being cultivated by the accused was his land. In such background the incident is claimed to have taken place.

5. Learned Additional Public Prosecutor is not able to show that reasons recorded by trial Court are not based on evidence available in the record of trial court. As such, no case is made out to interfere with judgment of acquittal.

6. Application is rejected.

(A.I.S. CHEEMA, J.)

MTK