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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 93 of 2015.

The State of Maharashtra .. Applicant.

Vs

Dattatraya Vitthal Jagtap and Anr .. Respondents.

Mrs P.P. Bhosale, APP for the State.

None for the Respondents.

CORAM : A.R.JOSHI,J

DATE : 29th September, 2015

PC. :

1) Heard learned APP for the State on this application for leave to file appeal challenging the acquittal of the respondents / original accused Nos 1 and 2 in the matter of offence punishable under section 324, 323, 337, 504, read with section 34 of IPC. The impugned judgment and order was passed by the learned J.M.F.C, Pune vide order dated 28/4/2015.

2) The case of the prosecution in nut-shell is that there was some quarrel earlier prior to ten days on 4.4.1997 during which present respondent no.2 original accused no.2 abused the

2/5

nephew of the first informant PW no.1. Said original accused no.2 also assaulted said nephew by throwing a stone. Due to this incident said nephew of the complainant started weeping. On enquiry the complainant knew regarding the incident and he went to accused no.1, father of accused no.2. That time there was hot exchange of words and there was sort of scuffle, during which allegedly accused no. 1 and 2, father and son, assaulted the complainant, another witness, who gathered there, who was PW no.2. Allegedly the sickle, which was kept in the car of accused no.1, was used by accused no.1 for assaulting and caused incised wound on the hand of the complainant.

3) During the trial, four witnesses were examined. PW no.1 is the complainant injured. PW no.2 is servant/employee of the complainant and who also sustained minor injuries during scuffle. PW no.3 is pancha. PW no.4 is a doctor who examined the complainant, his nephew and also PW no.2 i.e. servant/employee of PW no.1.

4) The trial Court doubted the injury certificates and placed much reliance on the non-disclosure of the injury sustained by present respondent accused no.1 during the said scuffle. The

3/5

trial court also observed that respondent accused no.1 also sustained some minor injury like abrasion etc. and he was also examined by PW no.4 Dr Ramnath Jadhav. As such the trial Court came to the conclusion as to the failure of the prosecution to establish the offences and mainly on the ground that there was prior enmity of the parties inasmuch as admittedly the respondent accused no.1, aged about 78 years and having the avocation as an advocate was the tenant of the complainant. The trial Court also observed that said accused no.1 being an advocate had represented the other tenants of the complainant in various cases lodged against the complainant who is the landlord. This circumstance much weighed with the trial Court to come to the conclusion that the prosecution has failed to establish the role of the accused persons in the assault. Moreover, admittedly, the nephew of the complainant who also sustained injury, was not examined. Consequently, the trial Court acquitted both the respondents accused.

6) Considering the evidence of the prosecution witnesses and the material available on record, it cannot be said that the view taken by the trial Court was of such a perverse nature so as

4/5

to be interfered with. There is nothing in the present case to re-agitate the matter by allowing the State to challenge the order of acquittal by way of appeal.

7) In the result, present application for leave to file appeal is dismissed and accordingly disposed of.

(A.R.JOSHI, J.)

5/5

CERTIFICATE:

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