

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

CRIMINAL APPLICATION NO. 3764 OF 2015

SAU KUSUMBAI W/O SHIVAJI MATKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Applicant : Mr. Rahul B. Temak.

APP for Respondent No.1 : Mr. S. N. Morampalle.

Advocate for Respondent Nos.2 & 3 : Mr. Suresh P. Salgar.

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CORAM : **INDIRA K. JAIN, J.**

DATE : 12th April, 2016.

P.C.:

. By this application Complainant seeks leave to appeal against the judgment and order dated 5th May, 2015 passed by the learned Judicial Magistrate First Class, Newasa, District Ahmednagar in R.T.C. No.189 of 2013. By the said judgment and order learned Judicial Magistrate First Class acquitted the Accused of the offences punishable under Sections 325, 323, 504 and 506 read with 34 of the Indian Penal Code.

2 Heard Mr. Rahul B. Temak, learned counsel for Applicant and Mr. Suresh P. Salgar, learned counsel for Respondent Nos.2 and 3. Mr. S. N. Morampalle, learned APP is present. Perused record.

3 Prosecution case in brief is as under:

Complainant Kusumbai Shivaji Matkar was resident of Pachegaon, Taluka Newasa. Her family was consisting of her husband, son and second wife of her husband. Accused are close relatives of Complainant. They are adjoining land holders. There was a dispute between parties on *Bandh*.

4 It is alleged that on 17th December, 2012 at 01:30 pm when Kusumbai was preparing food in her house both the Accused came in front of house of Complainant. They started abusing Kusumbai and raised a dispute on *Bandh*. Accused No.1 Dnyandeo assaulted her with a *Babool* stick on her right hand and Accused No.2 assaulted Complainant with stick on her legs and back. They threatened Complainant that they would see how they would cultivate land.

5 Complainant was then taken to hospital. PW-6 Dr.Prashant Chavan examined her. She was admitted to the hospital of Dr. Chavan. An intimation of medico legal case was given to police station. On 25th December, 2012 police recorded statement of Kusumbai. On the basis of her statement offence was registered. PW-7 Police Naik R. S. Pawar took over investigation. After

completing investigation charge-sheet was submitted to the Court.

6 Charge was framed and explained to the Accused. They pleaded not guilty and claimed to be tried. Their defence was of total denial and false implication.

7 During trial prosecution examined in all 7 witnesses. PW-1 Shashikant was witness on spot Panchanama. He was declared hostile and did not support the prosecution. PW-3 Ashok was another Panch on spot Panchanama Exhibit 31. On occurrence of incident prosecution relied upon evidence of PW-2 Kusumbai, PW-4 her husband Shivaji and PW-5 son Ganesh. Considering the contradictions in the evidence of these three witnesses Trial Court came to the conclusion that no reliance can be placed on their testimonies and acquitted the Accused. Being aggrieved Complainant has preferred this application for leave to appeal.

8 With the assistance of the learned counsel for parties this Court has gone through the evidence of Complainant Kusumbai, her husband Shivaji and son Ganesh. There are some contradictions in the evidence of these three witnesses. In the cross-examination Complainant and her husband have stated that they are illiterate and they do not know reading and writing. Evidence of PW-6 Dr. Chavan

indicates that on the same day he examined the injured and noticed that she sustained grievous injury. She was admitted to hospital for more than 12 days. As material witnesses on incident are rustic witnesses reappraisal of their evidence would be essential.

9 Upon hearing both the sides and after considering the evidence of above witnesses this Court finds that Applicant has an arguable case. Hence the following order –

ORDER

- I. Criminal Application No.3764 of 2015 is allowed.
- II. Leave granted.
- III. Appeal is **Admitted**.
- IV. Mr. S. N. Morampalle, learned APP for Respondent No.1/State and Mr. Suresh P. Salgar, learned counsel for Respondent Nos.2 and 3 waive service of notice.
- V. Action under Section 390 of the Code of Criminal Procedure stands dispensed with.

[INDIRA K. JAIN, J.]