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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.745 OF 2000**

The State of Maharashtra]... Appellant.

V/s.

1. Khandu Dattoba Dhamale	]
	]
2. Vilas Dattoba Dhamale	] ... <u>Respondents</u>
	] Ori. accused
Both are residing at Darumbre	] Nos 1 and 2.

Mr. H. J. Dedhia, for the APP for the appellant State.

Mr. Nitesh S. Nevshe, appointed advocate for the Respondents

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 24th NOVEMBER, 2015.

ORAL JUDGMENT : [Per : Dr. Shalini Phansalkar-Joshi, J.]

1. This appeal is preferred by the State challenging the judgment and order of 2nd Joint Judicial Magistrate First Class, Vadgaon Maval, in R.C.C. No.88 of 1997 dated 3rd May, 2000 thereby acquitting the respondent Nos. 1 and 2 for the offence under Sections 325, 504 read with 34 of the Indian Penal Code.

2. The brief facts of the appeal can be stated as follows :-

Respondent Nos 1 & 2 are cousins of P. W. 2 Tanaji. Their houses and lands are adjacent to each other. There used to be disputes and quarrels between them relating to the agricultural lands. The incident took place on 28th February, 1997 at about 8.30 a.m. While P.W.1 Babitai, the wife of P.W.2 Tanaji and Tanaji went to the house of respondents to ask them as to why they have cut down jowar crop, respondents abused and assaulted her with stick on her leg. P.W.2 Tanaji came to rescue, respondents assaulted him also with stick. P.W.4 Kundalik Waghole and P.W.5 Gurudas Gaikwad residing nearby witnessed the incident. Both P.W.1 Babitai and P.W.2 Tanaji were taken to the hospital by one Kashinath Bhonave. On the same day P.W.1 lodged complaint against respondents and on her complaint Exh.25, C.R.No.19 of 1997 was registered against respondents by A.S.I. Jadhav. Further investigation was taken over by P.W.8 ASI Ghuge. He visited the spot of incident and drew scene of offence

panchanama. On the very day he recorded statements of P.W.5 Kundalik and P.W.5 Gurudas. Respondents were arrested on the same day. During custodial interrogation of the respondents, stick came to be seized under panchanama. After completion of due investigation and on receipt of medical certificates, chargesheet came to be filed against respondents.

3. The trial Court framed charge against the respondents vide exh.19. Respondents pleaded not guilty and claimed trial raising defence of false implication on account of strained relations.

4. In support of its case, the prosecution examined in all 9 witnesses and on appreciation of their evidence, the trial Court was pleased to extend the benefit of doubt to the respondents and acquitted them of the offences charged against them.

5. This judgment of the trial Court is challenged in this appeal by learned APP Mr. H. J. Dedia, for the State and supported by learned counsel Mr. Nitesh S. Nevshe, for

respondents.

6. The submission is advanced by learned APP that in the present case there is evidence of P.W.1 Babitai and P.W.2 Tanaji injured eye witness supported with medical certificate which was sufficient for the trial Court to hold guilt of respondents beyond reasonable doubt. As trial Court has not done the same, the impugned judgment of the trial Court, according to him, is required to be quashed and set aside.

7. It is true that in the instant case there is evidence of P.W.1 Babitai and P.W.2 Tanaji, who, according to prosecution case, are injured in the incident. However, the evidence of P.W.1 goes to reveal that the incident of alleged assault has taken place within three minutes; whereas the evidence of P.W.2 Tanaji goes to prove that at the time of incident, he was in the shop, one person told him that the respondents have started assaulting his wife. Hence, he went to the spot. In his cross examination, he has admitted that after 15 to 20 minutes of the incident, he came to know about the alleged assault. Needless to

state that he is not an eye witness to the incident. Though the prosecution has examined two independent eye witnesses viz. P.W.4 Kundalik and P.W.5 Gurudas, both of them have not supported the prosecution case. According to them, they reached to the spot, after the entire incident was over. Though prosecution has declared them hostile and cross examined, nothing worthwhile is elicited from their cross examination to prove the prosecution case.

8. Even as regards the medical evidence, prosecution has failed to examine Dr.Rajesh Mehta, who has issued medical certificate of P.W.1 Babitai. P.W.9 Dr. Yeshwant Waghmare , through whose evidence the prosecution has proved hand writing on the medical certificate exh.47, has not deposed about injuries on her person as he has not examined her.

9. Thus, in this case the evidence of P.W.1 Babitai about injuries sustained in the assault is not supported either by the medical evidence or by the evidence of any of eye witness. As regards to injuries to P.W.2 Tanaji, though the prosecution has

examined P.W.3 Dr. Inamdar who has clinically examined P.W.2 Tanaji and issued injury certificate exh.29, as per evidence of P.W.2 Tanaji, he reached to the spot 15 to 20 minutes after the incident of assault. In such situation the said medical certificate is also of no any use to the prosecution. Both the panch witnesses namely P.W.6 Chandrakant and P.W.7 Dadu Agale to the panchanama of recovery of stick and scene of offence are again hostile to the prosecution and have not proved either recovery of the stick or spot panchanama. Hence in this case except for the evidence of P.W.1 Babitai, whose relations with respondents were strained on account of dispute over the agricultural land, there is absolutely no iota of evidence on record brought by the prosecution to prove the case against respondent beyond reasonable doubt. The trial Court has, therefore, rightly acquitted respondents for the offences charged against them. The appeal, therefore, holds no merits and hence stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

CERTIFICATE

Certified to be true and correct copy of the
original signed judgment.