

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Cr. Appeal No.534 of 2015

ANNARAO SWAMINATH TAMBOLE ...Appellant.
V/S
MADHUKAR SHRIPATI JADHAV AND ORS ...Respondents.

....
Mr. Vikas Shivgan i/b. Milind Parab & Associates for Appellant.
Mr. A.R. Patil, APP, for the State.
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CORAM : A. R. JOSHI, J.

DATE : 13th OCTOBER, 2015

P.C.

1. Heard learned Counsel for the appellant/original private complainant on this appeal challenging the acquittal of the respondents in the matter of offences punishable under Sections 395, 427, 452, 323, 323, 504 and 506 read with Section 149 of IPC.

2. The impugned judgment and order was passed by the 1st Adhoc Additional Sessions Judge, Solapur on 5.7.2013 on a private complaint which was committed to the Court of Sessions and numbered as Sessions Case No.255 of 2011.

3. The facts of the case are rather peculiar in the nature. The incident happened in the afternoon of 5.5.2008 when the complainant (PW-2) had been to market place for purchase of some articles and his wife (PW-1) was stationed at their house which was also being used a tea-stall. Said house-cum-tea stall was constructed on a Gram Panchayat land under some alleged authority by way of some writing on stamp paper. Apparently the complainant and his wife were in actual and physical possession of the said house-cum-tea stall.

4. On the relevant afternoon of 5.5.2008 when PW-1, wife of the complainant, was alone at the tea-stall the respondents came there armed with sticks, rods, hunter etc. and manhandled the woman and ransacked the articles of the tea-stall. It is also alleged that one of the respondents snatched the gold Mangalsutra she was wearing and also they took away the cash amount of Rs.50,000/- from the cash counter of the tea stall. It is alleged that the respondents gave threats of dire consequences and ordered PW-1 to remove all the belonging and demolish the tea-stall and go elsewhere by vacating the place. Allegedly this incident was witnessed by many people who had

gathered there including PW-4 one neighbouring woman.

5. After the incident, PW-1 went to the market place and met her husband (PW-2) and narrated him the events. He then lodged complaint with local police. However, according to him the police took action only against original accused No.1 / present respondent No.1 and that also for the minor offence like Section 323 of IPC etc... According to complainant (PW-2) he was directed by the police to approach the concerned J.M.F.C. Court by way of filing a private complaint. Under these circumstances, a private complaint was lodged by PW-2 on 27.8.2008. The allegations in the complaint were to the effect of having committed offence of dacoity armed with weapons. Considering these allegations, the concerned J.M.F.C. Court at Akkalkot committed the private complaint to the Court of Sessions as mainly Section 395 of IPC is exclusively triable by the Sessions Court. Under these circumstances, the matter came before the Sessions Court being Sessions Case No.255 of 2011.

6. During the trial total four witnesses were examined on behalf of the complainant. PW-1 is the wife of the complainant.

PW-2 is the complainant himself. PW-3 is one photographer who had taken the photographs of the scene of offence and PW-4 is a neighbouring woman.

7. It is an admitted position that PW-2 complainant is not an eye witness as during the incident he was at market place and he was apprised regarding incident by his wife subsequently. PW-4 the neighbouring woman did not support the case of the complainant and this weighed much with the trial Court as to non-establishment of the offences levelled against the respondents. Also what weighed with the trial Court was the delay of about three and half months in lodging the private complaint as the incident happened on 5.5.2008 and the complaint was lodged with the J.M.F.C. Akkalkot on 27.8.2008. The trial Court discussed the substantive evidence of sole important witness i.e. PW-1 and came to the conclusion that her testimony cannot be believed without there being any corroboration, much less corroboration by way of any medical certificate or by way of cogent proof that there was assault on her and stealing of Rs.50,000/- and snatching of gold Mangalsutra.

8. Considering the effect of substantive evidence brought before the Sessions Court, in the opinion of this Court, the decision arrived at by the Sessions Court cannot be termed as of perversity nature so as to be interfered with in appeal, allowing the complainant to re-agitate the matter further. In other words, a different view cannot be taken than that taken by the Sessions Court as to failure of the complainant to establish the case against the respondents. In the result, there is nothing to entertain the present appeal and the same is dismissed at the admission stage itself and accordingly disposed of.

(A. R. JOSHI, J.)

Deshmane (PS)