
(1981) 09 BOM CK 0062
In the Bombay High Court
Case No : Criminal Appeal No. 472 of 1979

Shantaram Zunjarkar

APPELLANT

Vs

Rambhau Udawant and Others

RESPONDENT

Date of Decision : 25-09-1981

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 427, 448

Citation : (1982) 2 BomCR 29

Hon'ble Judges : M.P. Kanade, J

Bench : Single Bench

Advocate : A.H. Vaishnav, for the Appellant; S.K. Kadam Advocate for R.M. Agarwal, for respondent Nos. 1 to 5, S.S. Choudhary, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Kanade, J.—This appeal by the original complainant is directed against an order of acquittal passed by the learned Additional Sessions Judge, Aurangabad, dated November 24, 1978.

2. The complainant alleged that one Digambar who was a tenant in the house owned by him in Fakarwadi at Aurangabad. Digambar was in arrears of rent and, therefore, a suit for recovery of arrears of rent was instituted which was subsequently dismissed. An appeal against that decree of dismissal was filed which also came to be dismissed. It is the complainant's case that during the pendency of the said appeal, the said tenant Digambar without any intimation to the complainant left the house and respondents Nos. 1 to 5 in this appeal entered in the house and committed a trespass and caused damage to the property and it is, therefore, a complaint came to be filed on June 10, 1977, being Summary Case No. 4302 of 1977. A charge against the accused was framed under sections 448 and 427 read with section 34 of the Indian Penal Code. The accused denied the charge. Their defence was that they were already residing in the house along with Digambar.

3. The learned Judicial Magistrate, First Class, Aurangabad, by judgment and order dated June 30, 1978, convicted all the accused for the offence punishable under sections 448 and 427 read with section 34 of the Indian Penal Code. Accused Nos. 3 to 5 were released on due admonitions and accused Nos. 1 and 2 were sentenced to pay a fine of Rs. 500/- each for the offence punishable u/s 448 of the Indian Penal Code and they were also sentenced to pay a fine of Rs. 200/- each for the offence punishable u/s 427 of the Indian Penal Code, in default of the payment of fine on each count, the accused were ordered to suffer rigorous imprisonment for 15 days. A further direction was passed by the learned Magistrate that out of the fine that would be recovered, Rs. 500/- be paid to the complainant in token of the damages suffered by him. Against that order of conviction and sentence passed by the learned Magistrate, as stated above, an appeal came to be filed before the learned Additional Sessions Judge, Aurangabad.

4. The learned Additional Sessions Judge, Aurangabad, heard the appeal and by judgment and order dated November 24, 1978 set aside the order of conviction and sentence passed by the learned Magistrate and acquitted the accused of the charge levelled against them. The said order of acquittal is challenged in this appeal.

5. Mr. A.H. Vaishnav, learned Counsel appearing in support of the appeal, contended that the learned Additional Sessions Judge has not properly appreciated the evidence on the record and recorded an incorrect finding. It is further urged that the defence of the accused that they were joint tenants along with Digambar has not been established by the accused by leading any cogent and reliable evidence. Lastly, it is submitted that the observations made by the learned Additional Sessions Judge as to the delay in filing the complaint is not justified by the evidence on the record.

6. There is no substance in each and every contention raised by Mr. Vaishnav. There is a delay of nearly 8 to 9 months in filing the complaint against the accused persons. The case of the complainant was that Digambar voluntarily left the house and the accused entered in the said house and, therefore, they were liable to be convicted and sentenced under sections 448 and 427 read with section 34 of the Indian Penal Code. The learned Additional Sessions Judge has observed that the complainant has not given satisfactory explanation for having filed the complaint after more than 8 or 9 months. The delay has not been properly explained. If the delay is not explained, such a complaint suffers from a number of infirmities. It is observed by the Supreme Court in *Thulia Kali Vs. The State of Tamil Nadu*, as follows :

"Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay the report not only gets bereft of the advantage of spontaneity danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the

lodging of the first information report should be satisfactorily explained."

In the present case, the complainant has miserably failed to give a satisfactory explanation and it is on that count the appeal deserves to be dismissed.

7. There is one more difficulty in the way of Mr. Vaishnav in order to succeed in this appeal. Admittedly, one Digambar was a tenant in the house owned by the complainant. His tenancy is not terminated by the complainant or any proceedings for eviction have been started against him. Even assuming that the accused persons are not joint tenants with Digambar and still they live in the said premises, I am unable to understand as to how the accused can be said to have committed an offence under sections 448 and 427 read with section 34 of the Indian Penal Code. At the Bar Mr. Vaishnav stated that no proceedings for eviction have been taken against Digambar and the present complaint is filed only against the persons who are now in possession of the said premises. Unless an order of eviction is obtained against Digambar by the complainant and he obtains possession of the said premises, it is not possible to convict the accused u/s 448 of the Indian Penal Code. In my judgment, the learned Additional Sessions Judge has rightly held that the complainant has failed to establish the case against the accused and accordingly rightly acquitted him. This being an appeal against the order of acquittal, it is not permissible to this Court to reverse the said order of acquittal merely on the ground of credibility of the witnesses. It is, therefore, this appeal must fail.

8. In the result, the appeal fails and the same is dismissed. The order of acquittal passed by the learned Additional Sessions Judge, Aurangabad, in Criminal Appeal No. 51 of 1971 is hereby confirmed.