

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

CRIMINAL APPLICATION NO. 5213 OF 2013

Homlal S/o Baithuram Choudhari,
Age: 75 years, Occu. Business,
R/o Mochi Galli, Ambajogai,
Dist. Beed.

...Applicant

versus

1. Bhadrasen Mahavir Choudhari,
Age: 60 years, Occu: Pensioner,
R/o Sadar Bazar, Tq. Ambajogai,
Dist. Beed.

2. Devdatt Omprakash Choudhari,
Age : 25 yrs, Occu: Business,
R/o Sadar Bazar, Tq. Ambajogai,
Dist. Beed.

2. Jaydatt Omprakash Choudhari,
Age : 30 yrs, Occu: Business,
R/o Sadar Bazar, Tq. Ambajogai,
Dist. Beed.

...Respondents

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Ms. Chinmayee Deshpande, Advocate holding for
Mr. S.V. Natu, Advocate for Applicant

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

DATED : 3rd FEBRUARY, 2015

Order :-

1. Heard learned counsel for the applicant. Perused judgment of the trial Court.

2. Learned counsel for the applicant refers to evidence of witnesses examined before trial court. Learned counsel for applicant pointed out that the trial court has not properly appreciated the evidence and committed an error in acquitting the accused persons. She further pointed out the short reasonings recorded by the trial court in paragraph No. 7 of the judgment that P.W.3 stated that he did not know what happened before he got up and so his evidence was hearsay. According to her, if evidence is read, it shows that, in fact, the witness was injured in the incident and appreciation of the evidence by the trial court is erroneous. She submits that complainant had submitted medical certificates, but there were no medical certificates to show that injuries were sustained by the accused. According to her, still the Magistrate concluded that there was quarrel and it was a case of free fight.

3. Looking to the submissions and the record, there is arguable case. Leave is granted.

4. Application be converted into appeal.

5. Appeal is **Admitted.**

6. Action under section 390 of the code of Criminal Procedure be taken against respondents-accused in trial court and short report of compliance be called.
7. Paper-book be got prepared.

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

MTK