
(1984) 01 BOM CK 0015

In the Bombay High Court

Case No : Criminal Appeal No. 615 of 1981

Ayodhyabai Krishna Gaikwad

APPELLANT

Vs

Gokul Anna Deokar and others

RESPONDENT

Date of Decision : 30-01-1984

Acts Referred:

Penal Code, 1860 (IPC) — Section 232, 323, 34, 342, 504

Citation : (1984) 1 BomCR 466

Hon'ble Judges : Khandekar, J

Bench : Single Bench

Judgement

1. This is an appeal by the original complainant against the order of acquittal recorded by the learned Judicial Magistrate, First Class, Paranda, in Criminal Case No. 303 of 1979 in respect of offences under sections 323, 342 and 504 read with S. 34 of the I.P.C. decided on 31st October 1980.

2. The case of the complainant Ayodhyabai in the lower Court was that on 2nd August 1979 at about 5.30 p.m. in front of the temple in village Sakat Khurd, taluka Paranda, district Osmanabad, she found her daughter named Yeshoda, a school-going girl, weeping and so, she asked her why she was weeping. Yeshoda replied to her that she was beaten by accused No. 2 Somanath. She alleged that all the accused came to the spot with sticks in their hands and they started abusing her. Accused No. 2 gave a blow of spade on her head, while accused No. 1 pelted a stone on the left side her back. Accused No. 2 also gave a spade blow on the right arm pit and on the upper side of thigh and due to this assault, she sustained injuries. Her husband Krishna (P.W. No. 2) came to the spot at that time and he was also assaulted by accused No. 4. On 8th August 1979, the complainant lodged complaint at the police station and she was referred to the medical officer. Dr. Kokne (P.W. No. 3) found four injuries on her person. As the police did not take any action on her complaint, she filed a private complaint in the trial Court against all the seven accused for offences under sections 342, 232 and 504 read with S. 34 of the I.P.C.

3. The learned Magistrate explained particulars of offences mentioned above to all the seven accused, who pleaded not guilty. The complainant examined five witnesses in all including herself before the learned Magistrate and on considering their evidence, he found the complainant had failed to establish any of the charges against the accused. Eventually, by order dt. 30th October 1980, he acquitted all the accused in respect of the three offences mentioned above. Feeling dissatisfied, the complainant has filed this appeal.

4. Shri Vivek Bhavthankar, learned Advocate for the Appellant, took me through the evidence of the alleged eye-witnesses and the medical evidence and canvassed before me that there was enough material on record on which conviction of the respondents could be based. He thus characterised the view of the learned Magistrate as perverse and unreasonable. Shri A. M. Dabir, learned Additional Public Prosecutor, supported the impugned order of acquittal drawing my attention to important discrepancies appearing in the evidence to the witnesses.

5. I have already referred to the case made out by the appellant in her complaint in para 2 above. In her evidence, however, she deposed that accused No. 1 Gokul gave a blow of stone at a distance of four to five feet without disclosing the venue of assault. She also stated that accused No. 2 gave a blow with the handle of spade on her thigh and back. Her husband then came near them on hearing her shouts and accused No. 4 lifted him and threw him on the ground, while accused No. 3 gave a stone blow to him. She also stated that all the seven accused were standing in front of her house with stones in their hands. The medical evidence shows that four injuries were found on the person of the complainant and even if we accept the evidence of the complainant at its face value it does not explain all the injuries found on her person. It is her say that the police came to her house on next day and till then, she was not allowed to move out of her house, but there is no evidence to show that she made attempt to move out of her house when the accused were there and they really obstructed her. There is also no statement of Krishna (P.W. No. 2) to that effect. Consequently, charges under S. 342 of the Code falls to the ground.

6. As regards offence under S. 323, the husband has given a different version altogether. There is no medical evidence to show that any injuries were sustained by Krishna although he has referred to injuries in his deposition. He himself poses to be an eye-witness to the incident of assault on his wife, but his cross-examination shows that he reached the spot after the assault on his wife was over. Consequently, he cannot be an eye-witness to the incident.

7. One more witness has been examined by the complainant and he was Vithoba (P.W. No. 5), who was the Kotwal of the village. He made a vague statement that accused Nos. 1 and 2 beat the complainant without even disclosing the weapon of assault as well as the venue of assault. This was the state of evidence and the learned Magistrate was correct in rejecting the evidence.

8. In appeals against acquittal, this court has no jurisdiction to interfere with the order of acquittal unless the finding given by the lower courts is perverse or unreasonable. In my view, the finding reached by the learned Magistrate in this case is perfectly justified by the material on record and consequently, I find no substance in this appeal.

9. In the result, the appeal is dismissed and the order of acquittal recorded by the learned Magistrate in Criminal Case No. 303 of 1979 on 30-10-1980 is hereby confirmed.

10. Appeal dismissed.