

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 11 OF 2003

State of Goa,
through Police Inspector,
Goa Velha Police Station,
Goa Velha.

... Appellant.

versus

1. Ramchandra Pereira,
s/o Francis Pereira,
aged 51 years,
r/o Cacara, St.Cruz.
2. Sanjay Ramchandra,
s/o Ramchandra F.
Pereira, aged 26 years,
r/o Cacara, St.Cruz.

... Respondents.

Mr. S. N. Sardessai, Public Prosecutor for the State.

Mr. Menino Teles, Advocate for Respondent Nos.1 and 2.

CORAM: P. V. HARDAS, J.

DATED: 26TH SEPTEMBER, 2003.

ORAL JUDGMENT

State being aggrieved by the acquittal of the Respondents for an offence punishable under Section 324 r/w 34 of the Indian Penal Code as recorded by the Judicial Magistrate First Class at Panaji, by his Judgment dated 30th August, 2003, in Criminal Case No.

6/99/B, has filed the present Appeal challenging the aforesaid acquittal.

2. The facts in brief as are necessary for the decision of the Appeal are set out hereunder:-

P.W.1, Caetan D'Mello, was admitted in the Goa Medical College with history of burn injuries on 25th September, 1998. A wireless message to that effect was sent to P.W.5, Pandurang Sawant, A.S.I., who immediately rushed to the Goa Medical College. The doctor attending on P.W.1, Caetan D'Mello, had informed him that the patient was not in a fit condition to give his statement. Accordingly, P.W.5, Pandurang Sawant, A.S.I. went to the Goa Medical College on 26th September, 1998 and recorded the complaint of P.W.1, Caetan D'Mello, at Exh.8. On the same day, the scene of offence panchanama came to be executed at Exh.12 in the presence of P.W.2, Suresh Cuncolienkar. From the hut of the Accused, a tin containing cashew sap came to be attached under the panchanama. P.W.1, Caetan D'Mello, was meanwhile examined in Goa Medical College by P.W.4, Dr. Rajesh Kambli and the Certificate is at Exh.17. According to P.W.4, Dr. Rajesh Kambli, P.W.1, Caetan D'Mello, had suffered 35% burn injuries. P.W.4, Dr. Rajesh Kambli, opined that the injuries were grievous.

3. P.W.1, Caetan D'Mello, in his evidence states that on 24th September, 1998, at about 10 p.m. after returning from answering the nature's call, the Accused had thrown hot cashew sap on his body. The cashew sap fell on his face, chest, stomach, back and hands as a result of which he suffered burn injuries. He went home and informed his father. On that night, he applied kerosene oil on his body and on the next day, he was examined by P.W.3, Dr. Dilip Cuncolienkar as boils had appeared wherever the sap had fallen. On that day, he was admitted in the Goa Medical College. In the cross-examination, he has admitted that he is not on good terms with the Accused for the last five years. In fact, he states that all the people from the ward are against him. He has also stated that his complaint was recorded in the Goa Medical College on 26th at 10.30 a.m. Certain minor omissions have been brought out in the cross-examination regarding his wearing half pant at the time of the incident. He has further admitted in the cross-examination that the distance from his house and the Police Station is hardly six kms.

4. P.W.4, Dr. Rajesh Kambli, has stated that P.W.1, Caetan D'Mello, was admitted with burn injuries. He had 35% burn injuries. In the cross-examination, it is admitted that he has not stated in the Certificate

Exh.17 that the patient had come with history of some hot corrosive liquid being poured on him.

5. P.W.5, Pandurang Sawant, A.S.I. has stated that on receiving the wireless message, he had rushed to the Goa Medical College and the doctor had informed him that P.W.1, Caetan D'Mello, was not in a fit condition to give his statement.

6. The prosecution case rests on the solitary testimony of P.W.1, Caetan D'Mello. On the basis of the solitary testimony of a witness as in this case, an injured witness, accused can be convicted provided the testimony is of a sterling quality and inspires the confidence of the Court. In the present case, the enemical relations between the Accused and the Complainant is admitted. In such circumstances, the Court ought to seek for some corroboration to the solitary testimony of P.W.1, Caetan D'Mello. P.W.1, Caetan D'Mello, admits to have informed his father about the incident. However, the statement of the father of P.W.1, Caetan D'Mello, was not recorded. Similarly, there is inordinate delay in the submission of the First Information Report. P.W.5, Pandurang Sawant, A.S.I. has stated that the doctor had informed that P.W.1, Caetano D'Mello, was not in a fit condition to give his statement. There is nothing on record to

suggest that P.W.1, Caetan D'Mello, was not in a fit condition to give his statement and at least this is not deposed to by P.W.4, Dr. Rajesh Kambli, when he had examined P.W.1, Caetan D'Mello, in the Goa Medical College. In the background of all these facts, the learned Trial Court has acquitted the Accused as he found solitary testimony of P.W.1, Caetan D'Mello be not reliable.

7. This is an Appeal against acquittal filed by the State. The appellate Court has undoubtedly the powers to re-appreciate the evidence. The view taken by the learned Trial Court, on appreciation of the evidence appears to be a possible view on the basis of the material on record. There is no perversity in the reasoning of the learned Trial Court warranting any interference in the Appeal against acquittal. In view of this, Criminal Appeal No.11 of 2003 is dismissed.

P. V. HARDAS, J.

RD.