

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 521 OF 2012**

The State of Maharashtra
(at the instance of P.I.,
Malvan Police Station,
vide C.R. No.5/2007)

... Appellant

Vs.

- 1] Anton Kaithan Mendes,
Age 28 years, Occ : Labour,
- 2] Augustin Inas Mendes,
Age 24 years, Occ : Labour,
- 3] Carmolin Rezi Mendes,
Age 30 years, Occ : Housewife,
- 4] Jospin Ijmail Mendes,
Age 35 years, Occ : Vegetable vendor,
All R/o Revatale, Malvan,
Tal. Malvan, Dist. Sindhudurg.

... Respondents

Mr. S. S. Hulke, A.P.P. for Appellant-State.
None for the respondents.

CORAM : A.S. GADKARI, J.
DATE : 18th September 2020.

ORAL JUDGMENT :-

Heard Mr. Hulke, learned A.P.P. for the appellant-State. None appeared for the respondents, despite service.

Perused the entire record.

2. The appellant-State has questioned the correctness of the impugned Judgment and Order dated 7th December 2011 passed in Regular Criminal Case No. 15 of 2007 by the learned Judicial Magistrate First Class, Malvan, acquitting the respondents from the offences punishable under Sections 324, 323, 427, 504, 506 read with Section 34 of the Indian Penal Code.

3. The First Information Report was lodged by Mrs. Natalin Ished Mendis on 30th January 2007. It was the prosecution case that, the first informant and respondents were neighbours. Their relations interse were strained on account of the drainage water of the bathroom of informant was released through a small gutter, which was passing in front of the house of the respondents, towards the palm trees. The said palm trees were planted in front side of the house of respondents. On 30th January 2007, the informant along with her children had been to Belgaon from her four wheeler car and returned at about 5.30 p.m. At that time, she noticed that, the flow of the said drainage water was obstructed by filling it. The informant was informed by her mother-in-law that, the said act was committed by the respondents. The husband of informant, namely Ished Mendis therefore started removing filling from the said gutter to release the flow of drainage water. It was alleged that, at that time the respondents came there, abused the husband of the informant in filthy language and assaulted him with a wooden log on his head. The

respondents also heckled and pushed the mother-in-law of the informant. It is further alleged that, the respondents caused damage to the car of the informant with stones and wooden log.

4. After completion of investigation charge-sheet came to be filed in the Court of Judicial Magistrate First Class, Malvan. Trial Court framed charge below Exhibit-17. The charge was read over and explained to the respondents in vernacular language to which they denied and claimed to be tried.

The trial Court after recording the evidence and hearing the learned counsel for the respective parties was pleased to acquit the respondents from the charges framed against them by the impugned Judgment and Order.

5. As per record there were at least 3 injured persons namely Mrs. Natalin I. Mendis i.e. first informant (PW.-3), Ished Mendis (PW.-2) and mother-in-law of PW.-3, out of which the prosecution has examined Mr. Ished Mendis (PW.-2) and Smt. Natalin I. Mendis (PW.-3) in support of its case. It is to be noted here that, there are material contradictions with respect to the alleged weapons used, author of injuries and the place of injuries on the body of the said three persons. The injury certificate (Exhibit-64) issued in favour of Ished Mendis (PW.-2) by the Medical Officer, Rural Hospital, Malvan indicates that, Ished had suffered total 6 injuries; out of which two were small

abrasions; two were abrasions and two were small CLW's.

6. As noted earlier, the witnesses in their testimony have narrated different version regarding use of weapons by accused persons and place of injuries sustained by the informant (P.W.-3), Ished Mendis (P.W.-2) and the mother-in-law of P.W.-3. Perusal of testimony of witnesses would indicate that, there is glaring variance in it, than what has been stated in the medical certificate. The panch witness (P.W.-1) to the scene of offence panchnama did not support the prosecution case and therefore had been declared hostile.

7. From the cross-examination of witnesses it appears that, the respondents have come with a defence that, on the date and time of incident after assaulting the family members of respondents, while running away Ished Mendis fell down and suffered injuries. Minute perusal of record would indicate that, there is substance in the defence adopted by the respondents. Most of the family members of the respondents have been impleaded in the present crime out of the grudge which was being harboured by the informant due to their dispute over the release of drainage water from the bathroom of informant.

8. After perusing the entire record and the impugned Judgment and Order, this Court is of the opinion that, the view adopted by the Trial Court is a legally possible in view in the facts and circumstances of the present case.

The Trial Court has not committed any error either in law or on facts while acquitting the respondents by its impugned Judgment and Order dated 7th December 2011.

Appeal is accordingly dismissed.

9. This Order will be digitally signed by the Personal Assistant of this Court. All the concerned will act on production by fax or e-mail of a digitally signed copy of this Order.

(A.S. GADKARI, J.)

Omkar S.
Kumbhakarn

Digitally signed
by Omkar S.
Kumbhakarn
Date:
2020.09.22
13:57:21 +0530