

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

CRIMINAL APPEAL NO.359 OF 2004

The State of Maharashtra	..Appellant
Vs.	
Ashoksingh Amarsingh Rajput & Ors.	..Respondents

Mr.S.R. Agarkar, APP for the Appellant-State.
Ms.Mrinal Shelar i/b Mr.S.S. Patwardhan for Respondent Nos.1 to 3.

CORAM : C.V. BHADANG, J.

DATE : 29 NOVEMBER 2021

P.C.

. By this Appeal the State is challenging the acquittal of the respondents, from an offence punishable under Section 324, 323, 504 read with Section 34 of the Indian Penal Code.

2. The prosecution case in brief is as under:-

The complainant Keshavsingh Rajput (PW-1) is having a grocery shop which is part of his house premises where he is staying along with his wife and children. The Respondent Ashoksingh Rajput and Ranjitsingh Rajput (Accused Nos.1 and 2) are the cousins of the complainant while the Respondent No.3 (Accused No.3) is the wife of the Accused No.1. It may be mentioned that the Accused No.2 Ranjitsingh Rajput has since expired and the Appeal

has abated against him. It is also not in dispute that the parties were residing adjacent to each other and there was civil litigation between them in respect of their house property and their relations were not cordial.

3. Some time prior to the complaint the complainant applied for a electric connection which was objected to by the respondents-accused. However, after obtaining a writing from the accused persons an electric connection was released by the State Electricity Board to the complainant. This was yet another issue between the parties which was part of their all over dispute.

4. On 24 November 2000 at about 10.00 a.m. it is alleged that the complainant PW-1 was in his shop. A person from the State Electricity Board asked the complainant as to where Respondent No.2 is residing. The complainant showed the residence of Respondent No.1 and asked his brother to seize this opportunity by obtaining something in writing from the accused before an electric connection is released in favour of the respondent-accused. Respondent No.1 is alleged to have overheard this conversation which was the point of the trigger for the incident. The Respondent No.1 is alleged to have gone to the shop of the complainant and assaulted him with a 1 kg weight lying in the shop.

5. It is also said that there was a scuffle between the complainant and the respondent No.1. The respondent Nos.2 and 3 had subsequently gone to the shop and according to the prosecution they were part of the common intention of the respondent No.1 to assault the complainant.

6. PW-1 lodged the complaint on the following day i.e. on 25 November 2000 with Miraj Police Station. The Investigating Officer referred the complainant for medical examination. The record discloses that PW-1 was examined by Dr.Krushna Lokhande (PW-6) on 24 November 2000 and had found a contused lacerated injury over the left temporo-parietal region measuring 3 cmx ½ cmx scalp deep with irregular margins and another contused lacerated injury over occipital region 1 cmx ½ cmx scalp deep with irregular margins. The record discloses that the Medical Officer has not been cross-examined on behalf of the respondent-Accused.

7. The Investigating Officer after the conclusion of the investigation filed a charge-sheet before the Judicial Magistrate First Class, Miraj which was registered as Criminal Case No.276 of 2000. The learned Magistrate framed charge against the respondent for the offence punishable under Section 323, 324, 504 read with Section 34 of the Indian Penal code. The respondents pleaded not guilty

and claimed to be tried. The defense of the respondents is of total denial and false implication.

8. At the trial the prosecution examined in all six witnesses namely the Complainant Keshavsingh Shankarsingh Rajput (PW-1), his brother Mr.Anilsingh Shankar Singh Rajput (PW-2), a panch Mr.Vijay Harat Sonavane (PW-3), Sharmila Keshvsing Rajput (PW-4) who is wife of the complainant, the Investigating Officer Shripati Naiku Nikam (PW-5) and the Medical Officer Dr.Kishan Jaising Lokhande (PW-6) and produced the record of the investigation.

9. The Respondent did not lead any evidence in defense.

10. The learned Magistrate by the impugned judgment and order dated 12 November 2003 has acquitted the respondent. Hence this Appeal.

11. I have heard Mr.Agarkar, the learned Additional Public Prosecutor and Ms.Mrinal Shelar for the respondent Nos.1 and 3. With the assistance of the learned counsel for the parties I have gone through the record.

12. The learned Magistrate has found that there was a dispute between the parties and their relations were not cordial. The learned Magistrate also noticed that PW-2 who is brother of the complainant has not supported him and the evidence of PW-4 who is wife of the complainant is discrepant. The learned Magistrate also noticed that PW-1 did not claim that his wife had come on the spot. These are some of the reasons apart from the delay in lodging of the complaint by about 28 hours, prompting the Magistrate to record a finding of acquittal.

13. After having carefully gone through the evidence of the prosecution witnesses and the reasons articulated by the learned Magistrate, I find that, the view taken by the learned Magistrate appears to be possible or a plausible view. It is true as argued on behalf of the Appellant that merely because there was a dispute between the complainant and accused is not sufficient to discard their evidence. This is because as it is well settled enmity is a double edged weapon. However, in such a case the evidence has to be closely scrutinized as the enmity at the same time can also afford ground for false implication. The learned Magistrate in this regard has also noticed that the complaint was filed on the subsequent day and the complainant was admitted in Civil Hospital in the afternoon of the day of incident. However, before that the complainant is shown to be examined by PW-6 as the compliance had gone to the

hospital, with a police 'yadi'. In my considered view, the learned Magistrate is right in observing that there is no reason that the real brother of the complainant would not support the complainant in the matter of the incident as alleged by the complainant.

14. It is now well settled that in an appeal of the present nature this Court can justifiably interfere only when the view taken by the Trial Court is found to be perverse or is against the weight of the evidence on record or it is an impossible view. (See the decision of the Supreme Court in *Chandrappa and Ors. V/s. State of Karnataka*¹.) Applying the principles as to the scope and ambit of the Appeal against acquittal, in my considered view, no case for interference is made out. The Appeal is accordingly dismissed.

C.V. BHADANG, J.

NILAM
SANTOSH
KAMBLE

Digitally signed by
NILAM SANTOSH
KAMBLE
Date: 2021.11.30
13:29:23 +0530

1 (2007) 4 SCC 415