

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 80 OF 2012**

The State of Maharashtra,
(Through Jail Road Police
Station, Solapur

....Appellant.

Vs.

1 Ambadas @ Anandam Rajmallu Samal,
 Age 57 years, R/o. House No. 1522,
 Daji Peth, Solapur.

2 Satyanarayan Rajamallu Samal,
 Age 60 years,
 R/o. House No. 1522,
 Daji Peth, Solapur.

....Respondents.

Mr. Amit Palkar APP, for the Appellant-State.
None for the Respondents.

CORAM : A. S. GADKARI, J.
DATE : 24th SEPTEMBER, 2020.

ORAL JUDGMENT:-

This is an Appeal under Section 378(1) of the Code of Criminal Procedure, against the impugned Judgment and Order dated 20th September, 2010 passed by the learned Judicial Magistrate, First Class, Court No.3, Solapur in Regular Criminal Case No.965 of 2009, acquitting the Respondents from the offence punishable under Sections 427 and 448 read with Section 34 of the Indian Penal Code.

2 Heard Shri. Palkar, learned APP for the State. The Respondents are absent despite service. Perused the entire record.

3 The first information report was lodged by Dr. Sau. Laxmikanta @ Vijayalaxmi Subhash Poredi (PW. No.2), who was a tenant in the suit premises owned by the Respondents. The Respondents were owners of property bearing Municipal House No.1522, Daji Peth, Solapur. The informant was in possession of a premises admeasuring 10 ft. x 20 ft. hall, since 1988 as a tenant. From 26th October, 2007 to 28th October, 2007 the informant was out of station and it was alleged that, during the said period, the Respondents constructed a wall towards North-South direction in the middle of the said hall, where the informant (PW. No.2) was running her dispensary. The informant therefore, lodged report in that regard to the police station bearing Crime No.800 of 2007. The informant had also instituted Regular Civil Suit No.749 of 2007 against the Respondents for a mandatory injunction and for directions to demolish the wall constructed by them. The said suit was decreed on 7th November, 2008 and the Respondents were directed by the concerned Court to demolish the said wall within a period of one month from the date of passing of decree. It was alleged that, the accused demolished the Western side common wall from the said hall, instead of the wall construed by them, in the night of 27th January, 2009. The Respondents also took away table, chairs, medicine and other record of the informant.

4 During the course of investigation, the Investigating Officer (PW. No.3) visited the scene of offence and drew spot panchanama on 17th May, 2009. After completion of investigation, he submitted charge-sheet in the Court of Judicial Magistrate, First Class, Solapur. The Trial Court framed charge below Exh. 9 for the offence punishable under Sections 427 and 448 read with Section 34 of the Indian Penal Code. The charge was read over and explained to the Respondents in vernacular language, to which they pleaded not guilty and claimed to be tried.

 The defence of the Respondents was that, they had requested the informant to vacate tenanted premises and being enraged by the same, the informant lodged a false complaint against them. From the line of cross-examination adopted by the Respondents, it further appears that, they had also adopted a defence that, in furtherance of Judgment and Decree passed by the learned VIII Joint Civil Judge, Junior Division, Solapur in R.C.S. No. 749 of 2007, they demolished the said wall constructed by them.

5 In support of its case, the prosecution examined in all four witnesses namely Ravindra Amre, (PW. No.1), Panch witness to the spot panchanama, Smt. Vijayalaxmi Poredi (PW. No.2) the informant/complainant, Shri. Mohan Dhage (PW. No.3), the Investigating Officer and Mr. Venkatesh Udgiri (PW. No.4), an independent witness to the alleged demolition of wall.

The learned Trial Court, after recording the evidence and after hearing the learned counsel for the respective parties was pleased to acquit the Respondents by its impugned Judgment and Order dated 20th September, 2010.

6 The admitted facts on record are that, the informant (P.W. No. 2) was a tenant in respect of the suit premises admeasuring 10 ft. x 20 ft. owned by the Respondents and was running her dispensary therein. The Respondents had requested P.W. No.2 to quit and vacate the suit premises. That, the Respondents had erected a wall in the hall let out to the P.W. No.2. The learned VIII Joint Civil Judge, Junior Division, Solapur by its Judgment and Decree dated 7th November, 2008 passed in Regular Civil Suit No.749 of 2007 had directed the Respondents to demolish the wall in the hall let out to the P.W. No.2 within a period of one month from the date of passing of the said Decree dated 7th November, 2008. It is the defence of the Respondents that, they demolished the said wall in pursuance of the Judgment and Decree dated 7th November, 2008 passed in Regular Civil Suit No.749 of 2007. It is also an admitted fact on record that, the Respondents had preferred Regular Civil Appeal No.289 of 2008 in the District Court at Solapur against the said Judgment and Decree and during the pendency of the said Appeal, on some occasions the informant approached the police for lodging crime against the Respondents.

7 The evidence on record indicates that, the Original Complaint (report lodged by the P.W. No. 2) dated 28th January, 2009 was not produced by the prosecution and the photocopy of it was produced on record, which is marked as Article 'A'. It is to be further noted that, the alleged incident of demolition of wall and causing mischief with the immovable property of the P.W. No.2 had occurred on 27th January, 2009, however, the spot panchanama was effected on 17th May, 2009. The said spot panchanama is at Exh. 13. It is to be noted here that, the informant found all her articles kept in a gunny bag at the scene of offence on the date of recording of the spot panchanama and therefore, it cannot be said that, the articles of the P.W. No.2 were found missing or damaged by the Respondents thereby, causing loss to her.

8 In view of the above, it is clear that, the prosecution has failed to prove beyond reasonable doubt that, the Respondents had intentionally demolished the common wall thereby, committing an act of mischief as contemplated under Section 425 of the Indian Penal Code. As noted earlier, the Respondents had demolished the wall constructed by them in furtherance of a Decree passed by the Civil Court. It clearly appears from the record that, as the Respondents had directed the informant (P.W. No.2) to quit and vacate the suit premises, she had lodged the present crime. The Trial Court, therefore, has rightly given benefit of doubt to the Respondents by its impugned Judgment and Order dated 20th September, 2010.

9 In view of the above and after perusing the entire record, this Court is of the considered view that, the Trial Court has not committed any error while passing the impugned Judgment and Order dated 20th September, 2010.

Appeal is accordingly dismissed.

10 This Judgment will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this Order.

(A.S. GADKARI, J.)