

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 114 OF 2016

THE STATE OF MAHARASHTRA
VERSUS
HANUMANT BHAGWAN BHAIRAT AND OTHERS

...
APP for Applicant : Mr. D. D. Ghayal.
Advocate for Respondents : Mr. V. G. Mote.
...

CORAM : **INDIRA K. JAIN, J.**
DATE : 06th April, 2016.

P.C.:

. By this application State of Maharashtra seeks leave to file appeal against the judgment and order dated 29th September, 2015 passed by the learned Judicial Magistrate First Class, Washi, District Osmanabad in Regular Criminal Case No.44 of 2014 acquitting the Respondents of the offences punishable under Sections 143, 147, 148, 323, 325, 504, 506 and 427 read with 149 of the Indian Penal Code.

2 Heard the learned counsel for parties. Perused record.

3 It is the case of prosecution that on 28th December, 2013 at around 08:00 a.m. informant Yemunabai Tukaram Bhairat was cleaning utensils in her courtyard at village Shelgaon. That time Accused hurled abuses and assaulted her, her son Rambhau, Sangita

and Suresh who were in the house. Report of incident was lodged. On the basis of report crime was registered. Investigation was conducted. After completing investigation charge-sheet was filed before the learned Magistrate.

4 Charge was framed against the Accused persons. They pleaded not guilty and claimed to be tried. Prosecution examined in all 8 witnesses in support of its case. After considering the evidence of prosecution witnesses Trial Court came to the conclusion that in view of material contradictions and omissions evidence of prosecution witnesses cannot be relied upon. Even medical evidence was discarded by Trial Court particularly on the ground that x-ray technician was not examined.

5 With the assistance of the learned counsel for parties this Court has gone through the evidence of prosecution witnesses. It can be seen from the evidence of informant PW-3 Yemunabai, injured PW-2 Rambhau, PW-4 Suresh, PW-7 Sangita and eye witness PW-5 Kashinath that they have supported the prosecution. Medical evidence clearly indicates that informant and injured received injuries. Based on the evidence this Court finds that prosecution has an arguable case. Hence the following order -

ORDER

- I. Criminal Application No.114 of 2016 is allowed.
- II. Leave granted.
- III. Appeal is **Admitted**.
- IV. Action under Section 390 of the Code of Criminal Procedure.

[INDIRA K. JAIN, J.]

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