

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.200 OF 2014
(For leave to Appeal – Private)**

Manjulabai Laxman Gaikwad ... **Applicant**
V/s.
Arjun Bandu Gaikwad & Ors. ... **Respondents**

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Ms.Vrushali Raje i/b. Mr.Nikhil M.Pujari, Advocate for the Applicant.

Mr.R.N.Gite, Advocate for Respondent Nos.1 to 13.

Mr.A.R.Kapadnis, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 12th JUNE 2018.

P.C. :

1 This is an application for leave to appeal seeking challenge to the Judgment and Order of acquittal of the contesting respondents of offences punishable under Sections 441, 447, 504, 506 read with Section 34 of the Indian Penal Code recorded by the learned trial Magistrate.

2 Heard the leaned Advocate appearing for the applicant/original complainant as well as the learned Advocate

appearing for the respondent/accused. The learned Additional Public Prosecutor appears for the respondent/State.

3 Complainant Manjuilabai and her relatives Sakharam, Jayram and Jayantabai are material witnesses. The learned trial Court considered civil dispute between the parties and put on record that evidence of prosecution needs to be scrutinized closely in the wake of enmity between the parties. Then eye-witness account given by the witnesses recorded by the prosecuting party is rejected with a finding that their evidence is discrepant and inconsistent. The delay in lodging the complaint was also considered as a factor to disbelieve the case of the prosecuting party.

4 The incident took place on 23/07/2006 and the complaint contains an explanation that on the very same day, the applicant had been to the Police Station to lodge the report. Similar is the evidence of the complainant. The witness entered in the witness box in the year 2013 to depose about the indent which took place in July 2006. It is well settled that ordinary it happens that the witnesses are overtaken by the events which they had not anticipated, which spring an element of surprise on them. Belated examination of witnesses leads to failure on their part to accurately recall the sequence of events. *Prima facie*, these facts seem to be ignored by the trial Court. Hence, the case for grant of leave is made out. Therefore, the Order :

ORDER

- (i) The leave, as prayed, is granted.
- (ii) Admit.
- (iii) Memo of the application to be treated as Memo of Appeal and the applicant to effect necessary amendment thereto.
- (iv) Mr.Gite, the learned Advocate waives notice for respondent No.1 to 13. The learned Additional Public Prosecutor waives notice for the respondent No.14/State.
- (v) In lieu of action under Section 390 of the Criminal Procedure Code, respondent Nos.1 to 13 shall execute P. R. Bond in the sum of Rs.15,000/- before the learned trial Court within a period of two months.
- (vi) Call for Record and Proceedings.

(A.M.BADAR J.)