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

CRIMINAL APPEAL NO.493 OF 2020

Bhimrao Madhoji Range,
Aged about 82 years, occupation agriculturist,
R/o Wadura, taluka Nandgaon, Khandeshwar,
District Amravati. **Appellant.**

:: V E R S U S ::

Ashok Yashwantrao Patekar,
Aged about 42 years, occupation agriculturist,
R/o Sidhanathpur, taluka Nandgaon
Khandeshwar, district Amravati. **Respondent.**

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Shri P.V.Navlani, Counsel for the Appellant.
Shri A.S.Deshpande, Counsel for the Respondent.

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CORAM : **V.M.DESHPANDE, J.**
DATE : **DECEMBER 10, 2021**

ORAL JUDGMENT

1. This is an appeal against acquittal. Appellant-Bhimrao Madhoji Range, is aggrieved by judgment and order of acquittal dated 6.11.2019 passed by learned Judicial Magistrate First Class, Nandgaon Khandeshwar, district Amravati in Regular Criminal Case No.19/2018 whereby learned Magistrate acquitted respondent-Ashok Yashwantrao Patekar for offences punishable

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under Sections 324, 427, 447, 504, and 506 of the Indian Penal Code.

2. Heard learned counsel Shri P.V.Navlani for the appellant and learned counsel Shri A.S.Deshpande for the respondent. **ADMIT**. Heard finally by consent of learned counsel for parties. Also, perused record.

3. According to appellant-Bhimrao (hereinafter referred to as, “**the complainant**”), he owns a farm land at village Wadura bearing survey No.15/2. On 24.9.2017, the respondent (hereinafter referred to as, “**the accused**”) was grazing his cattle in the complainant’s farmland and when the complainant requested the accused to take away his cattle and when he tried to drive away cattle of the accused, the accused assaulted him by means of a stick. In respect of the said incident, the complainant went to police station on 25.9.2017 and lodged a complaint against the accused. The Police registered a non cognizable Offence. Since the police failed to take cognizance of the offence, he filed a private complaint. After filing of the complaint, verification statement of

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the complainant was recorded. Learned Magistrate issued process against the accused for offences punishable under Sections 324, 427, 447, 504, and 506 of the Indian Penal Code. During trial, the complainant examined two witnesses apart from him and also relied upon documents. Similarly, in defence, the accused adduced evidence of two witnesses and he also filed certain documents.

4. Learned Magistrate, after appreciation of evidence, found that the complainant failed to prove the charge against the accused beyond reasonable doubt and, therefore, he was acquitted.

5. The charge framed against the accused was for offence punishable under Section 324 of the Indian Penal Code. However, the complainant failed to point out injury suffered by him inasmuch as there is no medical evidence available on record.

6. Be that as it may, even it was always open for the complainant to prove lesser offence under Section 323 of the Indian Penal Code for which injury is not necessary. Learned Magistrate, after appreciating evidence, found that there is a

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boundary dispute between the complainant and the accused inasmuch as Sidhanathpur to Wadura road went through the accused's farm. Admittedly, the accused is resident of Sidhanathpur. Learned Judge, in my view, while appreciating evidence rightly found that time of the incident is not stated either by the complainant or by any of his witnesses.

7. The law on appeal against acquittal is well settled by numerous decisions by the Honourable Apex Court and by this Court.

8. After having gone through the judgment and order impugned in the appeal, it is clear that there is no manifest error appearing on the face of the record. Learned Magistrate appreciated oral as well as documentary evidence. Neither the appreciation by learned Magistrate is perverse nor findings recorded by learned Magistrate are in conformity with evidence.

9. In this view of the matter, I am of view that this Court need not upset judgment and order dated 6.11.2019 passed by learned Judicial Magistrate First Class, Nandgaon Khandeshwar,

Judgment

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district Amravati in Regular Criminal Case No.19/2018 acquitting the accused. Consequently, I pass following order:

ORDER

The criminal appeal is **dismissed**.

JUDGE

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WANKHEDE

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