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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELATE JURISDICTION

CRIMINAL APPEAL NO.546 OF 2003

The State of Maharashtra

..Appellant.

V/s.

Tukaram Siddhappa Kamble,
Age: 39 years, Occ: Service,
R/o. Rendal, Tal. Hatkanangale,
District Kolhapur.

..Respondent.

Mrs.Sharmila Kaushik, APP for the Appellant.

None for the Respondent.

CORAM : ANOOP V. MOHTA, J.

DATE : 1 JUNE, 2017

ORAL JUDGMENT

The matter is called out for final hearing as the matter is specifically fixed in summer vacation.

2. This is a State appeal under section 378(1)

of the Code of Criminal Procedure against the judgment and order of acquittal passed by the Judicial Magistrate First Class, Ichalkaranji in Sessions Case No.262 /1999 dated 25 November, 2002 whereby the accused is acquitted of the crime punishable under section 324 of the Indian Penal Code.

3. As per the prosecution, on 17 April 1999 the complainant was sleeping in his newly constructed house in front Samaj Mandir. At that time, the door was open. At about 2 to 2.15 a.m. a heavy stone thrown at his house. He shouted loudly. His friend Sagar Kamble woke up - saw blood injury on the left ear of the complainant. A complaint was filed. Charges came to be framed against the accused. He pleaded not guilty, claimed to be tried, & the trial proceeded accordingly. The prosecution examined 5 witnesses in support of its case.

4. Heard the learned APP for the State who read the record and reasons given by the learned judge. In my view also, the prosecution failed to prove that on 18 April, 1999 at about 2.00 a.m., accused gave blow to the complainant by the stone and thereby committed the offence. There is no direct evidence or material placed to justify or even supported by any of the witnesses that the accused threw the stone when the complainant was sleeping in the house along with family members. The stone as per the prosecution case was about 35 kgs., found near the stated place. No family members came forward. No witness appeared to make a positive case that the accused had thrown the stone. The suspicion appears to be the foundation of the prosecution case. There was no light available during the time. The complainant and /or other witnesses unable to see the face of the accused. This is also in the background that the complainant came out after two minutes and

saw one person running. The supporting witness also saw one person running. That itself, as rightly recorded by the learned Judge, cannot be the reason to convict the accused for the stated offence. Therefore, taking overall view of the matter and after considering the evidence, I am of the view that prosecution has failed to prove that accused caused the stated injury to the complainant. The order of acquittal needs no interference keeping in the mind the settled position of law about the scope and power of the Appellate Court while dealing with the State appeal against the acquittal.

5. The State appeal is dismissed.

(ANOOP V. MOHTA, J.)