

(2022) 01 BOM CK 0006
In the Bombay High Court
Case No : Criminal Appeal No. 133 Of 2003

State Of Maharashtra

APPELLANT

Vs

Singarasingh Sarvansingh And Others

RESPONDENT

Date of Decision : 07-01-2022

Acts Referred:

Indian Penal Code, 1860 — Section 114, 324, 326

Citation : (2022) 01 BOM CK 0006

Hon'ble Judges : S. S. Shinde, J;N. R. Borkar, J

Bench : Division Bench

Advocate : Y. M. Nakhwa

Final Decision : Dismissed

Judgement

N. R. Borkar, J

1. This appeal takes an exception to the judgment and order dated 10th April, 2002, passed by the learned Metropolitan Magistrate, 10th Court,

Andheri, Mumbai, in Criminal Case No. 1747 / P / 1990.

2. By the impugned judgment and order, the Respondent Nos. 1 to 4, who were Accused Nos. 1 to 4 respectively before the trial Court, have been

acquitted for the offences punishable under Sections 326, 324 read with 114 of Indian Penal Code.

3. It is the case of the prosecution that on 27th April, 1990 at 3:00 p.m. the present respondents/accused assaulted (P.W.1) Devendrapal Kohli and his

father (P.W. 2) Suchasingh Kohli by iron rod, hammer and caused grievous hurt to them. At the relevant time, the parties were residing in one of the

same apartment i.e. Shere Panjab, at Andheri (E) Mumbai. The relations between the parties were strained as the accused were opposing the

construction which P.W. 1 and P.W. 2 were making on the third floor of the said apartment. According to the P.W. 2, on the date of incident, the

accused asked him to stop the construction work. As he declined to stop the construction, the present respondent / accused assaulted them.

4. The accused after filing the charge-sheet were tried for the offences punishable under Sections 326, 324 and 114 of Indian Penal Code. As stated

earlier by the impugned judgment and order, the trial Court acquitted them of the said offence.

5. We have heard the learned APP for the Appellant-State. None appeared for the Respondent Nos. 1 to 4.

6. The learned APP for the Appellant-State submits that the trial Court has discarded the evidence of P.W. 1 and P.W. 2 for no valid reasons. It is

submitted that the trial Court has observed that medical evidence is inconsistent with the oral evidence. It is submitted that the trial Court has,

however, lost sight of the fact that the medical evidence is only corroborative evidence and in case of inconsistency oral evidence prevails over the

medical evidence. It is submitted that the trial Court was thus not justified in acquitting the accused.

7. We have perused the evidence on record. According to P.W. 1, he was assaulted by iron rod on his forehead above left eye. He has further stated

that, when his brother Ravindrapal Singh came to his rescue, the Accused No.4 assaulted him by hammer. He has further stated that the accused

assaulted him and his father (P.W. 2) by means of an iron rod, fist and kick blows. In the cross-examination P.W. 1 has admitted that B.M.C. has fled

prosecution against them for making unauthorised construction on the third floor of the apartment.

He has further admitted that the Accused No. 1 has fled criminal case against them alleging that, they assaulted him.

8. P.W. 2 has stated in his evidence that on the day of incident, Accused No. 4 assaulted his son Ravindrapal Singh by hammer. He has further stated

that the Accused Nos. 2 and 3 assaulted him by fist and kick blows. He has further stated that the Accused No. 1 assaulted his son Devendrapal

Singh Kohli (P.W. 1) by iron rod on his forehead and neck.

9. The trial Court discarded the evidence of P.W. 1 and P.W. 2 on the ground that, it is inconsistent with the medical evidence. The trial Court has

further held that in view of the strained relations between the parties, it would not be safe to rely upon the testimony of P.W. 1 and P.W. 2 in the absence of any independent witness to the incident.

10. With a view to test the correctness of the finding of the trial Court, we have examined the medical evidence on record. According to P.W. 3 Dr.

Ramesh N. Dayawarkonda, on 27th April, 1990 (P.W. 2) Suchasingh Kohali was brought to the hospital by the Police Constable of M.I.D.C Police

Station for medical examination. On examination he found that there were no external injuries on his person. According to P.W. 1, the accused

assaulted him and his father (P.W. 2) by iron rod and fist and kick blows, then it is unlikely that P.W. 2 would not sustain any external injury. Similar is

the situation with P.W. 1. According to Dr. Manish M. Divekar, the P.W. 1 Devendrapal Kohli was brought to his hospital on 27th April, 1990. He

examined P.W. 1 and found following injuries on his person:

i) Swelling on forehead 2 x 2 in size.

ii) C.L.W. over the left eyebrow $\hat{A}\frac{1}{2} \times \hat{A}\frac{1}{2}$ c.m. subcutaneous deep.

According to P.W. 1, he was assaulted by iron rod and hammer. In case of assault by four persons that too by iron rod and hammer, it is unlikely that

P.W. 1 would sustain only one C.L.W.

11. Considering the overall facts and circumstances of the case, the view taken by the trial Court cannot be said to be perverse. No interference is

thus called for in the impugned judgment and order.

ORDER

The appeal is dismissed.