

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 555 OF 2002

The State of Maharashtra
through Santosh Namdeo Adhav,
Age 21 years, Occ. Teacher
R/o. Chinchkheda, Tq. Gangapur.
Dist. Aurangabad.

.. APPELLANT.

VERSUS

1] Ankush Nivrutti Tambe
Age 42 years, Occ. Nil (appeal abated since deceased)

2] Chandrakant s/o. Kakasaheb
Tambe, Age 22 years, Occ. Agril.

3] Ramdas s/o. Nivrutti Tambe,
Age 50 years, Occ. Agril.

4] Bandu s/o. Pundlik Tambe,
Age 30 years, Occ. Agril.

All r/o. Shahjatpur, Taluka Vaijapur
District Aurangabad.

... RESPONDENTS.

Mr. S.R. Palnitkar, APP for appellant.
Mr. V.R. Autade, Advocate for respondent Nos. 2,3 and 4.

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

PER COURT:

1] Aggrieved by the order of acquittal recorded in favour of the

respondent by the learned JMFC, from the offence punishable under Sections 323 and 504 r/w. 34 of IPC, the present appeal is preferred by the State.

2] During the pendency of the appeal, the original respondent No.1/accused No.1 has died and, therefore, the appeal is abated as against the said respondent.

3] The prosecution case, in short, is as under :-

The complainant PW-1 Santosh Adhav, during the relevant time, was working as Primary Teacher. On 27.9.2000, at about 9.00 a.m. while complainant Santosh and Head Master of the School PW-2 Dadaji Bacchav were in the play ground of the school, for conducting the prayer of the students, at that time, all the accused persons, i.e. present respondents came there. All of them accosted the complainant by questioning him, as to whether the school belongs to his father. Upon that, the complainant put a query, as to why on the previous day, they had opened the cupboard of the school. During verbal exchange of words they abused him, held his collar of his shirt and gave fist and blows. PW-2 Dadaji Bacchav intervened. In the meantime, PW-3 Rajendra and PW-6 Pralhad as well as other villagers came there. They also intervened. The complainant suffered injury to his lower jaw and, therefore, the complaint came to be filed.

PW-8 ASI, Shamrao Padme conducted the routine investigation including recording of statement, drawing spot panchahnama, collecting

injury certificate from PW-7 Medical officer Subhash Khillare and filed the charge sheet. Before the learned JMFC, in all 8 witnesses were examined, including, injured PW-1 Santosh, PW-2 Dadaji, the eye witnesses PW-3 Rajendra and PW-6 Pralhad. The learned JMFC, however, upon appreciation of evidence acquitted all the accused.

4] Learned APP took me through the evidence on record and submitted that the statement of complainant is not only corroborated by the eye witnesses, but even the injury certificate issued by Dr. Subhash Khillare supports the prosecution case. However, according to him, the learned JMFC has taken into consideration the minor contradictions and wrongly acquitted the accused.

5] On the other hand, Mr. Autade, learned counsel for the respondent also took me through the record and submitted that a reasonable and probable view has been taken by the learned JMFC and, therefore, in the present appeal no interference is warranted.

6] On the basis of this material on record, the following points arise for my consideration :-

[a] Whether the prosecution has proved that on 27.9.2000, all the present respondents in furtherance of their common intention, voluntarily caused hurt to the complainant

Santosh while he was discharging duty as a public servant with intent to prevent or deter him from discharging his duties and thereby committed an offence punishable under Section 323 r/w. 34 of IPC and

[b] Whether they in furtherance of their common intention, intentionally insulted the complainant, thereby gave provocation to break the public peace, and thereby committed an offence punishable under Section 504 r/w. 34 of IPC.

My findings to the above points are in the negative. The appeal is, therefore, dismissed with reasons to follow :-

REASONS

7] The FIR would narrate that all the 4 accused in furtherance of common intention of all, entered the premises, caught hold of complainant and assaulted him. The examination in chief of the complainant would show that only respondent No.2/accused No.2 entered the premises and caused the incident. The statement of PW-2 Head Master Dadaji Bacchav is, on the same lines. According to him, the incident has occurred not in the play ground, but, in the office and according to him, only scuffle was going on. In cross-examination, he has gone one step further and stated that he did not know as to who had beaten the complainant. The FIR would show that besides two eye witnesses, some other villagers were gathered. In cross-

examination complainant denied the presence of any other eye witnesses than PW-3 Rajendra and PW-6 Pralhad.

8] So far as the eye witnesses - PW-3 Rajendra and PW-6 Pralhad are concerted, their interest in the case is amplified in the cross-examination. Deceased Accused No.1 Ankush was admittedly Sarpanch and brother of PW-3 Rajendra, was the Gram Panchayat Member during the same period. Still, this witness stated that none of his family members contested the Gram Panchayat elections. In the next breath, however, he admits that his brother was Gram Panchayat member and even his uncle has also contested the election. Certain suggestions about the animosity in the village on the issue of fair price shop licence, sand spot auction, were also given to the witnesses. However, they denied the same. It was, however, found that there were criminal cases pending between the groups during the period of the present incident and even the complainant PW-1 Santosh who was teacher of the school, is the resident of village Chinchkheda, which is just 1 Kilometer away from the village wherein the school is situated. It was therefore suggested that his father was a partner in the sand spot business with one another person.

According to PW-2 Dadaji Bacchav, nobody except accused No.2 Chandrakant came in the school and he also does not know who had beaten the complainant. Evidence of PW-3 Rajendra and PW-6 Pralhad would show that PW-3 Rajendra was in front of the school while PW-6 Pralhad was behind

the premises of the school. The learned JMFC has observed that there is no explanation by PW-3 Rajendra and PW-6 Pralhad, as to how they were present near the school and how they appeared at the time of incident. Learned JMFC has, therefore, doubted their presence on the scene of occurrence.

9] So far as injuries are concerned, while the complainant alleged that his tooth was fractured, PW-7 Dr. Subhash Khillare deposed that bleeding injury was noted by him to the lower gum and accordingly, he issued the injury certificate at Exhibit 37.

10] Reading of the judgment passed by learned JMFC would reveal that he has taken into consideration each and every aspect of the matter including motive and extended reasonable benefit of doubt to the respondent. In the present appeal against acquittal, therefore, no interference is warranted. Hence I pass the following order :-

[a] The appeal is hereby dismissed with no orders as to costs.

[b] Bail bonds of respondent Nos. 2 to 4 stand cancelled.

**[M.T. JOSHI]
JUDGE.**

grt/-