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

CRIMINAL REVISION APPLICATION NO.81 OF 2015

Shamlal s/o Shriramlal Jaiswal,
Aged about 35 years, Occ: Agri.,
R/o. Jamod, District Buldhana. ..APPLICANT

VERSUS

1. The State of Maharashtra,
Through Police Station Officer,
Police Station Sangrampur,
District Buldhana.
2. Tukaram Laxman Rekhate (Dead)
Aged about 60 years,
Occ: Not known,
3. Mahadeo Laxman Rekhate,
Aged about 47 years,
Occ: Not known,
4. Ganesh Laxman Rekhate,
Aged about 20 years,
Occ: Not known,
5. Ananta Pandurang Rekhate,
Aged about 31 years,
Occ: Not known,
6. Ramesh Pandurang Rekhate,
Aged about 22 years,
Occ: Not known,
7. Nandu Tukaram Rekhate,
Aged about 32 years,
Occ: Not known,
8. Jairam Laxman Rekhate,
Aged about 40 years,
Occ: Not known,

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Res. No. 3 to 8 R/o. Warwat
Barkal, Tq. Sangrampur,
District Buldhana. ..RESPONDENTS

Mr A.R. Tichkule, Advocate h/f Mr K.N. Jawade,
Advocate for applicant;
Mr Vishal Gangane, Addl. Public Prosecutor for
respondent No.1

CORAM : N.W. SAMBRE, J.

DATE : 16th MARCH, 2017

ORAL ORDER :

The respondents-accused were acquitted by learned Additional Sessions Judge, Khamgaon, vide judgment and order dated 21st April, 2015 in Sessions Trial No. 30 of 2009, for the offences punishable under Sections 395, 427, 504 and 506 of the Indian Penal Code.

2. The prosecution case as it could be noted is, complainant Shamlal, PW-4, lodged first information report alleging that he is owner of land Gat No. 285 admeasuring 1 Hector 62 Are land at Warwat Bakal. On 10th October, 2007 at about 9.00 a.m., the accused persons were riding tractor bearing registration No. MH-28-B-4117 along with trolley bearing registration No. MH-28-A-1577

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entered the field of complainant armed with sickle and axe and harvested maize crop, worth of Rs. 5000/- to Rs.6000/-.

3. PW-10 Police Inspector Sarangdhar Turkmane registered first information report at Exhibit-87, drawn spot panchnama at Exhibit-74 and seized tractor from the accused vide seizure panchnama at Exhibit-96. The discovery of axe was made by accused Mahadeo vide Exhibit-97 and accused Ganesh gave discovery of sickle vide Exhibit-98.

4. During the course of trial, PW-1 Mahadeo Metkar, PW-2 Santosh Pawar, panch witnesses on the spot panchnama at Exhibit-74 and PW-8 Rajesh Takalkar and PW-9 Mahadeo Dabare, panch witnesses of discovery panchnama turned hostile. The prosecution case then was based on testimony of complainant Shamlal, PW-4 who is examined at Exhibit-85, PW-3 Mohanlal Jaiswal, brother of complainant and three servants namely PW-5 Sk. Taslim, PW-6 Sanjay and PW-7 Sk. Naim. In the evidence of complainant PW-4 Shamlal, he has never

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stated that servants were accompanied with him when they entered the field and witnessed the incident in question, which has created doubt qua very presence of said witnesses i.e. Servants of the complainant. In view thereof, testimony of this witness was rightly discarded by the learned Sessions Judge. It is to be noted that since panch witnesses turned hostile, spot panch panchnama and discovery panchnama was not proved.

5. There was material discrepancies in the evidence of complainant Shamlal and PW-3 Mohanlal, his brother, who claimed to be an eye witness to the incident. The dispute in relation to the property in question between the complainant and respondents was existing, enmity over the said issue has also formed to be basis for ordering acquittal of the respondents-accused.

6. In view of above, in my opinion, view expressed by the learned Sessions Judge is plausible view, it does not call for any interference, much less re-appreciation of

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evidence.

7. In view thereof, criminal revision fails
and stands rejected.

(N.W. SAMBRE, J.)

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