

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.712 of 1996

Gajanan Pandurang Prabhale .. Appellant

Versus

Sonibai Anna Wadkar and 5 ors .. Respondents

Mr.P.J.Shinde, Advocate for the appellant.

Mr.K.Y. Mandlik, Advocate for respondent nos.1 to 5.

Mr.Deepak Thakre, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 12th JUNE, 2015

ORAL JUDGMENT :

1 The appellant is the original complainant. On the basis of a complaint filed by him, the respondent nos.1, 2, 3, 4 and 5 were prosecuted on the allegation of having committed offences punishable under section 448 IPC, 426 IPC, 427 IPC, 504 IPC and 506 IPC read with section 34 of the IPC. The Judicial Magistrate First Class, Srivardhan, after holding a trial found the said respondents not guilty and passed an order of acquittal. The appellant is aggrieved by the said order of acquittal and has, therefore, with the special leave of this Court, filed the present Appeal against acquittal.

2 When the Appeal came up for final hearing, the learned counsel for the appellant submitted that he had

instructions not to prosecute the Appeal. Nevertheless the Appeal having been admitted, needs to be decided on merits. I have therefore examined the record of the case, and carefully considered the impugned judgment of acquittal. The Appeal is being disposed of after going through the record, and after hearing Mr.Mandlik, learned counsel for the respondents and Mr.Thakre, learned APP for the State.

3 For the sake of convenience and clarity, the appellant shall be hereinafter referred to as 'the complainant' and respondent nos.1 to 5 as 'the accused'.

4 The complainant examined himself during the trial. Additionally, he examined two more witnesses, one Anant Ratvadkar and one Datta Mukaddam.

5 The case of the complainant, as put forth before the trial court was that the complainant was the tenant of Gram Panchayat Hosue No.556 and one Shivram was the landlord. That the house consisted of three rooms, one of which was in the possession of the landlord and one in the possession of the accused. The third room i.e. the front room was in the occupation of the complainant. That, on 24th August 1992, the complainant had started work of affixing tiles on the floor, and for that purpose, had hired a mason worker and labour. That the said persons had started the work of digging. Sometime between 8 hrs to 9 hrs, the accused persons came there, abused the workers and obstructed them from doing the work. The accused no.5 allegedly caught hands of the son of the complainant, and accused nos.2

and 3 were instigating her during the incident. The accused persons stopped the work that was going on. A report regarding the incident was lodged to the police station, but as the police did not do anything, the said complaint before the Magistrate was lodged.

6 The learned Magistrate after considering the evidence adduced before him observed that there were some discrepancies and infirmities in the evidence. He came to the conclusion that the complainant and his witnesses were not reliable. The Magistrate observed that the complainant stated that the incident was going on for an hour, and about 50 persons had gathered on the spot of incident, but the witness Anant had stated that the complainant had come on the spot 15 minutes after the incident had started. According to witness Anant (PW 2), only two accused had come there, but the complainant stated that all the accused persons had come there. The Magistrate also observed that the complainant had failed to prove that the premises where the accused persons had allegedly entered, were in the possession of the complainant.

7 Apart from the reasoning of the Magistrate as reflected in the impugned judgment, it is apparent that the incident had arisen in the belief of the existence of a civil right in the accused persons, to stop and obstruct the work that was allegedly going on.

8 In Appeals from Acquittals, this Court does not ordinarily interfere with the findings of fact arrived at by the trial court unless the appreciation of evidence done by the trial court is

seen to be suffering from any obvious error or infirmity. It is well settled that even if two views, on the evidence adduced, are possible and the trial court has taken one of them leading to acquittal, the Appellate Court would not interfere with such a view, even if had it itself been the trial court, it might not have taken the same view.

9 In this case, the view taken by the learned Magistrate is certainly a *possible view*. Moreover, the complainant has not shown any inclination to prosecute the appeal and make submissions to show how the impugned judgment is erroneous.

10 In the result, the Appeal fails.

11 Appeal is dismissed.

(ABHAY M.THIPSAY, J)