

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

**CRIMINAL APPEAL NO. 133 OF 2003**

State of Maharashtra ] ...Appellant

Versus

1. Singarasingh Sarvansingh ]  
2. Kuldeepsingh Sarvansingh ]  
3. Didarsingh Sarvansingh ]  
4. Sansarsingh Sarvansingh ] ....Respondents

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Mr. Y. M. Nakhwa, APP for the Appellant-State.  
None present for Respondents.

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**CORAM : S. S. SHINDE AND  
N. R. BORKAR, JJ.**

**RESERVED ON : 04 JANUARY, 2022  
PRONOUNCED ON : 07 JANUARY, 2022**

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

. This appeal takes an exception to the judgment and order dated 10<sup>th</sup> April, 2002, passed by the learned Metropolitan Magistrate, 10<sup>th</sup> Court, Andheri, Mumbai, in Criminal Case No. 1747 / P / 1990.

2. By the impugned judgment and order, the Respondent Nos. 1 to 4, who were Accused Nos. 1 to 4 respectively before the trial Court, have been acquitted for the offences punishable under Sections 326, 324 read with 114 of Indian Penal Code.

3. It is the case of the prosecution that on 27<sup>th</sup> April, 1990 at 3:00 p.m. the present respondents/accused assaulted (P.W.1) Devendrapal Kohli and his father (P.W. 2) Sucharsingh Kohli by iron rod, hammer and caused grievous hurt to them. At the relevant time,

the parties were residing in one of the same apartment i.e. Shere Panjab, at Andheri (E) Mumbai. The relations between the parties were strained as the accused were opposing the construction which P.W. 1 and P.W. 2 were making on the third floor of the said apartment. According to the P.W. 2, on the date of incident, the accused asked him to stop the construction work. As he declined to stop the construction, the present respondent / accused assaulted them.

4. The accused after filing the charge-sheet were tried for the offences punishable under Sections 326, 324 and 114 of Indian Penal Code. As stated earlier by the impugned judgment and order, the trial Court acquitted them of the said offence.

5. We have heard the learned APP for the Appellant-State. None appeared for the Respondent Nos. 1 to 4.

6. The learned APP for the Appellant-State submits that the trial Court has discarded the evidence of P.W. 1 and P.W. 2 for no valid reasons. It is submitted that the trial Court has observed that medical evidence is inconsistent with the oral evidence. It is submitted that the trial Court has, however, lost sight of the fact that the medical evidence is only corroborative evidence and in case of inconsistency oral evidence prevails over the medical evidence. It is submitted that the trial Court was thus not justified in acquitting the accused.

7. We have perused the evidence on record. According to P.W. 1, he was assaulted by iron rod on his forehead above left eye. He has further stated that, when his brother Ravindrapal Singh came to his rescue, the Accused No.4 assaulted him by hammer. He has further stated that the accused assaulted him and his father (P.W. 2) by means of an iron rod, fist and kick blows. In the cross-examination P.W. 1 has admitted that B.M.C. has filed prosecution against them for making unauthorised construction on the third floor of the apartment.

He has further admitted that the Accused No. 1 has filed criminal case against them alleging that, they assaulted him.

8. P.W. 2 has stated in his evidence that on the day of incident, Accused No. 4 assaulted his son Ravindrapal Singh by hammer. He has further stated that the Accused Nos. 2 and 3 assaulted him by fist and kick blows. He has further stated that the Accused No. 1 assaulted his son Devendrapal Singh Kohli (P.W. 1) by iron rod on his forehead and neck.

9. The trial Court discarded the evidence of P.W. 1 and P.W. 2 on the ground that, it is inconsistent with the medical evidence. The trial Court has further held that in view of the strained relations between the parties, it would not be safe to rely upon the testimony of P.W. 1 and P.W. 2 in the absence of any independent witness to the incident.

10. With a view to test the correctness of the finding of the trial Court, we have examined the medical evidence on record. According to P.W. 3 Dr. Ramesh N. Dayawarkonda, on 27<sup>th</sup> April, 1990 (P.W. 2) Suchasingh Kohali was brought to the hospital by the Police Constable of M.I.D.C Police Station for medical examination. On examination he found that there were no external injuries on his person. According to P.W. 1, the accused assaulted him and his father (P.W. 2) by iron rod and fist and kick blows, then it is unlikely that P.W. 2 would not sustain any external injury. Similar is the situation with P.W. 1. According to Dr. Manish M. Divekar, the P.W. 1 Devendrapal Kohli was brought to his hospital on 27<sup>th</sup> April, 1990. He examined P.W. 1 and found following injuries on his person:

- i) Swelling on forehead 2 x 2 in size.
- ii) C.L.W. over the left eyebrow  $\frac{1}{2}$  x  $\frac{1}{2}$  c.m. subcutaneous deep.

According to P.W. 1, he was assaulted by iron rod and hammer. In

case of assault by four persons that too by iron rod and hammer, it is unlikely that P.W. 1 would sustain only one C.L.W.

11. Considering the overall facts and circumstances of the case, the view taken by the trial Court cannot be said to be perverse. No interference is thus called for in the impugned judgment and order.

**ORDER**

The appeal is dismissed.

**(N. R. BORKAR, J.)**

**(S. S. SHINDE, J.)**