

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO.49/2003

(State of Maharashtra, thr.PSO P. S. Nagpur..vs..Narayan Laxmanrao Ranbhad & anr.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. Laddhad, Advocate for appellant.

CORAM : A.B. CHAUDHARI, J.

DATE : JUNE 24, 2015.

Heard leaned A.P.P. for appellant.

This appeal is directed against judgment and order dated 10.10.2002 in Regular Criminal Case No.83/1998 by J.M.F.C. 4th Nagpur.

In support of appeal, Mr. Laddhad, learned A.P.P. for appellant-State, vehemently argued that there is perversity on the part of the trial Judge in making an order of acquittal when according to him the injury report is duly proved by the Doctor. Even then the trial Judge recorded an order of acquittal in the absence of any cross-examination of the Doctor. He further submitted that the injuries were by fist blows and there was a fracture that is shown in the injury report and, therefore, the conviction ought to have been recorded.

None for the respondent. I have perused the impugned judgment and order and also the entire evidence that was adduced by the prosecution. Insofar as the theory of fracture is concerned, it is seen that the prosecution did not produce any medical report regarding fracture to prove the fracture and, therefore, mere reliance on the injury certificate is not enough. Perusal of the other injuries shows that there were contusions because of the fist blows. I am afraid, in the absence of any allegations about any weapon being used, an offence other than punishable under Section 323 IPC could be established.

Be that as it may. The trial court disbelieved the evidence of the complainant as well as PW2-Shivshankar and PW6-Sandeep having found material discrepancies in their evidence. I quote paragraph 17 from the judgment of the trial Court to the above effect.

“17. Moreover, if we consider the evidence of P.W.2 Shivshankar and P.W.6 Sandeep, their evidence are interse contradicted to each other. Complainant P.W.2 Shivshankar deposes that he was beaten by accused Nos. 1 and 2 and other persons whereas P.W.6 Sandeep is an eye witness to the incident. He is not stating about the other

persons and complainant is stating that accused and other persons they have beaten. In my view, this is a material contradiction which creates doubt in the mind of Court. It is important to note here that it is admitted by the complainant that proceeding in respect of the said shop is pending before the Court. It indicates that the relation of the complainant and the accused, they are strained. Accused is the landlord and complainant is a tenant, therefore, possibility of false implication cannot be ruled out. Therefore, in my view, corroborative piece of evidence is required to sustain the conviction of the accused.”

At any rate, since no weapon was used nor the injury report regarding fracture was proved and further evidence being self contradictory besides the dispute about tenancy, I think the order of acquittal should not be interfered with in the jurisdiction pertaining to appeals against acquittal. That being so, following order is passed.

ORDER.

- (i) Criminal Appeal No.49/2003 is rejected.

JUDGE