

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 650 OF 2002

The State of Maharashtra
 through Police Station,
 Newasa

APPELLANT

VERSUS

1. Bhanudas Rambhau Aware,
 Age : 40 years, Occu. Agri.
2. Sanjay Rambhau Aware,
 Age : 22 years, Occu. Agri.
3. Haribhau Rambhau Aware,
 Age : 25 years, Occu. Agri.
4. Bapu Govind Aware,
 Age : 40 years, Occu. Agri.

All r/o Lohgaon, Tq. Newasa,
 District Ahmednagar

RESPONDENTS

Mr. S.D. Ghayal, A.P.P. for the appellant/State
 Mr. Vijay Sharma, Advocate for the respondents

CORAM : M.T. JOSHI, J.
DATE : 30/11/2015

ORAL JUDGEMENT :

Heard both sides.

2. Aggrieved by the acquittal of present

respondents from the offences punishable under section 325, 504 and 506 read with section 34 of the Indian Penal Code, by the learned Judicial Magistrate First Class, Newasa, vide judgement and order dated 31st July, 2002 passed in Regular Criminal Case No. 45 of 1998, the State has preferred the present appeal.

3. The prosecution case, in short, is as follows:-

. That, PW1-Laxman Gangadhar Jare had a long standing boundary dispute with the respondents regarding agricultural land at village Lohgaon. On 15th January, 1998 at about 3.00 p.m., when the complainant came to his house he saw that the hens of respondent no.1 – Bhanudas Aware were eating his wheat crop. He, therefore, asked respondent no. 1 to expel the said hens. Respondent no. 1 abused him. He, therefore, went to the house and brought an axe. Respondent no. 1's brother – respondent no. 2 and relative respondent no. 3 also came there. They caught hold the complainant. Respondent no.1 – Bhanudas gave a blow of an axe on the head of complainant. The complainant fell down. The respondent nos. 2 – Sanjay and respondent no. 4 – Bapu

gave stick blows to the complainant. They even gave fist blows and kicked the complainant. When the complainant raised shout, the sons of the complainant namely PW2 – Babasaheb and PW6 – Murlidhar came there and all these respondents also assaulted them with an axe and sticks. All of them abused and threatened to kill. The other persons namely Rajendra Jare, Dattatrya Jare, Bhimraj Jare and Paraji Jare intervened in the matter. PW5 – Dada Patil (Yelwande) brought them to Sonai Police Station.

. Upon registration of the crime, the injured witnesses were referred to the Rural Hospital, Newasa, where PW7 – Dr.Rahul Deshpande examined them and issued medical certificates at Exhibit - 44 to Exhibit - 46. Further investigation was carried by Police Head Constable PW8 - Mohan Salve. He recorded the panchanama of spot of occurrence and seized weapons used in the offence and thereafter, the charge sheet was filed in the Court.

4. Before the learned Judicial Magistrate First Class, in all eight witnesses, as detailed above, were

examined. The learned Judicial Magistrate First Class, however, found that the prosecution case is not proved beyond reasonable doubt and therefore, present respondents were acquitted of the offences. Hence the present appeal by the State.

5. The learned A.P.P. submitted that the statement of Medical Officer PW7 – Dr. Rahul Deshpande, coupled with the injury certificates clearly corroborate the prosecution case that the three persons were injured in the said incident. Yet, the learned Judicial Magistrate First Class, has amplified the discrepancy in the prosecution evidence and has wrongly acquitted the respondents. The learned A.P.P. took me through the record in support of his submissions.

6. On the other hand, Mr. Vijay Sharma, learned counsel for the respondents submitted that the long standing enmity between the parties is an admitted the fact. The exaggeration made by the prosecution witnesses, non examination of the alleged independent witness and the probability that the injury can be possible while traveling in a bullock-cart is an

admitted fact. In the circumstances, he submitted that in the present appeal against acquittal, no interference is warranted.

7. On the basis of above material on record and the submissions advanced on behalf of both sides, following points arise for my determination.

(I) Whether the prosecution has proved that on 15th January, 1998 at about 3.00 p.m., present respondents, in furtherance of their common intention, voluntarily caused grievous hurt to the prosecution witnesses?

(II) Whether the prosecution has further proved that at the given, date and time the present respondents intentionally insulted the complainant and also committed criminal intimidation by threatening to kill the complainant?

My findings to the above points nos. (I) and (II) are in the negative. The appeal is, therefore, dismissed, for the reasons to follow.

R E A S O N S

8. We have already seen that in the F.I.R. itself names of the eye witnesses to the incident are mentioned. None of them, however, has been examined and the investigating officer went to an extent by saying that since these eye witnesses were not produced before him either by the complainant or Dada Patil (PW5), he did not record their statements. We have the testimonies of the interested witnesses namely PW1 - Laxman Jare, PW2 - Babasaheb Jare and PW6 - Murlidhar Jare.

9. PW 1- Laxman Jare - the complainant has deposed that since the sharp side of the axe was used in the assault, he has suffered bleeding injuries and his cloths were stained with the blood. The Medical Officer PW7 - Dr. Rahul Deshpande has clarified that neither there was no such injury, nor the shirt or cloths of the complainant were stained with blood. The injury certificate regarding the complainant and his sons would show that they had received simple injuries. The Medical Officer was crossed examined to show that he had not examined the prosecution witnesses by giving number of

suggestion that the Medico Legal Certificates were not issued properly. One prominent thing however is that in all the medical certificates, the time of examining each of the injured is mentioned as 7.00 p.m. There are three injured witnesses who had suffered simple injuries i.e. at list twenty injuries in totality. Still the Medical Officer deposed that he has examined all the injured at 7.00 p.m. He, however, admitted the probability that if at the time of traveling by bullock-cart the said bullock-cart turns turtle, the injuries, as noted by him, are possible. While the prosecution case is that the dangerous weapons were used in causing the injuries, the nature of injuries found on the persons of the witnesses was simple.

10. The learned Judicial Magistrate First Class has taken into consideration all this evidence on record. Most prominently, there is no whisper in the oral evidence that any threats were issued by the respondents or any insult was caused to the complainant and, therefore, the case regarding offences punishable under section 504 and 506 read with section 34 of the I.P. Code, was also not proved. The exaggeration in the

prosecution is, therefore, prominent. In view of all these facts, the learned Judicial Magistrate First Class has acquitted the present respondents. Since the view of the learned Judicial Magistrate First Class is based on material on record, the same cannot be called as unreasonable. In the present appeal against acquittal therefore, no interference is warranted by this Court. Hence, the following order.

11. The appeal is hereby dismissed. The bail bonds of the respondents, if any, shall stand cancelled.

[M.T. JOSHI]
JUDGE

npj/criapl650-2002