

The respondents-accused are acquitted in Regular Criminal Case No. 265 of 2011 by learned Judicial Magistrate, First Class, Karjat, on 10th September, 2012, in which they were prosecuted for the offence punishable under Sections 143, 147, 148, 324, 323, 504, 506 and 149 of the Indian Penal

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Code.

2. Present applicant is the complainant in the aforesaid crime and as such, has preferred present proceedings in the form of revision questioning the acquittal of the accused.

3. The prosecution story as appears from the original record is that Chhaya Dilip Kale, the applicant herein and her husband Dilip were cultivating the land Gat No. 157 and on 8th October, 2011, the accused persons on the issue of entering the field in a jeep through common road took out quarrel and assaulted them by use of wire and pipe. It is then claimed that consequence of above referred offence, report submitted has resulted into registration of Crime No. 231 of 2011. During the investigation, from accused No. 1 Vilas, weapons which were used in the crime are recovered.

4. Since the accused have sought to be tried

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in the offence in question before the Court, the charge came to be framed at Exhibit-21.

5. In support of the prosecution story, complainant Chhaya, who is applicant herein, is examined at Exhibit-33, Medical Officer Dr. Khude, who has issued medical certificates (Exhibit Nos. 42 and 43) at Exhibit-39, Dilip, husband of Chhaya at Exhibit-35, Investigating Officer Hajare, at Exhibit-46, Amrut, panch witness at Exhibit-37 and relied upon other documents i.e. spot panchnama at Exhibit-47 and recovery panchnama at Exhibit-48,.

6. So far as the evidence in hand is concerned, it is required to be noted that all the weapons are claimed to have recovered from accused Vilas vide recovery panchnama at Exhibit-48. Overall evidence of respective witnesses if are analyzed, particularly witness Dilip and witness Chhaya, victims in the crime in question, witness Dilip has stated that Vilas, Shivaji, Kantabai, Chhaya, Akkabai have assaulted him with the help of

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cable, rod. It is claimed by him that accused Vilas assaulted him with the help of rod.

7. So far as the evidence of complainant Chhaya is concerned, though she has stated about alleged assault, however, in her cross examination to major extent, she has supported the case of prosecution.

8. It is required to be appreciated that the accused persons are sons and family members of brother of victim Dilip. Dilip is a guarantor to one of the accused persons, who has taken loan from the Village Co-operative Credit Society. So far as complainant Chhaya is concerned, she happened to be second wife of Dilip and there are matrimonial proceedings pending between victim Dilip against his first wife. Apart from above, it is required to be noted that for non payment of loan amount, already notice was served on the accused, for which Dilip stood guarantor. As such, the afore said evidence speaks of enmity between the accused

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persons and the complainant.

9. Though the evidence of Medical Officer Dr. Khude, who is examined at Exhibit-39, proved sufferance of injuries by Chhaya and Dilip, however, perusal of their evidence independently with that of other witnesses, who are examined, does not speak or repose any confidence qua use of specific weapon by which accused persons caused particular injury. Apart from above, it is to be noted that witness Amrut claimed to have reached at the spot after hearing noise about the incident in question and he has deposed on the basis of narrations made to him by Dilip. It is to be noted from the record that the recovery of the weapon is made from accused Vilas, as such, it was required to be investigated into as to which accused used which weapon for assaulting which victim. There is no scientific evidence brought on record as regards weapons from Chemical Analyzer or Forensic Science Laboratory.

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10. Overall evidence as is required to be assessed does not pin point that the accused persons are involved in the commission of crime beyond reasonable doubt. Though the Court below has committed an error in observing that by medical evidence, injuries suffered by victim were not proved, however, even if said evidence is re-appreciated at this stage, still in my opinion, in view of the discussion made in the foregoing paragraphs, the view as is expressed by learned Magistrate, in my opinion, does not call for any interference. The revision is devoid of any merits. As such, criminal revision application fails and stands rejected.

(N.W. SAMBRE, J.)

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