

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1592 OF 2015
IN CRIMINAL APEAL/533/2002
DYANDEO TUKARAM TAMBE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA & ANR

...

Advocate for Applicants : Mr. Shivraj B. Kadu
Mrs. S.D. Shelke, AGP for respondent No.1.
Mr. S.S. Mundhe, Advocate for respondent No.2.
WITH
CRIMINAL APPEAL NO. 533 OF 2002

The State of Maharashtra
through City Police Station,
Shrirampur, Dist. Ahmednagar

APPELLANT.

versus

1] Karbhari Tukaram Tambe [since deceased appeal abated]

2] Ganpat Tukaram Tambe,

Age 47 years.

3] Dnyandeo Tukaram Tambe,
Age 33 years, All R/o. Ukkalgaon,
Tq. Shrirampur, Dist. Ahmednagar.

RESPONDENTS.

Mrs. S.D. Shelke, APP for the appellant.
Mr.S.B. Kadu, Advocate for respondent Nos. 2 and 3.

CORAM : M.T. JOSHI, J.
DATE : 30TH MARCH, 2015.

JUDGMENT :-

1] Heard both sides.

2] Since Non-bailable warrant was issued against

respondents/original accused, they have filed Criminal Application No. 1592 of 2015 for recall of the said order. By the very same application, they alongwith the complainant i.e. victim of the offence, namely, Kisan Dada Kamble are praying for disposal of the appeal also which is filed by the State, in view of the compromise arrived at between them.

3] Learned APP, however, opposed the said settlement.

4] During the pendency of the present appeal against acquittal respondent No.1- Karbhari Tukaram Tambe has died and, therefore, accepting the report dated 9th February, 2015, this Court has already directed abatement of the appeal as against the said respondent.

5] The respondent accused were prosecuted before the learned Judicial Magistrate First Class, Shrirampur for the offences punishable under Sections 147, 148, 325, 324 r/w. 149 of IPC. The prosecution case, in short, is as under :-

[a] That on 9th August, 1991 at about 7.00 a.m. the complainant Kisan Tambe received information from his nephew Sharad that water flow of the sugarcane was diverted. Therefore, his son Raosaheb went there to choke up the water canal. At that time, the accused were standing there holding weapons in their hands like khife, axe, stick, iron bar and Ruman (handle of plough). Thereafter, all the respondents started assaulting Raosaheb. The complainant also rushed to the spot and tried to intervene

and rescue Raosaheb. At that time, all the respondents also assaulted the complainant by the weapons in their hand.

[b] Thereafter, complainant's wife Gangubai and son Gokul also came there. They were also beaten by the accused. One Shiwaji Borde, Pandit Jadhav and Rajendra Kardile also came there and intervened. Ultimately, all the respondents went away while giving abuses and threatening to kill the complainant. Hence, the complaint was filed.

6] Routine investigations like visiting the spot, recording panchanama, sending the injured to the Medical Officer, recording the statement of eye witnesses and seizure of the articles took place. Before the JMFC, in all 7 witnesses were examined, including the complainant Kisan, his son PW-2 Raosaheb, PW-6 Gokul - another son of complainant, PW-5 Sunanda - daughter in law of the complainant, medical officer and panch witnesses.

7] Learned JMFC has taken into consideration the entire evidence. He found that while the Medical Officer found injuries like fracture, avulsion of teeth, small CLWS, linear bruise marks on his person, the evidence of PW-2 Raosaheb, however, does not corroborate the same. This witness has stated before the police that his lower tooth of right side were dislocated. However, he has not stated that his 5 teeth were dislocated. The learned JMFC has observed that so many contradictions and omissions in the prosecution evidence were brought on record, however, the prosecution did

not examine the Investigating Officer to prove the same. Therefore, the learned JMFC has observed that a very valuable right of the accused to bring on record these contradictions is infringed.

8] Further, delay in filing the FIR by 4 hours was taken into consideration. The defence of the accused was that there was previous inimity between the respondent and complainant as well as the prosecution witnesses on the issue of land, tree and way. In the circumstances, benefit of reasonable doubt was extended and the respondents were acquitted.

9] Learned APP submits that, the statements of the injured are corroborated by the injuries found on their person by the Medical Officer. As such, the learned JMFC ought to not to have given much weightage to the contradictions and omissions in their statement before the Court.

10] Upon perusal of the record, it is clear that the Investigating Officer was not examined by the prosecution. The contradictions and omissions in the statement made before the police and in the witness box, was a material fact to be taken into consideration. The prosecution case had flaw on merit as detailed supra. In the circumstances, as a reasonable and probable view has been taken by the learned Judicial Magistrate First Class, I pass the following order :-

[a] The appeal against acquittal is hereby dismissed.

[b] The order of the learned JMFC acquitting the respondent Nos. 2

and 3 for the offences punishable under Sections 147, 149, 323,504 and 506 of IPC is hereby confirmed.

[c] The appeal against acquittal as against respondent No.1 stands abated.

[d] The order issuing Non-bailable warrants against the applicants stands recalled. The civil application filed for recall of the said order is accordingly allowed and disposed of.

[M.T. JOSHI]
JUDGE.

grt/-