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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.114 OF 2003

The State of Maharashtra

..Appellant.

V/s.

Dattu Balaram Katekar,
Age: 33 yers, R/o. Bhabgar Pade,
Taluka Panvel, District Raigad.

..Respondent.

Mr.Deepak Thakare, APP for the Appellant-State.

None for the Respondent.

CORAM : P.N.DESHMUKH, J.

DATE : 11 MAY 2017

ORAL JUDGMENT

This is an appeal filed by the State of Maharashtra against the judgment passed by the learned Judicial Magistrate First Class, Panvel in Regular Case No.200/1999 whereby the accused came to be acquitted of offences punishable under section 325 and 504 of the Indian Penal Code.

2. In brief, prosecution is that on 3 June, 1999 there was a

satyanarayan puja in the house of of PW2 Baban Katekar and for that purpose, complainant had put some soil in his courtyard. This was objected to by the accused. On 4 June, 1999 at about 7.00 a.m. when PW3 Hasuram Katekar was present in the courtyard, accused inquired from him as to why the sand was dug in his courtyard, upon which Hasuram replied that if accused was under the impression that the land belongs to him, then he should bring the village panchayat and settle the dispute. However, accused started abusing and committed assault by stick on the right hand of the complainant who had arrived on the spot in the meanwhile. On the basis of report Exhibit-6 of PW1 Eknath Katekar, offence came to be registered at Panvel police station vide crime No.270/1999 and was investigated by PW6 PSI Madhukar Patil, during the course of which he prepared spot panchanama Exhibit-8 and seized one bamboo stick vide Exhibit-14 and after completion of investigation, charge-sheet came to be filed. Charge came to be framed against accused, to which he pleaded not guilty and claimed to be tried. His defence is that of total denial and false implication in the case. Prosecution in all examined six witnesses and commenced its evidence by examining PW1 Eknath, the complainant, PW2 Baban Katekar, a witness to spot panchanama, PW3 Hasuram Katekar, son of the complainant, PW4

Namdeo, also the son of complainant, PW5 Naresh Gharat, panch witness to the memorandum statement of the accused. However, he did not support the case of prosecution. Prosecution concluded the evidence by examining PW6 Madhukar Patil, PSI Investigating Officer. The injury certificate is marked at Exhibit-15 since not disputed by the accused. According to which the complainant is certified to have sustained grievous injuries over right hand forearm near writ joint and fracture of right hand radius and ulna bone.

3. The learned trial Court after considering the evidence and documents on record, acquitted the accused. Hence this appeal by the State.

4. Heard the learned APP for the State. None for the Respondent. The learned APP has submitted that from the evidence of the complainant PW1 Eknath as well as his son PW3 Hasuram, it is established that the accused committed assault on the wrist of complainant due to which he sustained fracture, which evidence is found substantiated by the medical report Exhibit-15 on record and has thus submitted that the appeal be allowed.

5. I have perused the documents and evidence on record. In view of the submissions advanced by the prosecution, it is necessary to evaluate the evidence of the complainant and his son PW3 Hasuram. PW4 Namdeo who are the sons of complainant who are relied upon by prosecution as an eye witness. PW1 deposed that he was assaulted on his right hand by stick since there was a quarrel between them on the issue of preparing road by putting mud upon the courtyard by him and for that reason, accused questioned complainant's son as to why the soil was dug on his piece of land. Complainant has admitted that at the time of incident number of persons had gathered. Evidence of PW3 Hasuram is to the effect that it is he with others who had put soil in front of the house of accused for which he was questioned by him. Upon which he stated that accused may call for a village panchayat and decide the dispute, upon which accused committed assault on his father with stick.

6. In the evidence of PW1 Eknath and P3 Hasuram, there is no consistency as to the cause of quarrel. As according to PW1 Eknath, it is he who had put the mud to prepare road while according to PW3 Hasuram, he along with others got the road dug. In fact, presence of

PW3 Hasuram at the time of incident is doubtful when he has admitted that his father was not present when the incident of quarrel between him and accused had taken place and thus, appears much substance when it is suggested to this witness that at the time of incident, he was not present on the spot.

7. Evidence of PW4 Namdeo, another son of complainant reveals that as his father had put soil in front of house of accused, accused abused him and his father on this count and had assaulted his father by stick on his right hand. PW4 Namdeo has come out with a new story that accused abused him saying as to why he and his father had put soil in his courtyard. In view of such contrary evidence of complainant and his two sons, it was necessary for the Investigating Officer to collect independent evidence which appears to be available, in view of evidence of complainant PW1 Eknath that at the time of incident, number of people had gathered on the spot. However, there is no independent evidence on record. In that view of the matter, though from the injury certificate Exhibit-15, complainant is stated to have sustained fracture of wrist, which may be caused by hard and blunt object, the same cannot be attributed to accused alone in the absence of reliable and convincing

evidence to that effect. In the circumstances, there appears much substance in the case of accused of his false implication when he suggested to complainant that he has sustained injury due to a fall and he has falsely implicated the accused, though this is denied by him and also that accused is an activist of the congress party and complainant was an activist of Peasants and Workers party, he is falsely implicated to to political rivalry.

8. Another point which goes in favour of accused is the delay in lodging F.I.R., of which no satisfactory explanation is found on record as it is found that the incident took place on 4 June, 1999 at 7.00 a.m. and the report is lodged on the same date at 11.00 p.m. i.e. after 16 hours. It has come on record in the evidence of complainant that Panvel police station is at a distance of 20 minutes from the place of incident. In the absence of any satisfactory explanation for lodging the delayed report, it can only be held that the same is lodged belatedly to falsely implicate accused. In that view of the matter, the appeal is liable to be dismissed.

9. Even otherwise, as per settled legal principle when two views are possible from evidence on record, the one taken by the trial Court in

favour of accused should not be normally disturbed by the Appellate Court. In the circumstances and on considering the impugned judgment as it is found, the trial Judge has acquitted the accused by passing a reasoned order, the view taken by the Court below does not appear to be perverse or impossible to be taken. In the circumstances, the appeal is liable to be dismissed. Hence following order.

Appeal is dismissed.

(P.N.DESHMUKH, J.)