

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

CRIMINAL APPEAL NO.814 OF 2003

State of Maharashtra

... Appellant

Vs

1 Sanjay Rajaram Shirgave

Age 27 yrs., Occ: Agri.,

R/o. Gadnudshingi, Tal: Karveer,

Dist. Kolhapur

2 Anil Rajaram Shirgave

Age 25 yrs., Occu.Aгри.,

R/o as above.

... Respondents

...

Mr. Arfan Sait, APP for the Appellant-State.

Mr. Prashant R. Suryavanshi i/by Mr. G.M.Savagave for
the Respondents.

CORAM : SANDEEP K. SHINDE J.

DATE : OCTOBER 14, 2019

ORAL JUDGMENT :

*Heard Mr. Sait , the learned Public Prosecutor for
the State and Mr. Suryavanshi the learned counsel for the
respondents/accused.*

2 *It is an appeal under Section 378(1) of the Code
of Criminal Procedure, 1973 against the order of acquittal*

2003.odt

dated 25th February, 2003 passed by the learned Judicial Magistrate, First Class, Court No.4, Kolhapur in Regular Criminal Case No.304 of 2001.

3 *Complainant Sadu Padwal is next door neighbour of the accused. On 21st April, 2001 in the morning, complainant asked accused to remove garbage. It appears that the accused did not tolerate comment of the complainant. It is held that on the very date when the complainant was proceeding to work, accused Sanjay and Anil assaulted him with sticks. He was lifted from the place of incident by one Sagar P.W.3 and Namdev. On the complaint by Sadu, offence was registered vide C.R.No.27 of 2001 at 10.20 a.m. under Section 324 read with 34 of the IPC. Spot panchanama was drawn in presence of pancha, P.W.2. Complainant was referred for medical examination. He had sustained four injuries; 2 CLW, one abrasion over left ankle and contusion over occipital region. Accused recorded No Objection for exhibiting injury certificate and accordingly, it was exhibited but the*

Evidence discloses that stick was produced by the accused and accordingly, it was seized by Namdev Lokare, Police Constable, who had carried out investigation ,was examined as prosecution witness no.5.

4 The learned Trial Judge after appreciating evidence acquitted the accused having found that sole eye witness P.W.3 has not witnessed the incident but had come on the spot afterwards. It also appears there are material contradictions in the evidence of P.W.1 and Investigating Officer and as rule of prudence, the Trial Court thought it fit to look into the evidence of independent witness Sagar Shirgave (P.W.3). He has come on the scene of offence at 8 a.m. when he found that the deceased was lying on the ground. He did not see, who are the assailants. There are also material contradictions in relation to time of the incident in the evidence of P.W.1 and P.W.5-Investigating Officer. Prosecution admittedly did not examine another witness Mr. Namdev, who was otherwise available.

5 *Evidence on record shows that weapon has not been identified. Thus, taking into consideration evidence on record, Trial Court was of the view that the prosecution has not established quarrel had taken place between the accused and the complainant in the morning on the date of the incident and in retaliation thereof respondent-accused assaulted the complainant on the very date when he was proceeding for work.*

6 *With the assistance of Mr. Sait the learned Public Prosecutor , I have gone through evidence of all the prosecution witnesses. In my view, conclusion order of acquittal recorded by the Trial Court does not require any interference. View taken by the learned Trial Court is a possible view and, therefore, such a view cannot be substituted by the Court sitting in the appeal against the acquittal. That even otherwise evidence on record is falling short of requirements of an offence punishable under Section 324 of the Indian Penal Code, 1860. Though the*

stick has been considered as dangerous weapon, same has not been identified and proved in use for commission of alleged offence.

7 In the result, appeal fails and dismissed accordingly.

(SANDEEP K. SHINDE, J.)