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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 565 OF 2003***

The State of Maharashtra.

... Appellant.

V/s.

1. Babai Sarjerao Gavade
2. Vimal Bitu Gavade
3. Janabai Ramdas Gavade
4. Anjana Bhimrao Gavade
5. Sarjerao Tatyaba Gavade, 60 yrs.
6. Ramchandra Sarjerao Gavade
7. Dilip Sarjerao Gavade
8. Bhimrao Sarjerao Gavade,

All residents of Gokhali,
Tal. Phaltan, Dist. Satara.

... Respondents.

Mr. P.H. Gaikwad-Patil, Asstt. Public Prosecutor for the Appellant,

Mr. Yogesh Patil i/b. Vijay Patil for Respondents 1 to 8.

CORAM : N.M. JAMDAR, J.

DATE : JUNE 29, 2017.

Oral Judgment :-

By this Appeal, the State of Maharashtra has challenged the Judgment and Order passed by the Judicial Magistrate, First

Class, Phaltan dated 20 August 2001 acquitting the Respondents – accused of the offences punishable under Sections 143, 147, 148, 149, 325, 323, 504, 506 r/w. 34 of the Indian Penal Code. According to the prosecution, in the evening of 28 August 1993, the complainant and her daughter-in-law and two other women were working in the field of the complainant when the accused assaulted the complainant and her daughter-in-law by iron rod and wire. The complainant lost her front upper tooth and suffered bleeding injury. A complaint was lodged. The complainant was examined by a medical officer. A spot panchnama was prepared. The statements of the witnesses were recorded. Charge-sheet was filed against the accused under Section 323, 325, 504, 506 r/w. 34 of the Indian Penal Code.

2. The learned Magistrate, after considering the evidence led by the prosecution, came to the conclusion that the case against the accused was not proved and acquitted the accused of the offences charged by the impugned order dated 20 August 2001.

3. Heard Mr. Gaikwad-Patil, the learned Asstt. Public Prosecutor and Mr. Patil, the learned Counsel for the Respondents.

4. The complainant in her deposition has admitted that her husband is related to the accused and there is a civil dispute going on

between the accused and the husband of the complainant regarding sharing of well water. The parties were on the inimical terms. In this back-drop, the learned Magistrate considered and scrutinized the evidence of prosecution with care. The learned Magistrate found various discrepancies in the evidence of the prosecution and gave given benefit to the Respondents – accused.

5. One of the glaring discrepancy in the prosecution case is that the complainant did not mention the names of Accused Nos.1 to 4 to the police and she improved the same in the evidence. In the light of the enmity between parties and the pending civil dispute, this glaring improvement will have to be taken note of. According to the prosecution, both the complainant as well as her daughter-in-law were assaulted. The daughter-in-law was not examined as witness who would be one of the best witness, being present on the spot and being a victim. The prosecution withheld this evidence. As regard the witness Laxmibai, who was stated to be present, she had stated that the complainant was hit by an iron bar which led to her losing the front tooth. This is also the story put-forth by the complainant. However, in the evidence of the Doctor he had admitted that the complainant had lost couple of teeth due to old age and there loss of one tooth which was a recent one. The Doctor also admitted that if the person falls on rough surface, the injuries were possible.

6. It is the case of the prosecution that the accused beat the complainant with a wire. However, the Doctor admitted that the injuries caused were possible by beating with the tip of the wire. The learned Magistrate therefore rightly did not believe that it was possible to beat somebody with a tip of a wire. The injuries were not welts. If the assault was committed by a wire, the nature of injuries would be different. The wire as well as the iron rod, which was stated to be used in the assault was not seized nor a memorandum panchnama or seizure panchnama was prepared.

7. Considering these omissions and improvements, if the learned Magistrate has acquitted the Respondents – accused, it cannot be said that the approach is perverse. Merely because another view is possible is not a ground to reverse the order of acquittal. There is no merit in the Appeal, which is accordingly dismissed.

(N.M. JAMDAR, J.)