

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

CRIMINAL APPEAL NO. 818 OF 2003

Venkatrao s/o Mukundrao Nemaniwar,
aged 51 years, occu. Agriculture and
business, R/o. Yelumapura, Kinwat,
District Nanded.

... APPELLANT
(Orig. Complainant)

VERSUS

1. The State of Maharashtra,
(Notice to be served on the
Public Prosecutor, High Court
of Mumbai, Bench at Aurangabad)

2. Narayanrao s/o Mukundrao Nemaniwar,
aged 54 years, occu. Agriculture,
R/o Yelumapura, Kinwat, Dist. Nanded.

... RESPONDENTS
(No.2 Org. Accused)

...
Mr. A. G. Godhamgaonkar, Advocate for Appellant.

Ms R. P. Gour, APP for Respondent No.1 / State.

Mr. A. S. Khedkar, Advocate for Respondent No.2.

...

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

DATE : 28th October, 2015.

JUDGMENT:

. This appeal is preferred by original complainant Venkatrao Nemaniwar against judgment and order dated 22nd February, 2000 passed by the Judicial Magistrate First Class, Kinwat in Summary Criminal Case No.96 1997. By the said judgment and order learned Magistrate acquitted Respondent No.2 of the offences punishable under Sections 336 and 427 of the Indian Penal Code.

2 For the sake of convenience Appellant and Respondent No.2 are referred in their original status as Complainant and Accused as they were referred before the Trial Court.

3 Facts as are necessary for deciding present appeal may be stated as follows:

- i. Complainant and Accused are real brothers. They were residents of Kinwat, District Nanded.
- ii. Incident occurred on 26th January, 1997 at 11:30 am

in the vicinity of Yelumapura at Kinwat. It is the case of prosecution that Accused pelted stones on the house of Complainant. Stones pelted by Accused entered the house and fell near wife and son of Complainant. Glasses of window were broken. Complainant sustained damages to the tune of Rs.400/- to Rs.500/-. He went to Kinwat Police Station and lodged report. Crime No.8 of 1997 came to be registered.

- iii. PW-7 ASI Hanmant Gopwad was entrusted with investigation. I.O. visited the place of occurrence and recorded spot panchanama. PW-3 Kalawatibai wife of Complainant had shown the spot. At the time of recording spot panchanama stones and broken pieces of glass lying at the place of incident were seized. Witnesses were examined. Accused was arrested. On completion of investigation charge-sheet was submitted before Judicial Magistrate First Class, Kinwat.

4 Particulars of offence were explained to Accused Vide Exhibit 10. Accused pleaded not guilty and claimed to be tried. His defence was of total denial and false implication.

5 Prosecution examined in all 8 witnesses in support of its case. Considering the evidence adduced by prosecution Trial Court found that prosecution could not prove the guilt of Accused beyond reasonable doubt and consequently passed the order of acquittal. Being aggrieved Complainant has challenged the judgment and order of acquittal of Accused in present appeal.

6 Heard the learned counsel for parties. Perused the facts and evidence on record. For the below mentioned reasons this Court is of the opinion that findings recorded by Trial Court cannot be said to be perverse as prosecution could not legally prove the charge against Accused.

7 Prosecution case revolves round the evidence of PW-1 Complainant Venkatrao, PW-5 Ramkishan Eleshwarwar and PW-8

Subhash Nemaniwar both the eye witnesses. It is stated by Complainant that on 26th January, 1997 at 11:30 am, he was at the house and that time Accused started pelting stones on his house due to which glasses of window were broken and stones entered his house. He quantified damages caused to him to Rs.400/- to Rs.500/- and proved FIR at Exhibit 20.

8 So far as presence of Complainant is concerned, it is doubtful in view of the evidence of PW-5 Ramkishan who was working at the house of Complainant since two years prior to the incident. PW-5 Ramkishan stated that Complainant was not present at the time of incident. Material admissions elicited in the cross-examination of PW-5 Ramkishan create serious doubt regarding presence of Complainant at the relevant time.

9 According to eye witness PW-5 Ramkishan incident took place between 10:00 am and 11:00 am. He stated that Accused came and pelted stones on the window of house of Complainant and two glasses of window were broken. Since Complainant was his master PW-5 Ramkishan was bound to side the Complainant and so

independent corroboration to his testimony was must.

10 Though PW-8 Subhash stated that Accused pelted stones on the house of Complainant and window glasses were broken causing damages of Rs.500/-, he had not stated the same before Police at the time of recording his statement under Section 161 of the Code of Criminal Procedure. Testimony of PW-8 Subhash thus suffers from material contradictions and vital omissions.

11 It has come on record that all the witnesses examined in the case were interested and related witnesses. Considering the dispute between two brothers Trial Court observed that for want of independent corroboration it would be risky to rely upon the inconsistent evidence of prosecution witnesses. Absolutely there is no evidence to quantify the damages allegedly caused to Complainant. It was revealed during investigation that there was strong enmity between both the brothers.

12 In the above premise findings recorded by Trial Court cannot be said to be perverse. On the contrary view taken by Trial

Court was a reasonable and possible view. No case for interference.

Hence the following order-

ORDER

Criminal Appeal No.818 of 2003 is dismissed.

[INDIRA K. JAIN, J.]

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