

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.66 OF 2015

The State of Maharashtra	...Applicant
Versus	
Appa Jaywant Chaudhari	...Respondent

Mr.Prashant Jadhav APP for the Applicant.

CORAM: SMT.ANUJA PRABHUDESSAI, J
DATED: 18th AUGUST, 2017

PC:-

1. By this Application, the State has sought leave to challenge the Judgment and order of acquittal dated 10.4.2015 in Regular Criminal Case No.38 of 2013 passed by the learned Judicial Magistrate, First Class, Tasgaon, Dist.Sangli.

2. Heard the learned APP for the State. I have perused the records and considered the submissions advanced by the learned APP.

3. The records reveal that pursuant to the First Information Report lodged by PW-5 Ramchandra Chaudhari, crime was registered against the Respondent for the offences punishable under Section 324,504 and 506 of the Indian Penal Code.

4. The case of the prosecution in brief is that:

On 24.1.2013 at about 11.00 a.m while the First Informant PW-5 Ramchandra Chaudhari was watering his field. The Respondent, who is brother of PW-5 Ramchandra Chaudhari, came to the field and abused him and assaulted him by a stick and further threatened to cause his death.

5. The records reveal that, PW-5 was referred to the rural hospital, Tasgaon for medical examination. He was examined by PW-6 Dr.Manohar Chavhan. The evidence of PW-6 Manohar Chavan vis-a-vis the hurt certificate at Exhibit 34 indicates that PW-5 had a Contused Lacerated Wound over right the frontal region and another contusion on left region.

Both these injuries were stated to have been caused by a hard and blunt object. Doctor has opined that these injuries are grievous in nature. In addition to these two injuries PW-5 had also sustained an abrasion and contusion mark which are certified to be simple injuries.

6. PW-5 lodged First Information Report on 13.1.2013. Pursuant to the said First Information Report, PW-7 Baburao Panbude A.S.I, Police Station Tasgaon, registered crime No.19 of 2013 for the offences punishable under Sections 324, 504 and 506 of the Indian Penal Code. He conducted the spot panchnama and also seized the stick being the weapon of offence. He recorded statements of PW-2 Sanjay Chaudhari and PW-3. Upon completion of investigation chargesheet was filed before the learned Judicial Magistrate, First Class, Tasgaon.

7. The learned Judicial Magistrate First Class, Tasgaon framed charge for offences under Sections 324, 504 and 506

of the Indian Penal Code. The Respondent/accused pleaded not guilty and claimed to be tried. The prosecution in support of its case examined in all 7 witnesses. The statement of the Respondent/Accused was recoded under Section 313 of the Code of Criminal Procedure. The defence of the accused was of total denial.

8. The learned Trial Judge after considering the evidence on record held that the testimony of PW-5 was not corroborated by the two other witnesses examined by the prosecution. The learned Judge further held that the testimony of the PW-5 does not inspire confidence. The learned Judge therefore acquitted the accused. Being aggrieved by the said order of acquittal, the State filed this application for leave to challenge the order of acquittal.

9. Heard the learned APP for the State. He has submitted that the evidence of injured PW-5 is duly corroborated by PW-2 and 3, as well as by medical evidence. He has further submitted that the evidence adduced by the prosecution also

further proves that the stick being the weapon of offence was seized by the police. He contends that the evidence on record amply proves the guilt of the accused beyond reasonable doubt.

10. In the present case, the alleged incident had occurred on 24.1.2013. The First Information report was lodged on 31st January, 2013. Though PW-5 has stated that he had lodged the complaint after he was discharged from the hospital, the medical evidence does not indicate that PW-5 was admitted in the hospital till 31st January, 2013. Furthermore, the medical certificate reveals that PW-5 was referred to the medical hospital by the police officer from Tasgaon, Police Station. The evidence further reveals that the injured was conscious and was able to give his statement, despite which there was no prompt registration of First Information Report. PW-5 as well as Investigating Officer has not explained the delay in registering the crime.

11. In deciding the Application under Section 378(3) of the Criminal Procedure Code the Court is not required to enter into minute details of the prosecution evidence but the question for considerations is whether prosecution has made out prima facie case or raised arguable points. In the instant case, the testimony of PW-5 indicates that the accused had assaulted him by a stick and sickle. His evidence indicates that, his nephew Ajay had intervened. The prosecution has not examined the said Ajay and has not given any explanation for non examining this material witness.

12. The prosecution has examined PW-2 Sanjay Chaudari and PW-3 Aparna, who is the daughter-in- law of the PW-5. It is to be noted that the testimony of PW-5 does not disclose that these two witnesses were present at the place of the incident. Hence, presence of these two witnesses is itself doubtful. Be that as it may, the testimony of these two witnesses does not indicate that the accused/Respondent had assaulted the complainant by means of a sickle. The learned

Judge was therefore, justified in holding that the testimony of these two witnesses does not corroborate the testimony of PW-5.

13. Now coming to the medical evidence, the testimony of PW-6 is vis-a-vis, the certificate at Exhibit 34 indicates that PW-5 had sustained contusion on the right front region and left region. The medical officer has stated that these two injuries were grievous injuries. The medical evidence does not indicate that these two injuries fall under the classification Eighty of Section 320 of the Indian Penal Code, so as to classify the said injuries as 'grievous hurt'. It is also not the case of the prosecution that these two injuries fall under any other clauses of Section 320. The medical officer has not explained as to on what basis these two injuries have been classified as 'grievous hurt'.

14. As stated earlier, the evidence of PW-2 and PW-3 does not indicate that the accused was armed with sickle and he

had assaulted PW-5 by means of sickle. The medical certificate also does not indicate that any of the injuries sustained by PW-5 was caused by any sharp weapon or by an instrument used for stabbing, or cutting. The prosecution has also not adduced any evidence to prove that the stick which was allegedly used by the accused could be classified or described as an instrument or weapon which could have caused death of PW-5. Hence, weapons which was allegedly used by the accused does not meet the description of the weapon as specified in Section 324 of the Indian Penal Code.

15. Considering all the above facts and circumstances, the view taken by the learned Magistrate cannot be said to be Perverse or illegal. No arguable points are raised.

16. Hence, the Application has no merit and is hereby dismissed.

(ANUJA PRABHUDESSAI, J.)