

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 166 OF 2022**

Malubai Sambhaji Gurav

.....Appellant

Vs.

Shivaji Nivrutti Gurav & Ors.

.....Respondents

Mr. Varun Thokal for the Appellant.

Mr. Ashish Vernekar i/by Mr. Nitesh J. Mohite for the Respondent Nos.1 to 3 and 6 to 8.

Mrs. S.D. Shinde APP, for the Respondent No.9-State.

**CORAM : A. S. GADKARI AND
PRAKASH D. NAIK, JJ.
DATE : 16th DECEMBER, 2022.**

PC:-

1) Present Appeal under Section 372 of Code of Criminal Procedure is preferred by the first informant, feeling aggrieved by the Judgment and Order dated 29th January, 2022 passed by the learned Additional Sessions Judge, Kolhapur in Sessions Case No.116 of 2022.

2) Heard Mr. Thokal, learned Advocate for the Appellant, Mr. Vernekar, learned Advocate for the Respondent Nos.1 to 3 and 6 to 8 and learned APP for Respondent No.9-State. Perused notes of evidence.

3) It is the prosecution case that, on 25th November, 2011 at about 12.00 noon, the Appellant-informant (PW-1) along with Smt. Sharmila Ashok Patil and Smt. Sulabai Bander Rao Patil (PW-5) went to the disputed

house for its demolition as Mr. Ashok Banderao Patil (PW-2) was intending to construct new house. That, the said persons had been to the spot of incident in furtherance of a Decree passed in R.C.S. No.28 of 2003. It is alleged that, at that time all the Respondents obstructed the Appellant (PW-1) and other two witnesses and assaulted Sambhaji Gurav and Ashok Patil (PW-2) with sticks. That, Respondent Nos.2 and 3 robbed Sharmila Ashok Patil and took away gold ornaments from her neck and bangles from her hands. In this brief premise, Crime No.86 of 2011 under Sections 395, 324, 323, 337, 504 read with Section 34 of the Indian Penal Code (for short, "IPC") was lodged with Bhudargad Police Station, District Kolahpur against the Respondents.

4) After completion of investigation, Police had submitted charge-sheet. As the offence under Section 395 of IPC was exclusively triable by the Court of Sessions, the case was committed to the concerned Court. Charge came to be framed against Respondents below Exh-15. Respondents adjured the charges and came to be tried. The Trial Court by its impugned Judgment and order was pleased to acquit all the Respondents from the charges levelled against them.

5) Perusal of evidence on record and in particular evidence of Appellant-Informant (PW-1) discloses that, though as per the allegations, Respondent No.2. Sau. Laxmibai Shivaji Gurav and Respondent No.3 Rani @ Gayatri Gurav robbed Sharmila Ashok Patil, the said most important

witness has not been examined by the prosecution. There is no other material on record to even infer that, Sharmila Ashok Patil was infact robbed by the Respondents in the said incident. There is no recovery of the said alleged ornaments at the instance of any of the accused persons. The other offences alleged against the Respondents have also not been proved by the prosecution by leading cogent evidence in that behalf. It appears to us that, the prosecution case was based on conjunctures and surmises and in particular upon the instructions of the Appellant and not more than it.

6) Perusal of impugned Judgment and Order would clearly reveal that, the view adopted by the trial Court is a probable view in facts and circumstances of the present case. The trial Court has not committed any error either in law or on facts while passing the impugned Judgment and Order.

No case for interference in the impugned Judgment and Order is made out.

7) Appeal is accordingly dismissed.

(PRAKASH D. NAIK, J.)

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

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