



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 352 OF 2005

The State of Maharashtra

... Appellant.
(Orig. Complainant)

Versus

1. Isak Amir Masuldar,
Age : 54 years, Occu. : Murum,
Tq. Omerga.
2. Jakir Yakub Masuldar,
age : 25 years, Occu. & R/o. As Above.

... Respondents.
(Orig. Accused)

...
Mr. N. D. Batule, APP for Appellant - State.
Mr. Parag V. Barde, Advocate for Respondent Nos.1 and 2.
...

CORAM : ABHAY S. WAGHWASE, J.
DATED : 13th JUNE, 2024

JUDGMENT :

1. As State is aggrieved by the judgment and order of acquittal passed by learned Judicial Magistrate First Class, Omerga in R.C.C. No. 59 of 2001, acquitting respondents from offence punishable under sections 324, 323, 504, 506 read with section 34 of Indian Penal Code (IPC), instant appeal has been preferred.

FACTS LEADING TO TRIAL ARE AS UNDER

2. Complainant and accused are relatives. There used to be quarrel between them on account of erecting tin shed in common passage. In such backdrop, on 09.02.2001 at about 9:40

a.m., when complainant was standing in front of his house, at that time, accused Isak and accused Jakir came there. At that time, complainant asked them not to erect the tin shed in the common passage. In such backdrop, accused Jakir caught hold of shirt of complainant and gave him fist blows. Accused Isak also gave fist blows to the complainant as well as took bite of his middle finger causing bleeding injury. As a result of which, complainant lodged report at Exh.18, on the strength of which, crime bearing no.19 of 2000 came to be registered and crime was investigated and finally both accused were charge-sheeted for commission of offence punishable under sections 324, 323, 504, 506 read with section 34 of IPC.

3. Learned trial court recorded evidence adduced by prosecution i.e. of five witnesses. Defence denied to lead evidence. On appreciation of oral and documentary evidence, learned trial court reached to a finding that prosecution failed to prove its case beyond reasonable doubt and acquitted the accused by its judgment and order dated 31.12.2004 from all the charges.

Feeling aggrieved by the same, State has taken exception to the judgment and order of acquittal.

SUBMISSIONS

On behalf of appellant – State :-

4. Criticizing the judgment of acquittal, learned APP pointed out that, there is convincing and reliable evidence of injured PW1 complainant. His evidence about assault has remained intact. That, his testimony has remained unshaken in spite of extensive cross. That, he promptly lodged complaint. That, there is medical certificate in support of the injury suffered by complainant. Therefore, according to learned APP, there was overwhelming evidence against both applicants. That, their roles were clearly defined in the testimony of complainant and other witnesses. According to learned APP, apart from testimony of injured complainant, wife also deposed that, when her husband objected to erect tin shed, accused persons assaulted her husband, causing him injury to the finger. That, there was corroborative piece of evidence in the form of very wife. However, same has not been considered and appreciated properly. Therefore, learned APP prays to re-appreciate the evidence and set aside the judgment by allowing the appeal.

On behalf of respondent :-

5. In answer to above, learned counsel for respondents pointed out that, prosecution could not establish its case beyond reasonable doubt. Exaggerated version was reported to falsely

implicate in the backdrop of previous quarrel and enmity. That, there was no convincing evidence and therefore, according to him, learned trial court committed no error whatsoever in refusing to accept the case of prosecution and holding that, case has not been proved beyond reasonable doubt. Therefore, he prays to dismiss the appeal.

EVIDENCE ON RECORD BEFORE TRIAL COURT

6. **PW1** Liyakatali, who is examined at Exh.17, deposed that, accused are his neighbours. They were erecting partition of tin in his place and when he objected to the same, accused Isak and Jakir hit him with fists. According to him, accused Jakir caught him by his collar and gave him fist blows. At that time, accused Isak caught his left hand and even bite his middle finger. That time, Shivanand and Ramesh arrived at the spot. Both accused fled from the spot.

PW2 Shakilabee, deposed that, both accused arrived at the spot with intention to raise partition shed. When her husband objected to raise partition in front of their house, accused Jakir caught collar of her husband. Accused Isak gave fist blows. He also caught left hand of her husband and bite his finger. Due to it, piece of the finger fell down. Accused abused her husband and threatened to kill.

PW3 Shivanand, an acquaintance of complainant and accused, stated that, at the time of incident, he was present in front of his house. On hearing noise, he reached at the spot. He saw accused Isak catching hold collar of complainant. He stated that, complainant sustained bleeding injury to his finger. He stated that, he does not know exactly who caused bleeding injury to complainant.

PW4 Ramesh stated that, on hearing noise he reached at the spot and he saw that accused and complainant had caught hold each other. He claims to have been informed by the complainant that he sustained bleeding injury. According to him, out of two accused, one accused might have caused teeth bite to the complainant.

PW5 Abas Patel, pancha to spot panchanama did not support the prosecution.

Apart from above oral evidence, prosecution has placed on record injury certificate.

ANALYSIS

7. On re-appreciating the evidence of complainant, he is found to have deposed that, on 09.02.2001, both accused were

erecting partition of tin shed over the common passage, to which he objected. According to him, Jakir caught hold by his collar and gave him fist blows on the back and neck. According to him, at that point of time, Shivanand and Ramesh i.e. PW3 and PW4 came there. Thereafter, accused Isak caught his left hand and bite his middle finger. Broken part of his finger fell at the spot and accused ran away. However, while under cross, he deposed that, he handed over piece of finger to police. Even, pancha to spot panchanama has not supported prosecution.

8. PW3 Shivanand and PW4 Ramesh, who claims to have arrived at the spot while the incident was going on, have deposed that, when they reached, at that time, complainant was already bleeding and the incident was over. PW3 Shivanand in his examination-in-chief itself has answered that, he does not know exactly how complainant had suffered bleeding injury. Likewise, PW4 Ramesh is also not sure which of the two accused caused the bleeding injury. Therefore, here except complainant and his wife there is no independent supportive evidence. Already there is enmity between parties. Mere medical certificate is placed on record. The doctor, who examined and authored the medical certificate is not examined to substantiate the said injury to be due to bite.

9. Therefore, with such quality of evidence no fault can be found in the trial court's appreciation and conclusion. No case is made out in appeal to interfere in the judgment. Finding no merits, I proceed to pass the following order :-

ORDER

The criminal appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)