

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

CRIMINAL APPEAL NO.1321 OF 2019

Chaya Balu Gore

.... Appellant

Versus

Sandipan Dagadu Gore

and others

.... Respondents

Mr. Vaibhav R. Gaikwad, Advocate a/w. Atharva R. Bhingardive for the Appellant.

Mr. Siddharth S. Deshpande, Advocate for Respondent Nos.1 & 2.

Smt. M.R. Tidke, APP for the Respondent No.3-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 29th SEPTEMBER, 2022

P.C. :

1. This is an appeal challenging the judgment and order dated 7.8.2019 passed by the Extra Joint Additional Sessions Judge, Pandharpur in Criminal Appeal No.15/2015 thereby allowing the appeal against the judgment and order dated 12.3.2015 passed by the Judicial Magistrate, First Class at Pandharpur who had convicted the respondent Nos.1 & 2 for commission of offences punishable under Sections 324, 323, 504, 506 read with 34 of the Indian Penal Code.

2. Heard Shri Vaibhav Gaikwad, learned counsel for the appellant, Shri Siddharth Deshpande, learned counsel for respondent Nos.1 & 2 and Smt. M.R. Tidke, learned APP for the State.

3. The trial Court convicted these respondents for those offences; and had sentenced them to suffer RI for one year and to pay fine of Rs.2,000/- for offence under Section 324 read with 34 of IPC. They were sentenced to suffer RI for six months for offence under Section 323 read with 34 of IPC. They were sentenced to suffer RI for one month for offence under Section 504 read with 34 of IPC. They were also convicted for offence under Section 506 read with 34 of IPC. They were sentenced to suffer RI for one month. All sentences and convictions were set aside by the Appellate Court vide judgment and order dated 7.8.2019.

4. The prosecution case is in respect of the incident dated 25.12.2013. Respondent Nos.1 & 2 as well as the first informant were relatives. There was a dispute about using way to their land. On that day, both the respondents

stopped her when she was returning back from a temple at around 4.00 p.m.. The respondent No.1 held her and beat her by Chappal. The respondent No.2 assaulted her with a stone on her head. She suffered injuries.

5. Learned counsel for the appellant submitted that PW-1 the first informant's evidence is supported by two eye witnesses, PW-2 Bapu Pandhare and PW-3 Uttam Lavate. There was consistency which shows that the incident had taken place and, therefore, the judgment and order of the Appellate Court is not correct. The respondent Nos.1 and 2 deserve to be convicted and sentenced.

6. On the other hand, learned counsel for Respondent Nos.1 & 2 supported the reasoning of the appellate Court.

7. Learned APP supported the appellant's case. However, no separate appeal is preferred on behalf of the State.

8. I have considered these submissions and I have perused both the judgments and orders. As far as the

Appellate Court's reasoning is concerned, it was observed that PW-1, the first informant, has stated that the people gathered at the spot after the appellant had run away. As an afterthought, she deposed that PWs-2 & 3 came at the spot and helped her. Both these witnesses were friends of her husband that is brought out in her cross-examination, though PW-2 & 3 had denied this. Thus, it is established that they were not completely truthful and completely reliable witnesses. The incident had taken place on the road. The prosecution should have examined other independent witnesses. The evidence of PW-2 & 3 does not inspire confidence and they have deliberately not admitted that they were friends of husband of PW-1. Apart from that, the Appellate Court has also commented on the quality of evidence of PW-4 Dr. Khatavkar though he claims that he had put stitches on the head of PW-1, his contemporaneous medical certificate does not mention so.

9. Considering all these aspects, the Appellate Court has given benefit of doubt to the respondent Nos.1 & 2.

I do not think that this judgment and order can be termed as perverse. The view taken by the Appellate Court is a possible view and, therefore, I am not inclined to interfere with the impugned judgment and order of acquittal. The Appeal is, therefore, dismissed.

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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by
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