

Bombay High Court

The State Of Maharashtra vs Vijay Vasudeo Dhuri & Ors on 29 June, 2017

Bench: N.M. Jamdar

1

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 464 OF 2003

The State of Maharashtra. ... Appellant.

V/s.

1. Vijay Vasudeo Dhuri,
Age about : 37 yrs.
2. Satish Vasudeo Dhuri,
Age about : 28 yrs.
3. Ganpat Vasudeo Dhuri,
Age about : 40 yrs.
4. Raghunath Narayan Dhuri,
Age about : 82 yrs.
5. Anil Raghunath Dhuri,
Age about : 30 yrs.
6. Smt, Rajashri Vidyadhar Parab,
Age about : 40 yrs.
7. Smt. Mangala Vasudeo Dhuri,
Age about : 30 yrs.

All R/a. Pinguli-Dewoolwadi,
Tal. Kudal, Dist. Sindhudurg.

... Respondents.

Mr. S.V. Gavand, Asstt. Public Prosecutor for the Appellant.

None for the Respondents.

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CORAM : N.M. JAMDAR, J.

DATE : JUNE 29, 2017.

ORAL JUDGMENT :-

By this Appeal, the State of Maharashtra has challenged the Judgment and Order passed by the Judicial Magistrate, First Class, Kudal dated 23 October 2002 in Regular Criminal Case No. 71 of 2000, acquitting the Respondents - accused of the offences punishable under Section 379 r/w. 34 of the Indian Penal Code.

2. The complainant was a resident of Village Pinguli and in possession of land bearing Survey No.224, Hissa No.1 and Survey No. 221, Hissa No.5. According to the prosecution, on 8 August 2000, the accused entered the land in possession of the complainant and committed theft of cement poles and barbed iron wire. A complaint was lodged. P.R. No. 91 of 2000 was registered and after investigation the charge-sheet was filed. The learned Magistrate framed charge and the case was tried. The prosecution examined six witnesses and placed documentary evidence on record. The learned Magistrate, after considering the evidence, held that there was no satisfactory and cogent evidence to hold the Respondents - accused guilty of the offence charged and in view of admitted enmity between the parties, the case of the complainant and his interested witnesses could not be believed.

3 237. APEAL 464.03.doc

3. Heard Mr. Gavand, the learned Asst. Public Prosecutor for the State. None appears for the Respondents.

4. The complainant and the Respondent - accused owned lands neighboring to each other. A Regular Civil Suit No. 109 of 1997 was pending between the parties. The relations between the complainant and the accused were inimical. The witnesses that were examined by the prosecution were close relations of the complainant. In view of the close relations of the witnesses and the admitted animosity between the complainant and the accused, the learned Magistrate rightly considered the evidence with due care.

5. The complainant himself did not witness the event of theft but PW-4 Draupadi stated to have witnessed the incident of theft. She stated so in her evidence but she was confronted with her statement wherein she has not mentioned that she saw accused persons while taking cement poles and iron wire. PW-3 Hanumant stated that cement poles were in unbroken condition while in the charge-sheet it was indicated that the poles were in broken condition while the panch recorded the poles were damaged. The panch witness also gave a different version regarding the existence of the poles. If the cement poles were being stolen by uprooting, then there ought to have been ditch in the ground, it was not stated so. Even the Investigating Officer gave incorrect dates of filing a complaint. Keeping aside the evidence of these interested witnesses, there was 4 237. APEAL 464.03.doc nothing satisfactory on record to show that the Respondent - accused entered the land and removed the cement poles and committed theft.

6. The appreciation of the evidence by the learned Magistrate keeping in mind the pending dispute between the parties and the near relation of the witnesses is correct and proper and he has rightly

extended benefit of doubt to the Respondent - accused. There is no perversity in the approach of the learned Magistrate. No case is made out to reverse the order of acquittal. The Appeal is dismissed.

(N.M. JAMDAR, J.)