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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.68 OF 2000**

The State of Maharashtra] ... Appellant

vs.

Kisan @ Krishna Vishnu Pokale & Anr.] ... Respondents

ALONGWITH

CRIMINAL REVISION APPLICATION NO.267 OF 1998

Sunita Haribhau Damishthe] ... Applicant

vs.

Kisan @ Krishna Vishnu Pokale & Anr.] ... Respondents

Mrs.M.M. Deshmukh, APP for the Appellant/State.

**CORAM : PRASANNA B. VARALE &
N.R.BORKAR, JJ.**

DATE : 5TH JULY, 2021.

COMMON JUDGMENT : (PER : N.R.BORKAR, J)

1] Criminal Appeal No.68/2000 at the instance of State and Criminal Revision Application No.267/1998 at the instance of original complainant are filed against one and the same Judgment and order dated 29.09.1998 passed by the learned IInd Additional Sessions Judge, Pune in Criminal Appeal No.8/1996. They are thus being disposed of by this common Judgment.

2] The respondent No.1 in Criminal Appeal No.68/2000 was tried alongwith one more accused for the offences punishable under Sections 323, 326 read with 34 of the Indian Penal Code by the learned Judicial Magistrate First Class, Pune in regular Criminal Case No.46/1991. By the Judgment and order dated 16.12.1995 the learned JMFC convicted the respondent No.1 for the offences punishable under Section 323 and 326 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for one year and three years respectively. The respondent No.1 had filed an appeal before the Sessions Court against the said Judgment and order of learned JMFC dated 16.12.1995. The learned IInd Additional Sessions Judge, Pune allowed the said appeal by the impugned Judgment and order and acquitted the respondent No.1 of all the charges.

3] It is the case of the prosecution that on 28.12.1990 the present respondent No.1/original accused No.1 assaulted the complainant Sunita and her sister Ruparani by sword. It is further alleged that father of respondent No.1 who was accused No.2 before the trial Court, assaulted the complainant by bricks.

4] The accused No.2 was also convicted by the trial Court for the offence punishable under Section 323 of the Indian Penal Code.

However, he died during the pendency of his appeal before the Sessions Court.

5] We have heard learned APP for the Appellant/State. None appeared for the Respondent No.1/Accused.

6] Learned APP submits that the learned appellate court erred in acquitting the respondent No.1. It is submitted that the appellate court has found fault with the procedure adopted by the trial Court, while conducting the trial, even though no case was made out by the respondent/accused that due to such procedural infirmities any prejudice was caused to him. It is submitted that the appellate Court discarded the evidence of the complainant for no valid reasons. It is submitted that the Judgment and order of the appellate court thus needs to be quashed and set aside and Judgment and order of the trial court needs to be restored.

7] We have perused the evidence on record. According to the complainant, the accused No.1 assaulted her by sword. The complainant, in her cross-examination has admitted that her family had strained relations with Surekha, sister of accused No.1, on account of partition of agricultural land. She has further admitted that on

25.12.1990 in the quarrel between her and Surekha, Surekha had sustained injuries.

8] According to the complainant, her sister PW 4-Ruparani was with her at the time of incident and she was also assaulted. PW 4-Ruparani has, however, admitted in her cross-examination that she has not stated to the police that accused No.1 had caused injury to her face with sword. She has further admitted that she has not stated to the police in her statement that accused No.1 had assaulted her sister Sunita by sword.

9] According to the complainant, after the incident she was admitted in Sasoon Hospital, Pune. In the history given by the complainant to the hospital, she has not named the present respondent No.1 as assailant.

10] According to the prosecution, the sword was seized. However, there is nothing on record to show that the said sword was sent for forensic examination. The Investigating Officer has not been examined in the matter. Therefore, it is not clear as to whether the clothes which were on the person of the complainant and her sister on the day of incident, were seized or not. Thus, there is no corroborative

evidence on record.

11] The complainant has admitted in her cross-examination that villagers had gathered at the place of incident. In the facts and circumstances of the case and when there was admittedly enmity between the parties, it was necessary to examine independent witnesses to the incident. However, no independent witness has been examined in the matter.

12] Considering these facts and circumstances of the case, no interference is called for in the impugned Judgment and order. In the result, following order is passed :

ORDER

Criminal Appeal No.68/2000 as well as Criminal Revision
Application No.267/198 stand dismissed.

[N.R.BORKAR, J]

[PRASANNA B. VARALE, J]