

11.9.2019

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 676 OF 2003

The State of Maharashtra ...Appellant

(Orig. Complainant)

: V E R S U S :

1. Shashikant Shivagonda Patil,

Age : 31 years

2. Dadaso Bhujgonda Patil,

Age : 47 years

3. Shivgonda Bhau Patil,

Age : 63 years

4. Babgonda Bhau Patil,

Age : 74 years

All R/o. Kumbhoj, Tq. Hatkanangale,

Dist. Kolhapur

....Respondents

(Orig. Accused nos.

1 to 4)

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* * * * *

Mr. Arfan Sait, APP for State.

None for the respondents.

CORAM : SANDEEP K. SHINDE, J.

Wednesday, 11th September, 2019.

ORAL JUDGMENT :

1. It is an appeal under Section 378(1)(b) of the Code of Criminal Procedure preferred by the State against the order of acquittal made and recorded in Regular Criminal Case No. 47 of 2000 by the Judicial Magistrate First Class, Peth, Vadgaon, District-Kolhapur.

2. Heard learned APP for State, Mr. Arfan Sait.

3. Complainant, Arvindkumar Gunpal Patil alleged that on 1st June, 2000 his wife was

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assaulted by his relatives in morning at 6.45 a.m. and on such report when he had gone to the accused to ask why they had beaten his wife, he was equally assaulted by the accused by chain and stick. The incident was reported to the police and crime was registered. The spot panchanama was drawn in the presence of two panchas. The stick and chain were recovered. The complainant was referred to Medical Officer. On examination of complainant's wife, Medical Officer, Mr. Killedar noted four injuries. The Injury Certificate of complainant's wife is at Exhibit-34. The injuries were found on the person of the complainant by the Medical Officer, Rural Hospital, Hatkanangle are noted in the Certificate at Exhibit-30-C. The injuries on the person of the complainant and his wife were in the nature of abrasions, contusions and two contusions above left scapula. The doctor

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certified that the injuries were possibly caused by hard and blunt object and three of such injuries were caused by inflicting the chain.

4. The evidence of complainant discloses the fact that his father had filed a Civil Suit against him and he had also filed suit against his relatives relating to boundary dispute. It appears, the relatives were harbouring grudge against the complainant and it is alleged on account of this, the accused and some other persons first assaulted his wife and when the complainant asked the accused why his wife was being assaulted, the accused assaulted him with chain and stick.

5. Both the panch witnesses turned hostile and did not support the prosecution. Besides, the complainant, his wife Aruna (P.W.2) was examined.

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Aruna's evidence shows, Raigonda Patil, Ganpat Chougule and Appasaheb Patil intervened and tried to pacify quarrel. However, these independent witnesses were not examined though they were not from the very village. The learned trial Judge, in view of this fact, did not accept the prosecution's case and held, non-examination of these material witnesses creates a doubt about the prosecution's version. Besides, it appears, the incident had taken place in thick locality but since prosecution has not examined any independent witness, the trial Court declined to accept the prosecution's case.

6. Mr. Arfan Sait, learned APP, has taken me through the evidence of prosecution and would submit that evidence of Medical Officer has proved that the complainant and his wife had received injuries caused by stick and chain. Mr. Sait, further submits that, though panch

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witnesses to the spot turned hostile, spot panchanama has been proved by the Investigating Officer from where the stick and chain were recovered. Mr. Sait, submits that, prosecution has brought on record the material evidence and successfully proved motive. It is therefore submitted that, just because the independent witness were not examined, that itself is not a ground to discard the evidence of the complainant and that of Medical Officer.

6. Mr. Sait, learned APP may be right in his submission, however, prosecution has not given any reason as to why eye-witness were not examined though they belong to another village. It also appears that, though stick and chain were recovered from the spot, same were not shown to P.W.1 and resultantly were not marked as Exhibits. Likewise, the Medical Officer in cross-

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examination would admit that original case papers were not brought by him to substantiate the injury certificate issued by him.

7. In view of the facts as aforesaid and in particular, non-examination of the eye-witness, the view taken by the learned trial Judge for recording the order of acquittal is a possible view. Thus, in the given set of facts, this Court while exercising the jurisdiction in an appeal against acquittal, is not expected to substitute another view unless the view taken by the trial Court is perverse or dehors the evidence on record.

8. Thus, taking into consideration the facts of the case, no interference is called for. The Appeal therefore fails. It is dismissed and disposed of accordingly.

(SANDEEP K. SHINDE, J)