

MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 434 OF 1996

THE STATE OF MAHARASHTRA) .. APPELLANT
(Org. Complainant)

VERSUS

BALU VITHOBA SHINDE)

r/o Indira Nagar Zopadpatti)

Solapur) .. RESPONDENT

Mr. Y. S. Shinde, APP

Mr. Ashok K. Lakhia. Advocate appoint for the respondent.

CORAM: SMT. RANJANA DESAI, J.DATE: OCTOBER 31, 2007.

ORAL JUDGMENT:

. Respondent (hereinafter referred to as "the accused") was tried in the Court of Judicial Magistrate First Class at Solapur in Regular Criminal Case No. 191 of 1995 for offences punishable under Sections 332, 353, 324 of the Indian Penal Code. By the impugned judgment and order the learned Magistrate acquitted the accused. Hence the State of Maharashtra has preferred this appeal.

2. The case of the prosecution as disclosed by PW 5 Jahangir Ibrahim Shaikh in his evidence is that at the relevant time he was posted in Sadar Bazar Police Chowky as Police Constable. The incident in question took place on 13/6/95. On that day he was on duty at the Civil Hospital Chowky from 9 p.m. to 9 a.m. According to him the incident in question took place at about 9 p.m. on the same day. He had gone to the civil hospital. He saw the accused beating his wife in the O.P.D. Ward. He intervened in their quarrel. Accused then bit his left arm with teeth. He also caught hold of his collar. The police constable who was present there intervened in the quarrel. He then went and lodged his complaint which was reduced into writing by H.C.M Patil. The said complaint is at Exhibit 15. On the basis of the complaint lodged by PW 5 investigation started and the accused came to be charged as aforesaid.

3. In support of its case the prosecution examined as many as seven witnesses. The star witness of the prosecution is PW 5 Jahangir Shaikh, the complainant. The prosecution also examined the wife of the accused PW 1 Subhadra. PW 4 Dr. Ashok

Billappa Borde gave evidence about the injuries sustained by PW 5 Jahangir Shaikh. Details of investigation were given by PW 7 PSI Dastagir Appalal Mulani.

4. The accused pleaded not guilty to the charge. His defence was of total denial. He claimed to be tried.

5. After perusing the evidence on record the learned Magistrate acquitted the accused as aforesaid and hence this appeal.

6. I have heard Mr. Shinde, learned APP in support of the appeal. He submitted that the learned Magistrate erred in acquitting the accused. According to learned APP the evidence of PW 5 Jahangir Shaikh is cogent and reliable and it is supported by the evidence of PW 4 Dr. Borde. Learned APP urged that in the circumstances, the impugned judgment and order be set aside and the accused be convicted in accordance with law.

7. Mr. Lakhia, learned advocate appointed by this court to assist the court strenuously contended that the impugned judgment and order cannot be

characterised as perverse. He submitted that it is a well reasoned order. Learned counsel urged that most of the prosecution witnesses having not supported the prosecution case, no reliance can be placed on the interested evidence of police witnesses. He contended that the view taken by the trial court is a reasonably possible view and hence this court should not interfere with it. He urged that the appeal be dismissed.

8. PW 1 Subhadra Shinde is the wife of the accused. The incident is said to have taken place in her presence. However, she has turned hostile. According to the prosecution the daughter of the accused had received burn injuries. She was admitted in civil hospital. PW 2 Shri Sharanabasappa Tarapure is the Special Executive Magistrate. He was at the relevant time present in the civil hospital for recording statement of the daughter of the accused. He was examined by the prosecution to support its case that the accused bit the left arm of Jahangir Shaikh PC with his teeth. However he has also not supported the prosecution case.

9. The prosecution can, therefore, only try to

take support from the evidence of PW 3 PC Shantaram Vahamare and PW 6 Udaykumar Mishra to lend corroboration to the interested evidence of PC Jahangir Shaikh. PW 3 Vahamare being a police constable, it is risky to place total reliance on his evidence because he is bound to support the prosecution case. Independent corroboration, therefore, is necessary.

10. PW 6 Udaykumar Mishra is a labourer. No doubt he has stated that he had seen the accused biting the arm of PC Jahangir Shaikh with his teeth but he appears to be a chance witness. There is no reason as to why he should be present at the hospital at that time. I find it difficult to place implicit reliance on his evidence. No doubt PW 4 Dr. Borde's evidence suggests that PW 5 Jahangir Shaikh had received an injury on his left arm. Certificate issued by Dr. Borde is also on record but it is not possible to hold on the basis of the evidence adduced by the prosecution that this injury was caused by the accused. Certificate Exhibit-13 does not indicate history of bite injury. It states that injury could be caused by hard and blunt weapon.

11. PW 7 PSI Dastagir Mulani has in his cross-examination stated that the incident in question took place prior to PW 5 Jahangir Shaikh joined the duty. If that is so even if it is assumed that the prosecution story is correct, offences under Section 332 and 353 are not made out. It can be argued that PC Shaikh has no reason to involve any innocent person as his assailant. But then in the absence of cogent and independent corroborative evidence the accused cannot be convicted on his evidence.

12. It also cannot be forgotten that this is an appeal against an order of acquittal. It is well settled by catena of judgments that if the view taken by the trial court is a reasonably possible view, the High Court should not interfere with it merely because some other view is possible. Keeping this well established principle in mind, I am of the opinion that the impugned judgment and order merits no interference because the view taken by the trial court is a reasonably possible view. Hence the appeal is dismissed.

13. The respondent is served, however, he has not engaged any lawyer. In the circumstances, I

appointed Shri Ashok K. Lakhia, Advocate to assist me in the matter. He has accordingly assisted me. Therefore, the Secretary, High Court, Legal Services Committee is directed to pay fees quantified at Rs.1,000/- to him.

JUDGE

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BALU VITHOBA SHINDE .. RESPONDENT

Mr. Y. S. Shinde, APP

Mr. Ashok K. Lakhia. Advocate appoint for the respondent.

CORAM: SMT. RANJANA DESAI, J.

DATE: OCTOBER 31, 2007.

OPERATIVE PART OF THE ORDER

. For the reasons stated in the oral judgment,
this court has dismissed the appeal.

JUDGE.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL No. 434 OF 1996

DATE OF DECISION: 31/10/2007

Submitted for
approval.

THE HON'BLE (SMT.) JUSTICE RANJANA DESAI:

THE HON'BLE SHRI JUSTICE :

1. Whether Reporters of Local Papers)
be allowed to see the Judgment?)

2. To be referred to the Reporters or)
not?)
3. Whether Their Lordships wish to)
see the fair copy of the Judgment?)
4. Whether this case involves a)
substantial question of law as to)
the interpretation of the)
Constitution of India, 1950 or any)
Order made thereunder?)
5. Whether it is to be circulated to)
the Civil Judges?)
6. Whether the case involves an impor-)
tant question of law and whether)
a copy of the judgment should be)
sent to Nagpur, Aurangabad and Goa)
Offices?)