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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.569 OF 2004**

The State of Maharashtra] .. Appellant
(Org.Complainant)

vs.

1. Popat Bhagwan Khabale] .. Respondents
2. Mohan Jalindar Khabale] (Org.Accused)

Ms.P.P. Shinde, APP for the State/Appellant.

Mr.Prasanna Shahane i/b Mr.Milind Deshmukh, for Respondent Nos.1 and 2.

**CORAM : SMT.SADHANA S. JADHAV &
N.R.BORKAR, JJ.**

**RESERVED ON : 10th MARCH, 2021.
PRONOUNCED ON : 16th MARCH, 2021.**

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

1] This appeal at the instance of State has been filed against the Judgment and order dated 23rd January, 2004 passed by the Adhoc Assistant Sessions Judge, Baramati in Sessions Case No.102 of 2001. By the impugned Judgment and order, the Respondents who were original accused Nos.1 and 2 before the trial Court have been acquitted of the offences punishable under Section 307, 504 and 506 read with 34 of the Indian Penal Code.

2] It is the case of the prosecution that on the day of incident i.e. on 28th May, 2001 the complainant Madhukar Mhasu Khabale was residing with his family at village Bhat Nimgaon, Taluka – Indapur, District – Pune. The accused are his relatives. There was a dispute between the complainant and accused on account of ancestral property.

3] It is alleged that on the day of incident at about 10.00 a.m. the complainant came to the bus stop of the village Bhat Nimgaon for going to Indapur for marketing. At that time, Mahipat Khabale, Nagnath Magar and Punjab Gaikwad were present there. It is alleged that after some time, the accused came there and accused No.1 started abusing the complainant. It is alleged that, accused No.2 caught hold the complainant and accused No.1 assaulted him by knife on his shoulder, back and left hand and attempted to kill him.

4] The statement of the complainant was recorded by police while he was taking treatment at Government Hospital, Indapur. On the basis of said statement, crime was registered vide CR No. 83 of 2001 for the offences punishable under Section 307, 325, 504, 506 read with 34 of the Indian Penal Code against both the accused.

5] On completion of investigation, charge sheet was filed against both the accused. They were charged and tried for the offences punishable under Section 307, 504 and 506 read with 34 of the Indian Penal Code. The trial Court, as stated earlier, acquitted both the accused for the said offences.

6] We have heard learned APP for the State/Appellant and learned counsel for the Respondents/accused.

7] Learned APP for the State has submitted that the complainant in no uncertain terms has stated that the accused assaulted him by knife. It is submitted that eye witnesses to the incident have also stated that the accused assaulted the complainant. It is submitted that the trial Court has, however, discarded the evidence of the complainant and eye witnesses for no valid reasons. It is submitted that the evidence of the complainant is even corroborated by the medical evidence on record. It is submitted that the trial Court was, therefore, not justified in acquitting the accused.

8] On the other hand, learned counsel for the respondents/accused has submitted that admittedly there was enmity between the complainant and accused. It is submitted that the evidence on record

and more particularly the evidence of PW 6 Nagnath Magar will show that it was the complainant who abused the accused No.1 and even tried to assault him. It is submitted that the evidence on record will further show that the complainant was carrying the knife and he tried to assault the accused no.1 and at that time one Dattu who was present there had snatched the said knife. It is submitted that the complainant sustained injuries while Dattu was snatching knife from him. It is submitted that considering these facts and circumstances, the trial Court was justified in acquitting both the accused.

9] PW 1, the complainant Madhu Khabale has stated in his evidence that on the day of incident, the accused No.2 caught hold of him and accused No.1 assaulted him by knife on his shoulder, back and left hand. In the cross-examination, he has admitted that he was sentenced to life imprisonment in the case of murder of father of accused No.1. He has denied that at the time of incident, one Dattu Khabale was present at the bus stop. The complainant was, however, confronted with his statement dated 30th May, 2001, wherein, he has specifically stated that he was assaulted by the said Dattu.

10] According to the complainant Nagnath Magar was present at the time of incident. Nagnath Magar who has been

examined as PW 6 has stated in his evidence that on the day of incident he was there at ST Bus stop. He has stated that a scuffle took place between the complainant and the accused No.1 and in the said scuffle, the complainant fell down. In the cross-examination, this witness has admitted that when they were at bus stop the complainant on seeing accused No.1 started abusing him. He has further admitted that the complainant took out a knife from his pocket to assault accused No.1. He has admitted that one Dattu Khabale tried to separate them and in the scuffle, the complainant was injured.

11] Considering these facts and circumstances, no fault can be found with the order of acquittal passed by the learned trial Court. Hence, no interference is called for in the impugned judgment and order. In the result, following order is passed :

ORDER

Criminal Appeal No. 569 of 2004 stands dismissed.

[N.R.BORKAR, J]

[SMT.SADHANA S. JADHAV, J]