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

CRIMINAL APPEAL NO. 912 OF 2003

The State of Maharashtra

...Appellant

VS

Pintya Santu Donde

...Respondent.

.....

Mr K.V.Saste, APP for the Appellant.

None for the Respondent.

.....

**CORAM : SARANG V.KOTWAL, J.
MARCH 01, 2018.**

ORAL JUDGMENT :

This is an appeal preferred by the State of Maharashtra challenging the Judgment and Order dated 20.3.2003 passed by the Judicial Magistrate, First Class, 7th Court, Nashik in Regular Criminal Case No. 89 of 1998 whereby the Respondent was acquitted from the charges of committing the offences Punishable under Sections 324, 323, 504, 506 read with 34 of the Indian Penal Code and under Section 135 of the Bombay Police Act.

2 When the matter was called out the Advocate for the Respondent was absent, and therefore, I have heard the learned APP Mr Saste and with his assistance I have gone through the evidence and the impugned Judgment as well as the record and proceedings of the case.

3 The prosecution case pertains to the incident dated 1st March, 1998. On that day when the first informant, P.W.1 Uday Sonawane along with his sister Monali Sonawane (P.W.2) was going to his uncle's place at Savatanagar. The name of his uncle is Vijay Sonawane and he was stitching clothes for police officers. According to the prosecution case, at about 3.30 p.m. P.W.1 Uday was riding a bicycle with P.W.2 Monali as a pillion rider and both of them were proceeding towards their uncle's place. At that time, near one Nalini bungalow at Kamatwade, a rickshaw having No.MH-15-J-3028 came in high speed from the opposite direction and almost gave dash to them. P.W.1 Uday took his bicycle on the side of the road. P.W.1 Uday stopped his bicycle on the side of the road and the rickshaw driver went ahead and he

also stopped. The rickshaw driver got down from his rickshaw along with his companion and came towards P.W.1 Uday. The rickshaw driver was carrying a hockey stick. Thereafter, P.W.1 Uday questioned him about his rash driving, at that time, the rickshaw driver assaulted him with the hockey stick. His companion joined him in assaulting P.W.1 Uday with fist blows and kicks. Both these assailants then threatened P.W.1 Uday and told him not to lodge the complaint with the Police Station and thereafter they went away. It is the prosecution case that some passersby took the informant to his uncle's house and his uncle took him to the Civil Hospital where he was treated. His statement was recorded and it was treated as First Information Report ("F.I.R."). The F.I.R. was registered at 8.25 p.m. vide Crime Registration No. 27 of 1998 at Ambad Police Station Nashik. While lodging the F.I.R. P.W.1 had mentioned that he came to know the name of the rickshaw driver as Donde, and therefore, such name was mentioned in the F.I.R. After lodging of the F.I.R., the investigation was carried out, the spot panchanama was conducted at about 9.00 p.m., the

spot was shown by the uncle of P.W.1 Uday, Mr Vijay Sonawane. Uday's bicycle was seen lying on the side of the road. The Respondent was arrested and after completion of the investigation, the charge-sheet was filed.

4 The charge was framed on 19.8.2002 under Sections 324, 323, 504, 506 r/w 34 of I.P.C. and under Section 37(1) read with 135 of B.P.Act. During trial, the prosecution examined four witnesses. P.W.1 Uday is the first informant, P.W.2 Monali is the sister of P.W.1 Uday who claims to be an eye witness to the incident. P.W.3 is Dr. Sankpal who was the Medical Officer attached to the Civil Hospital, Nashik, who had treated P.W.1 Uday and P.W.4 A.S.I. Nehe is the Investigation Officer.

5 After appreciating the evidence and after hearing the parties, the learned Trial Judge was pleased to acquit the Respondent. The learned Judge held that the injuries are proved by the prosecution, however, the author of the injuries was not proved to be the Respondent in this case.

According to the learned Judge, the identity of the assailant was not established properly and the prosecution case fell short of establishing that the rickshaw driver was none other than the Respondent. The learned Judge further observed that the presence of P.W.2 Monali on the spot was doubtful and all the events after the incident indicate that she might not be present at the time of the incident at all and hence there was no corroboration to the version narrated by P.W.1 Uday.

6 Having gone through the evidence, it appears that the defence of the Respondent / accused was that he was falsely implicated in the case because there was previous enmity between his uncle Vijay Sonawane and the Respondent. According to the defence there was some dispute about stitching of the clothes in the past and hence, the relations between the Respondent and P.W.1's uncle Vijay Sonawane were strained. The defence was also taken that the F.I.R. was lodged at the behest of Vijay Sonawane who has close proximity with the police officers. Some

suggestions were given to the Medical Officer that the injuries were caused because of fall on the stony road and not because of the assault by the hockey stick. The hockey stick was neither seized nor recovered during the investigation.

7 P.W.1 Uday is the first informant. He has narrated the incident as per the prosecution case. According to him on 1st March,1998 at about 3.30 p.m. when he was going towards his uncle's house at Savatanagar on bicycle with P.W.2 Monali, the rickshaw came in high speed from the front side. The rickshaw was having No.MH-15-J-3028. The rickshaw was driven rashly and almost gave dash to his bicycle. Therefore, he took his bicycle on the side of the road. The rickshaw driver went little ahead, stopped the rickshaw, came back with his companion and then assaulted P.W.1 Uday. According to P.W.1 Uday some persons were passing by the road, who took him to his uncle's house. The said persons who took him to his uncle's place were not brought by the prosecution before the Court and the

Investigating Officer has not secured any evidence to show as to who had made efforts to take P.W.1 Uday to his uncle's house. P.W.1 Uday has admitted in his cross-examination that he was not knowing the Respondent since prior to the incident. It appears that the name of the Respondent as 'Donde' was mentioned in the F.I.R. The F.I.R. indicates that P.W.1 Uday came to know that the rickshaw driver was Donde, on making inquiry.

8 To corroborate the version of P.W.1, the prosecution has examined only P.W.2 Monali Sonawane. Though she corroborated the version of P.W.1 Uday as far as the actual incident is concerned, her evidence does not inspire confidence. According to her she gave call for assistance during the incident but no one came on the spot. After this there is a missing link regarding the presence of P.W.2 at the spot. There is nothing to show that she made any efforts to help P.W.1 Uday to reach their uncle's house or that they sought help of any passersby to take P.W.1 Uday to his uncle's house. In fact, the F.I.R. mentions that when P.W.1

Uday had reached his uncle's place, at that time P.W.2 Monali had already reached there. All these factors throw doubt on the version of not only P.W.2 Sonali but that of P.W.1 Uday as well. Thus, it is difficult to believe that P.W.1 and P.W.2 were travelling on the same bicycle when the incident took place. There is no other independent person examined by the prosecution to corroborate the version of P.W.1 Uday. P.W.2 Sonali has admitted in her deposition that in the Court her uncle had read over her statement.

9 P.W.3, Medical Officer, Madhukar Sankpal has deposed that he had examined P.W.1 Uday on 1.3.1998 and he had found two injuries as-

- (i) C.L.W. over scalp left parietal region 6 x 3 cms.
- (ii) Contusion left shoulder joint.

According to him, both the injuries were simple in nature and were caused by hard and blunt object. A copy of the medical certificate was produced at Exh.22. The said

witness denied the suggestion that the injuries could be self-inflicted or that they could be caused by a person falling on his own. However, he admitted the possibility that such injuries could be caused when a person loses control and falls down on any stony surface.

10 The prosecution concluded its case by examining P.W.4 A.S.I. Suresh Nehe who was the Investigating Officer and deposed about the investigation carried out by him. He had produced the spot panchanama on record at Exh.28. However, no explanation was offered as to why the panchas for the spot panchanama were not examined. He admitted that he knew Vijay Sonawane. According to him except P.W.2 Monali no other eye witness was available. He further admitted that he had not recorded the statement of the owner of the rickshaw involved in the incident. He further admitted that he did not conduct any identification parade to enable P.W.1 Uday to identify the Respondent. He has further stated that he was unable to say as to whether there was any prior quarrel between Respondent and Vijay Sonawane.

11 Thus, considering the entire evidence led by the prosecution, it is clear that the prosecution has failed to prove the identity of the assailant. Admittedly, the first informant was not knowing the Respondent before the incident. His F.I.R. shows that he came to know the name of the rickshaw owner Donde on making inquiry. With whom such an inquiry were made, is not explained. There is nothing to show that there was any prior interaction between the Respondent and P.W.1 Uday. It is also difficult to believe that P.W.1 Uday noted down the exact number of the rickshaw when it came in speed directly towards him. It is not his case that he noted down the number after it had stopped. Furthermore, there is no investigation in respect of the ownership of the rickshaw or to show in whose possession the rickshaw was on 1st March, 1998. Hockey stick allegedly used in the incident was neither seized nor recovered.

12 In my opinion, the learned Trial Judge has taken a reasonable view in observing that, though the injuries were

proved by the prosecution, the other evidence was lacking and the prosecution has failed to establish the identity of the assailant. In my opinion the view taken by the learned Trial Judge was a possible and a reasonable view and, therefore, it is not proper to interfere in the conclusion reached by the learned Trial Judge through appropriate reasoning. In the result the appeal fails, and accordingly, the appeal is dismissed.

(SARANG V.KOTWAL, J.)