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Sherla

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPEAL NO. 22 OF 2004**

The State of Maharashtra

... Appellant

V/s.

1. Jaywant @ Sarjerao Anna
Tadakhe

(Abated)

2. Ananda Baburao Tadakhe

... Respondents

Ms M.H. Mhatre, APP for the Appellant – State.
Mr. Govind Ghogare for the Respondents.
Respondent No.2 in person present.

**CORAM : SMT. SADHANA S. JADHAV &
N.R. BORKAR, JJ.
DATE : MARCH 10, 2021.**

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

1] This appeal at the instance of State has been filed against the judgment and order dated 26.09.2003 passed by learned IInd Additional Sessions Judge, Satara in Sessions Case No. 70 of 2001. By the impugned judgment and order, the respondent Nos.1 and 2, who were accused before the trial court, have been acquitted for the offence punishable under sections 307 read with 34 of the Indian Penal Code (for short “IPC”).

2] During pendency of the present appeal, respondent No.1 (original accused No.1) has died on 28.11.2017. Accordingly, we have on 2.2.2021 ordered that appeal as regards respondent No.1 (original accused No.1) stands abated.

3] It is the case of the prosecution that on the day of incident, i.e. 2.7.2000, the complainant Atmaram Bali Kambale (PW 1) was residing with his family at Village Shirsavadi, Taluka Khatav, Dist. Satara. The agricultural land owned by the complainant was in possession of his elder brother Tukaram as a lessee. The complainant demanded Rs.3000/- from his brother Tukaram as loan for the marriage expenses of his daughter. His brother Tukaram refused to give loan of Rs.3000/- to him. He therefore, took loan of Rs.5000/- from his younger brother Sopan. As his elder brother Tukaram refused to give him loan, the complainant took the possession of the agricultural land from him and handed over it's possession to his younger brother Sopan.

4] It is alleged that accused No.1, who is brother-in-law of Tukaram (brother of Tukaram's wife), was annoyed with the

said act of the complainant as he felt that the complainant by his said act lowered down the image of Tukaram in the eyes of villagers. It is alleged that accused No.1 along with accused No.2, who is nephew of accused No.1, therefore, on the date of incident, i.e., 2.7.2000 at about 7.30 p.m., assaulted the complainant by knife on his stomach and attempted to kill him.

5] The complainant lodged the report in relation to the incident with Vaduj Police Station, Dist. Satara. On the basis of said report, Vaduj Police Station registered the crime against both the accused for the offence punishable under sections 307 read with 34 of the IPC. On completion of investigation, a charge-sheet was filed against them. Both the accused were charged and tried for the said offence. As stated earlier, the trial court acquitted both the accused for the said offence by the impugned judgment and order.

6] We have heard learned APP for the State and learned counsel for the respondent No.2 (accused No.2).

7] Admittedly, the incident took place on 2.7.2000, however, the first information report is lodged on 11.7.2000.

8] It appears that immediately on the next day of the incident, i.e., on 3.7.2000 the statement of the complainant was recorded by the police. In the said statement, the complainant has stated that he accidentally fell on the sickle and sustained injury in question. Similar statement was made at the time of giving history of incident to the Doctor.

9] The complainant has stated in his evidence that after the incident, he was threatened by accused No.1 of dire consequences in case he lodges the report with the police and therefore, he had stated in his earlier statement that he had sustained injury due to accidental fall on the sickle. In the cross-examination, the complainant has admitted that he is in service of Grampanchayat. He knows Advocate Ingale. Advocate Ingale is from his village. Advocate Ingale was the member of Panchayat Samiti, Khatav Taluka. He has further admitted that due to active help of Advocate Ingale, he and his wife were appointed as Peon and Anganwadi Teacher respectively. Considering these facts, the alleged explanation

of the complainant for not lodging the report practically for nine days, does not appear to be convincing.

10] Apart from above mentioned circumstances, no overt act is attributed to accused No.2. As against accused No.2, it is only stated that accused No.1 took out the knife from the bag, which accused No.2 was carrying and assaulted the complainant. However, this fact also appears to be an omission.

11] Considering these facts and circumstances, no interference is called for in the impugned judgment and order of acquittal. In the result, we pass the following order.

ORDER

Criminal Appeal No.22 of 2004 stands dismissed.

(N.R. BORKAR, J.) (SMT. SADHANA S. JADHAV, J.)