

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.754 OF 2017

The State of Maharashtra	 Appellant
versus	
Santosh Manohar Salve	... Respondent

**WITH
CRIMINAL APPEAL NO.462 OF 2017**

Santosh Manohar Salve	 Appellant
versus	
The State of Maharashtra	... Respondent

**WITH
CRIMINAL APPLICATION NO.84 OF 2017
(APPLICATION FOR LEAVE TO APPEAL)**

The State of Maharashtra	 Appellant
versus	
Laxmibai Manohar Salve	... Respondent

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- Mrs.M.M. Deshmukh, APP for the Appellant in Appeal and in ALS for State.
- Mr.A.H. Fatangare, Advocate for the Respondent in Appeal No.754/17.

**CORAM : B. R. GAVAI &
SARANG V. KOTWAL, JJ.
DATE : 21st JUNE, 2018.**

P.C. :

1. This is again one another frivolous Application filed by the State seeking leave to file Appeal against the acquittal of the Accused No.2 Laxmibai Manohar Salve. The State has also filed an Appeal seeking enhancement of sentence insofar as the Accused No.1 Santosh Manohar Salve is concerned.
2. The Original Accused No.1 Santosh Manohar Salve i.e. the brother of the deceased Vijay Manohar Salve and Original Accused No.2 Laxmibai Manohar Salve, the mother of the deceased were charged with the offence of committing murder of Vijay Salve on account of a quarrel.
3. Insofar as the Appeal for enhancement of sentence of Accused No.1 Santosh Salve is concerned, the learned APP does not press for the same.
4. The learned Trial Judge, upon considering the evidence, convicted the accused No.1 Santosh Salve for the

offence punishable under Section 304 (II) of the Indian Penal Code (for short IPC) and sentenced him to suffer rigorous imprisonment for three years. However, the Accused No.2 Laxmibai Salve was acquitted for the offence punishable under Section 304 (II) of IPC.

5. Mrs.M.M. Deshmukh the learned APP submitted that the learned Trial Judge has grossly erred in acquitting the accused. She has submitted that on the very same set of evidence, the learned Trial Judge has convicted the Accused No.1 Santosh Salve and he has grossly erred in acquitting Accused No.2 Laxmibai Salve.

6. The Division Bench of this Court in Criminal Application No.508/12 by order dated 26/04/2012 had issued various directions to the State Government so as to prevent filing of frivolous Appeals. The Court had found that since the Officer of the State are not required to incur the costs from their pocket for filing Appeal against the acquittal, numerous Appeals

against acquittal are proposed and filed by the Public Prosecutors and the State without application of mind. It is observed that such frivolous Appeals unnecessarily waste precious time of the Courts, which can be utilized to dispose of Appeals against conviction.

7. The Court had specifically directed the Principal Secretary, Law & Judiciary Department, State of Maharashtra to circulate the order amongst all the Public Prosecutors. We had specifically warned the State as well as the learned APPs that hereinafter if the Court comes across filing of frivolous Appeals, the Court would be required to take strong view of the matter.

8. We are constrained to state that in spite of specific directions issued by this Court, there is no improvement in the approach of the Public Prosecutors Office and the Appeals against the acquittal are being filed as a matter of routine.

9. In the present case, the evidence of P.W.1 Complainant

Aruna Vijay Salve, wife of Vijay Salve, is a hearsay evidence. She is not an eyewitness. However, P.W.2 Ashok Amritlal Jaiswal, who is a neighbour and P.W.3 Prajwal Vijay Salve, who is the son of the first informant, have clearly exonerated the accused. The specific role of assault is attributed only to the accused No.1. Insofar as P.W.2 Ashok Jaiswal is concerned, on the contrary, he states that it is the accused No.2 Laxmibai Salve who tried to separate the accused and the deceased. Insofar as the P.W.3 Prajwal Salve i.e. the son of the first informant and the deceased is concerned, he clearly admits in his cross-examination that he was deposing as told to him by the P.W.1. In that view of the matter, the learned Trial Judge has rightly relied on the independent witness P.W.2 Ashok Jaiswal and has acquitted the Accused No.2.

10. By no stretch of imagination, it can be said that the view taken is either perverse or impossible view. On the contrary, we are of the considered view that no other view is possible.

11. Therefore Criminal Appeal No.754/17 is disposed of as withdrawn and Criminal Application No.84/17 is dismissed.
12. Issue notice to the Principal Secretary calling upon him to show cause as to why action should not be taken against the Public Prosecutor who has proposed the filing of the present Appeal, the Secretary/Joint Secretary, Law & Judiciary Department, who has sanctioned filing of the said Appeal and the Public Prosecutor who has argued the present Appeal.
13. The notice is returnable on 05/07/2018.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)