

(1967) 01 GAU CK 0003**Gauhati High Court (Imphal Bench)****Case No:** None

Harilal Teli APPELLANT

Vs

Chaturi Teli and Another RESPONDENT

Date of Decision: Jan. 28, 1967**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 323

Citation: (1968) CriLJ 184**Hon'ble Judges:** C. Jagannadhacharyulu, J.C.**Bench:** Single Bench**Judgement**

C. Jagannadhacharyulu, J.C.

1. This is an appeal filed u/s 417(3) Cr.P.C. by the complainant in Criminal case 4 of 1964 on the file of the Magistrate First Class-II, Imphal against the judgment of the Additional Sessions Judge, Manipur in Criminal Appeal 23/21 of 1965 allowing the appeal and acquitting the respondent of the offence u/s 323 I.P.C.

2. The case of the appellant-complainant, P.W. 6 (Hiralal Teli) of Telipati, Imphal, is that at about 9-30 p.m. on 16.10.1964 when he was returning home after witnessing Durgapuiah, accompanied by P.Ws. 1, 2 and 3 (Ramananda Teli, Mangalal Teli and Chirkut Teli) the respondent waylaid P.W. 6 (Hiralal Teli) near the gate of the house of the respondent and beat him with a shoe and stone causing injuries. It is his further case that he made an oral complaint to the Officer-in-Charge of the Police Station in the same night, that the Police Officer came to the scene of offence, but that he could not find the respondent, that he directed P.W. 6 (Hiralal Teli) to file a written complaint, that P.W. 6 (Hiralal Teli) filed Ext. A/1 (complaint petition) written by P.W. 4 (Tensubam Yaima Singh) before the Police, that the latter sent P.W. 6 (Hiralal Teli) to the Civil Hospital in Imphal for treatment and that P.W. 5 (Dr. Toyaima Singh) examined P.W. 6 (Hiralal Teli), the complainant on 17.10.1964 and issued Ext. A/2 (wound certificate) mentioning that he found one bruise 4" ♦ 2" on

the back of the left shoulder of P. W. 6 (Hiralal Teli). Then, the case of P.W. 6 (Hiralal Teli) is that the Police directed him to seek redress in the criminal court as he sustained only a simple injury and that, accordingly, P.W. 6 (Hiralal Teli) filed the complaint petition in the Magistrate's Court on 21.10.1964.

3. The Magistrate framed a charge against the respondent u/s 323 I.P.C. after recording the evidence. The complainant examined the eye witnesses Ramananda Teli, Mangalal Teli, and Chirkut Teli as P.Ws. 1, 2 and 3. the scribe of Ext. A/1 as P.W. 4, the medical officer, who examined P.W. 6 (Hiralal Teli) and issued Ext. A/2-(wound-certificate) as P.W. 5 and himself as P.W. 6. The Magistrate held that the charge framed against the respondent u/s 323 I.P.C. was established beyond all reasonable doubt. So, he found him guilty u/s 323 I.P.C. convicted him thereunder and sentenced him to undergo rigorous imprisonment for 6 months.

4. The respondent carried the matter in appeal to the Sessions Court which was disposed of by the Additional Sessions Judge, Manipur in Criminal Appeal 23/21 of 1965. He held firstly that there was no proper examination of the respondent u/s 342 Cr.P.C. Secondly, he held that the magistrate did not mention in the operative portion of his judgment that he convicted the respondent and that the omission of the word "convicted" is not curable by Section 537 Cr.P.C. Thirdly, he held that the evidence was not free from doubt, Fourthly, he held that Ext. A/1 was not "affirmed" before the Court by the Police Officer. So, he allowed the appeal and set aside the-conviction of the respondent and acquitted him.

5. P.W. 6 (Hiralal Teli). the complainant filed the present appeal u/s 417(3) Cr.P.C. with the leave of this Court.

6. The first ground, on which the learned Additional Sessions Judge based his judgment of acquittal, is that, as seen from the statement of the respondent recorded u/s 342 Cr.P.C. the Magistrate put the evidence of P.Ws. 1, 2, 3 and 6 (Ramananda Teli, Mangalal Teli, Chirkut Teli and Hiralal Teli) in one composite question. But, the case is a simple one. The Magistrate stated in the question that P.Ws. 1, 2, 3 and 6 (Ramananda Teli, Mangalal Teli, Chirkut Teli and Hiralal Teli) deposed that the respondent waylaid P.W. 6 (Hiralal Teli) near his gate and assaulted him with a shoe and stone causing injury on the person of P.W. 6 (Hiralal Teli) and asked the respondent what he would say. The respondent understood the question and denied the truth of their evidence in the answer to the next question, the respondent stated that P.Ws. 1, 2, 3 and 6 (Ramananda Teli, Mangalal Teli, Chirkut Teli and Hiralal Teli) were living for rent together (in a house) and that there was previous enmity between him and them.

The Additional Sessions Judge commented that the evidence of P. W. 5 (Medical Officer) was not put to the respondent and that the Magistrate did not ask the respondent about the alarm raised by P.W. 6 (Hiralal Teli) at the time of the incident. The failure of the Magistrate to put these two circumstances to the respondent did

not prejudice him at all. He understood the evidence and denied the entire case. In Bijoy Chand Potra Vs. The State, it was held that it is not sufficient for the accused to show merely that he has not been fully examined as required by Section 342 Cr.P.C. but that he must also show that such examination materially prejudiced him. In Zwinglee Ariel Vs. State of Madhya Pradesh, it was held that the circumstances appearing against an accused should not be considered unless opportunity is given to the accused to explain them in his examination u/s 342 Cr.P.C. In the present case, the respondent was given opportunity to explain the incriminating evidence of P.Ws. 1, 2, 3 and 6 (Ramananda Teli, Mangalal Teli, Chirkut Teli and Hiralal Teli) against him. The evidence of P.W 5 (Dr. Toyaima Singh) is only circumstantial and corroborative of the direct evidence of P. Ws. 1, 2, 3 and 6 (Ramananda Teli, Mangalal Teli, Chirkut Teli and Hiralal Teli). So, I do not think that the respondent was, in any way, prejudiced by the failure on the part of the Magistrate to put the evidence of P.W. 5 (Dr. Toyaima Singh) to him, though he should have put it to him.

7. The second ground on which the lower appellate Court set aside the judgment of the Magistrate is that the Magistrate did not mention in the operative portion of his judgment that he convicted the respondent. There is no substance in this reasoning of the lower court. The Magistrate stated in para 4 of his judgment that he found the respondent guilty of the offence u/s 323 IPC and sentenced him to undergo rigorous imprisonment for 6 months. His judgment is in conformity with Section 245(2) and Section 258(2) Cr.P.C. So, no valid objection can be taken to the judgment of the Magistrate on this score,

8. The third ground on which the lower appellate Court set aside the judgment of the lower Court is that P.Ws. 1, 2, 3 and 6 (Ramananda Teli, Mangalal Teli, Chirkut Teli and Hiralal Teli) could not state what dress was worn by the respondent, that while the respondent was alone, P.Ws. 1, 2, 3 and 6 (Ramananda Teli, Mangalal Teli, Chirkut Teli and Hiralal Teli) were four in number, but that they did not make any attempt to overpower the respondent and that on account of enmity between P.W. 6 (Hiralal Teli) and the respondent, the case of P.W. 6 became doubtful. The occurrence took place at about 9-30 P. M. The consistent evidence of P.Ws. 1, 2, 3 and 6 (Ramananda Teli, Mangalal Teli, Chirkut Teli and Hiralal Teli) is that they were all coming together after attending Durga Pujah, that P.Ws. 1, 2, and 3 (Ramanand Teli, Mangalal Teli and Chirkut Teli) were ahead of P.W. 6 (Hiralal Teli) by a few feet, that they saw the respondent standing near the fate of his house, that the respondent beat P. W. 6 (Hiralal Teli) with a shoe and a stone, that the latter raised hue and cry, that P.Ws. 1, 2 and 3 (Ramananda Teli, Mangalal Teli and Chirkut Teli) saw the respondent beating him and that the respondent ran away.

Their evidence shows that immediately after the occurrence an oral complaint was made by P.W. 6 (Hiralal Teli) to the police that a Police Officer came to the scene of offence but that the respondent could not be traced. As P.Ws. 1, 2 and 3 (Ramanand Teli, Mangalal Teli and Chirkut Teli) are the co-villagers of the respondent and as

their houses are near his, there is nothing improbable in the evidence of P.Ws. 1, 2 and 3 (Ramanand Teli, Mangalal Teli and Chirkut Teli) that they identified the respondent when he beat P.W. 6 (Hiralal Teli). The fact that they were not able to state what exactly the dress worn by the respondent was, does not militate against their evidence. The evidence of P.W. 1 (Ramananda Teli) was not, in any way, shaken. No suggestion was made to show that there is any enmity between the respondent and P.W. 1 (Ramananda Teli), though P.Ws. 2 and 3 (Mangalal Teli and Chirkut Teli) admitted in their further cross-examination that some case was filed by the respondent against them.

P. W. 1 (Ramananda Teli) is an independent witness. The evidence of P.Ws. 1, 2 and 3 (Ramananda Teli, Mangalal Teli and Chirkut Teli) shows that by the time they came near P.W. 6 (Hiralal Teli), the respondent ran away. So, there was no question of superiority in strength of the party of P.Ws. 1, 2, 3 and 6 (Ramananda Teli, Mangalal Teli, Chirkut Teli and Hiralal Teli). The learned Additional Sessions Judge also made a comment that there was no necessity for P.W. 6 (Hiralal Teli) to raise any alarm, as he had three friends with him and as he could not expect anybody residing in the locality to come to his rescue. This observation of the Sessions Judge is against human conduct and probabilities. For, it is but natural that P.W. 6 (Hiralal Teli) would have raised alarm when he was attacked by the respondent. He would not have kept mum, when he was attacked. The reasons given by the Additional Sessions Judge for disbelieving P.Ws. 1, 2, 3 and 6 (Ramananda Teli, Mangalal Teli, Chirkut Teli and Hiralal Teli) are not convincing. On the other hand, the Magistrate, who had the opportunity to see the witnesses gave good reasons for believing their evidence.

9. The fourth ground on which the Additional Sessions Judge allowed the appeal is that Ext. A/1 was not "affirmed" before the Court by the police officer, who received it. There is no meaning in this statement. The learned Counsel for the respondent did not support the judgment of the lower Court on the alleged laches on the part of the Police Officer in not getting Ex. A/1 "affirmed" by the court.

10. The contention of the learned Counsel for the respondent is that the appeal is not maintainable as the appellant was not a party to Criminal Appeal 23/21 of 1965 and that, if this appeal is to be deemed to be a revision petition, then the revisional jurisdiction should not be exercised by this Court unless there is some glaring defect in the procedure or manifest error on the part of the lower court and consequent flagrant miscarriage of justice. In support of his contention that a High Court should not interfere with a judgment of acquittal except under the circumstances mentioned by him, he relied on [K. Chinnaswamy Reddy Vs. State of Andhra Pradesh](#), He further argued that, even if an appeal lies, there must be strong and compelling reasons for interference in view of the fact that the acquittal of the respondent by the lower appellate court raises a presumption of innocence and relied on [Wilayat Khan v. State Of Uttar Pradesh AIR 1963 SC 122](#) , [Tulsiram Kanu Vs. The State](#) , [Bansidhar Mohanty Vs. State of Orissa](#) , [Aher Raja Khima Vs. The State of](#)

Saurashtra, Prasannachary v. Chikkapinachari AIR 1959 Mys 106 and Sanwat Singh and Others Vs. State of Rajasthan,

11. The complaint-petition was filed by P.W. 6 (Hiralal Teli) before the Magistrate. But, after conviction the respondent herein did not add P.W. 6 (Hiralal Teli) as a respondent in his Criminal Appeal 23/21 of 1965. He added the Union Territory of Manipur as the respondent. As the lower appellate Court allowed the appeal and acquitted the respondent, P.W. 6 (Hiralal Teli) filed this appeal u/s 417(3) Cr.P.C. after obtaining the leave of this Court. So, even though he was not a party to the appeal in the lower appellate court, he was entitled to file this appeal, as he was the complainant before the Magistrate, with the leave of this Court. The appeal is maintainable u/s 417(3) Cr.P.C.

12. With regard to the power of this Court to interfere in this appeal against the judgment of acquittal, it has to be noted that the reasons given by the Additional Sessions Judge for allowing the appeal are not convincing. The grounds mentioned by him for coming to a different conclusion from that of the Magistrate, who tried the case and who had the opportunity of observing the demeanour of the witnesses, are not sound. As the Courts below came to different conclusions, the principle that unless: there are compelling reasons the High Court should not interfere does not apply. This Court can scrutinize the evidence as in the case of an appeal against conviction. As such, the judgment of the lower appellate Court is liable to be set aside.

13. In the result, the appeal is allowed and the judgment of the lower appellate Court is set aside and that of the Magistrate is restored.