

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION*

CRIMINAL APPEAL NO. 829 OF 2003

State of Maharashtra

(Through Indapur Police Stn., Dist.Pune.)

.. Appellant

Vs

1. Vasant Kirshna Kale,
Age about : 40 yrs., Occ. : Agri.,
2. Ganpat Krishna Kale,
Age about : 32 yrs., Occ. : Agri.,
3. Baburao Krishna Kale, & ors.
Age about : 28 yrs., Occ. : Agri.,
4. Sampat Krishna Kale,
Age about : 30 yrs., Occ.: Agri.

Respondent/Orig. Accused Nos. 1 and 4
R/o Wadapuri, Tal.: Indapur,
Dist.: Pune.

Respondent/Orig. Accused Nos. 2 and 3
R/o Lonand, Tal.: Phaltan, Dist.: Satara.

.. Respondents

Mr.S.V.Gavand, Assistant Public Prosecutor, for the Appellant-State.

None for Respondents.

***Coram : N.M.Jamdar, J.
Date : 29 June 2017.***

Oral Judgment :

This Appeal has been filed by the State of Maharashtra challenging the judgment and order passed by the Judicial Magistrate First Class, Indapur, dated 22 February 2003 acquitting the Respondents-Accused of the offences punishable under section 325 read with section 34 of Indian Penal Code.

2. According to the prosecution, the Complainant Hanumant Haribhau Kale who was resident of Wadapuri, taluka Indapur, was assaulted by Respondents-Accused, when he was returning with his cattle. According to the prosecution, the accused assaulted the Complainant with an iron rod on his head, due to which he sustained a bleeding injury. The Complainant and his father Haribhau both sustained swelling injuries. They sought medical treatment from the Rural Hospital, Indapur. Charge-sheet was filed against the Respondents-Accused. Charge was framed and the case was tried by the learned Magistrate. Prosecution examined the Complainant, witnesses - Haribhau Ramchandra Kale, Arjun Shivaji Bagal and Laxman Durgalal Jadhav. The panch witness and the doctor were examined. The spot panchanama and seizure panchanama were also placed on record. The learned Magistrate, after examining the evidence adduced by prosecution, came to the conclusion that there were various material omissions and contradictions in the evidence and proceeded to acquit the

Respondents-Accused by the judgment and order dated 22 January 2003, which has been assailed in this Appeal.

3. Heard Mr.Gavand, learned Assistant Public Prosecutor, for the Appellant – State. None for the Respondents-Accused.

4. The Accused no.1 is the cousin brother of the Complainant. The other accused are close relatives of the Complainant. A Regular Civil Suit No.254 of 1996 for partition was pending between the parties. Wife of accused No.1 had filed a criminal complaint against the Complainant in respect of assault on her and her daughter. Therefore the relation between the parties were seriously strained. In view of this position, the learned Magistrate had to examine the evidence adduced with care.

5. The perusal of the evidence led by the prosecution indicates that there are various material omissions. Though the Complainant was examined, the medical certificate does not disclose head injury with bleeding at the time of examination, though the examination took place almost immediately. The medical certificate of Haribhau discloses certain injuries on the knee which is not the case of the prosecution, which was that the Complainant was hit on his head. Exhibit 48 which states the history of assault does not have signature of the Medical officer. The panch witness could not state the Gat number of the land where the panchanama was drawn. Considering the evidence of the panch and the other witnesses the

learned Magistrate came to the conclusion that the evidence of panch witness regarding the spot where the incident took place could not be believed. Witness Laxman Jadhav stated that nobody was present along with him and he did not state about the presence of another panch witness. Defence was taken by the Accused that the Complainant had sought to intervene in a fight between two bullocks and suffered certain injuries which due to enmity was sought to be attributed to the Accused. In the medical certificate one injury has been attributed to a wooden stick, when even as per the prosecution case no wooden stick was used in the assault.

6. Considering the enmity between the Accused and the Complainant and that the witnesses were interested witnesses, the learned Magistrate gave benefit of doubt to the Respondents-Accused in view of the various omissions and contradictions. There is no perversity in the decision of the learned Magistrate. Incident has taken place in the year 1998. Appeal has come up for hearing after fourteen years.

7. In the circumstances, there is no merit in the Appeal. Appeal is accordingly dismissed.

(N.M.Jamdar, J.)