



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 345 OF 2004

The State of Maharashtra

.. Appellant

Versus

Swenjita Sanjeet Goraksha and Anr.

.. Respondents

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- Dr. Krishnaiyar, learned APP for Appellant- state of Maharashtra
 - Mr. Sumedh Modak, Advocate for the Respondent No. 1 and 2.
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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 20, 2024.

JUDGEMENT:

1. The present Appeal is directed against judgment of acquittal dated 29.11.2003 passed by the Ld. Judicial Magistrate First Class, Dahanu below “**Exhibit 70**” in Criminal Appeal No. 345 of 2004 by which the two respondents- Accused have been acquitted. Offences for which respondents were tried are under Sections 324, 504, 506 read with Section 34 of Indian Penal Code, 1860, (for short “**IPC**”). Complainant is the victim himself. Accused No.1 and Accused No. 2 are wife and husband, respectively.

2. The facts of the case for consideration are summarized as follows:

2.1. On 17.05.2000, in between 8:00 - 8:15 a.m., Complainant Mr. Jaikumar, resident of Bordi filed report at Gholvad Police Station alleging that Accused No. 1 and Accused No. 2 in furtherance of their

common intention hurled insults, gave threats and caused hurt to the complainant by means of stone and the Accused No. 1 bit the complainant on his back, causing injury to him.

2.2. The dispute leading to filing of complaint, indictment and trial arises out of a civil cause of action. Place of incident is the vicinity of the house of the accused persons. Brother of Accused No. 2 sold the adjacent land next to the house of accused to complainant which was owned jointly by them without consulting the Accused No.2. Hence a civil suit was pending between them restraining the Complainant by an injunction order from putting up any construction / fencing on the said land. On 17.05.2000, Complainant attempted to put up some fencing with the aid of some workers violating the injunction order on the open land in between the two houses which lead to an altercation. According to Prosecution, between 8:00 and 8:15 am the altercation escalated and Accused No. 1 bit the Complainant on his back whereas Accused No. 2 injured him with a stone. One of the probable reason for the altercation was that on that very day the civil case was listed in the civil court for hearing. The altercation escalated initially by exchange of verbal insults, threats, provocation and abuses between the parties. Since Complainant was injured, he lodged complaint under Crime No. I-28/2000 against Accused No. 1 (Wife) and Accused No. 2 (Husband) under Section 324, 323, 504, 506 read with Sections 34 of I.P.C. Investigating Officer carried out investigation and recorded statement

of witnesses and filed chargesheet.

2.3. Prosecution led evidence of six witnesses, PW- 1 was eye witness to the incident who turned hostile. PW- 2 merely deposed about the pending civil litigation between parties. PW- 3 is the Complainant himself. PW- 4 is a panch witness examined for spot panchanama, PW-5 is the medical examiner who examined the Complainant and PW 6 is the Investigating Officer (I.O.). The weapon i.e., stone is not recovered. Rather, PW- 4 has testified that the stone showed to him during trial is not the same stone.

2.4. The evidence of PW-1 is to the effect that he saw both the Accused beating the Complainant but later during cross examination he deposed that he had heard the commotion before he arrived at the scene of crime. His testimony is therefore rejected by the trial court as unreliable.

2.5. PW-1 to 3 are interested witnesses whose submissions have been substantially improved 8 to 9 times making those submissions gravely infirm and unreliable. PW-4 panch witness, did not support the prosecution case

3. I have heard both the Advocates, Dr. Kirshnaiyer, learned APP for Appellant and Mr. Modak, learned appointed Advocate for Respondents and with their able assistance perused the record of the case.

4. From the deposition of the Complainant, it is clearly seen that the dispute between parties was on account of the pending civil litigation before the Civil Court. Further it is seen that PW- 3 has deposed that during the altercation there was a scuffle between the parties namely Complainant and Accused No. 2 and in that scuffle Accused No. 2 fell to the ground. However, in his cross-examination PW- 3 has admitted that since the accused persons had an injunction order in their favour, the Complainant was upset and therefore he deposed that the accused took objection on the Complainant attempting to erect a boundary by fencing / compound on his plot of land. It is seen that it has come in evidence that Accused No. 2 fell to the ground because of which Accused No. 1 (his wife) rushed to his aid.

5. However, there is no evidence of any independent witness to support the prosecution case because Court has come to the conclusion that PW- 1 to 3 were clearly interested witnesses. The Trial Court while recording this finding has taken into account the evidence of the Complainant himself. The Trial Court has held that PW- 1 to 3 have made 8 to 9 improvements in their depositions which have been duly proved by the defence in their cross examination which are of substantial nature, therefore such evidence of interested witnesses, would suffer from serious infirmities and cannot be held as reliable evidence. Further it is seen that, the alleged weapon (stone) with

which the injury is alleged to be inflicted is not recovered. Prosecution witnesses have themselves agreed that with respect to the incident spot there was a civil dispute pending in Court.

6. PW-4 panch witness has not supported the prosecution case. Most importantly none of the witness have stated, elaborated and reproduced the alleged abuses, threats advanced including the Complainant, so as to accept the prosecution case. With such evidence, prosecution case leaves several questions unanswered. It has failed to bring home the guilt of the accused. It has not proved its case beyond all reasonable doubts and once this is the finding returned by the Trial Court on the basis deposition and cross examination 5 prosecution witnesses except PW-1, the case of the prosecution has been rightly rejected by the Trial Court.

7. I cannot take a different view and interfere with such a reasoned judgment based on the material evidence before the Court. The judgment under challenge is a well-reasoned judgment and deserves to be upheld unless any element of perversity is noticed by the Appeal Court. In the judgment at hand, analysis and scrutiny of prosecution evidence has been correctly done by the Trial Court. Resultantly the judgment dated 29.11.2003 in RCC No. 62 of 2000 is upheld.

8. In the present Criminal Appeal, Mr. Modak, learned Advocate for the Private Respondent is appointed by this Court through the Legal Aid Services Committee, High Court, Mumbai. His professional fee quantified as per the rules be paid to him by the High Court Legal Aid Services Committee, Mumbai, within a period of one week positively upon a server copy of this order/ judgment presented by him to the Committee alongwith Application.

9. Criminal Appeal is dismissed.

[MILIND N. JADHAV, J.]

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