

R.M. AMBERKAR
(Private Secretary)

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

CRIMINAL APPEAL NO. 466 OF 1996

The State

Union Territory of Dadra & Nagar Haveli,
Silvassa.

(Through Public Prosecutor for Union of
India)

.. Appellant
(Org. Complainant)

Versus

**1. Gata alias Ishwarsinh Mohansinh
Jadav,**

Age - 36 Years, Occ. : Service,
R/o. Naroli, Dadra & Nagar Haveli.

.. Respondent No. 1
(Org. Accused)

2. The State of Maharashtra

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- Mr. H.J. Dedhia, Special PP for the Appellant
 - Mrs. M.H. Mhatre, APP for the State
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**CORAM : S.S. SHINDE &
A.S. GADKARI, JJ.**

DATE : OCTOBER 8, 2018.

ORAL JUDGMENT : [PER A.S. GADKARI, J.]

1. The acquittal of respondent No. 1 - original accused for the charges under Section 307 of IPC, by the learned Sessions Judge, Silvassa in Sessions Case No. 6 of 1994 by its Judgment & Order dated 15.9.1995 is under challenge in the present appeal preferred by the Union Territory of Dadra &

Nagar Haveli, Silvassa.

2. The prosecution case, in brief, is that :-

(a) Respondent No. 1 was working as a constable in the police department of Dadra and Nagar Haveli. That in the intervening night of 24.5.1994 and 25.5.1994, respondent No. 1 caused grievous hurt to his wife namely Smt. Urmilaben with an axe. It is the further prosecution case that the blade of the said axe was stuck in her left parietal region causing injury of 9 cm x 2 cm x 7 cm deep. On 25.5.1994, Urmilaben was shifted to the hospital and the said axe was removed by the doctors.

(b) After completion of investigation, police submitted charge sheet in the Court of Judicial Magistrate First Class at Silvassa. As the offence punishable under Section 307 of IPC is exclusively triable by the Court of Sessions, the learned Judicial Magistrate First Class committed the case to the Court of Sessions as contemplated under Section 209 of Code of Criminal Procedure.

(c) After committal, the trial Court framed charge below Exh. 2. The said charge was read over and explained to respondent No. 1 in a language known to him, to which he denied and claimed to be tried. The defence of respondent No. 1 is of total denial. The prosecution, in support of its case, examined in all seven witnesses. The learned trial Court after recording the evidence of the prosecution witnesses and after hearing the parties to the said case was pleased to acquit respondent No. 1 from the charges framed against him by the impugned Judgment & Order dated 15.9.1995

3. Heard learned Special PP for Union Territory of Dadra & Nagar Haveli and perused the record.

4. The record indicates that the prime witness injured witness namely Smt. Urmilaben (PW 3), the wife of respondent No. 1 – did not support the prosecution case, inter alia, in her examination-in-chief she has stated that during the said intervening night “somebody” gave an axe blow on her head and that she did not know as to who gave

the blow to her. She became unconscious after receiving the said axe blow and regained her consciousness when she was admitted in hospital at Surat. That she was operated by the doctors and the blade of the axe was removed from her head in the said surgery. Despite the fact that the injured witness namely Smt. Urmilaben (PW 3) did not support the prosecution case, the prosecution has failed to declare her hostile and her testimony in the examination-in-chief goes unchallenged. In her cross-examination, she has admitted that since her marriage, the relations between her and respondent No. 1 were good and cordial and the accused used to regularly handover his monthly salary to her to meet household expenses.

5. The record further indicates that respondent No. 1 in the early morning had made phone call to his brother namely Bharatsinh (PW 4) informing him about receiving of injury by Smt. Urmilaben (PW 3). The said witness has also not supported the prosecution case. Ashoksinh (PW 5), the other brother of respondent No. 1, also did not support the case of

the prosecution. The prosecution has also failed to adduce other cogent evidence particularly on the point of fingerprints on the handle of the said axe and the record is absolutely silent in that behalf.

6. After perusal of the entire record, this Court is of the opinion that the prosecution has failed to adduce sufficient and cogent evidence in support of its case against respondent No. 1. The learned trial Court, after examining various circumstances of the case, pleased to acquit respondent No. 1. The entire perusal of the record indicates that the findings recorded by the trial Court are proper and the view adopted by the trial Court is a reasonable view in the facts and circumstances of the present case.

7. The present appeal being devoid of any merit is accordingly rejected.

[A.S. GADKARI, J.]

[S.S. SHINDE, J.]