

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO. 159 OF 2004

The State of Maharashtra,
Through Police Station,
Kalamnuri, Tq. Kalamnuri,
District Hingoli.

... **APPELLANT**

VERSUS

1. Ramrao s/o Manjajirao Mhaske,
Age 43 years, Occu. Agril,
R/o. Chinchordi, Tq. Kalamnuri,
District Hingoli.
2. Madhavrao s/o Apparao Mhaske,
Age 63 years, Occu & R/o. as above.
3. Kanbarao s/o Uttamrao Mhaske,
Age 36 years, Occu & R/o. as above.
4. Kuberrao s/o Madhavrao Mhaske,
Age 25 years, Occu & R/o. as above.

... **RESPONDENTS**
(Orig. Accused)

...
Mr. A. S. Shinde, APP for Appellant.

Mr. R. D. Mane, Advocate for Respondents.
...

CORAM : **INDIRA K. JAIN, J.**

DATE : 24th November, 2015.

ORAL JUDGMENT:

. Appellant / State of Maharashtra has preferred this appeal against judgment and order dated 24th November, 2003 passed by learned Judicial Magistrate First Class, Kalamnuri, District Parbhani in Regular Criminal Case No.214 of 1999. By the said judgment and order learned Magistrate acquitted the Respondents of the offences punishable under Sections 324 and 504 read with 34 of the Indian Penal Code.

2 For the sake of convenience Respondents / Accused shall be referred in their original status as they were referred before the Trial Court.

3 The gist of prosecution case may be stated as follows –

- i. Complainant Ganesh Dadarao Mhaske and Respondents / Accused were residents of village Chinchordi, Taluka Kalamnuri. On 12th November, 1999 Complainant Ganesh Mhaske lodged report alleging therein that on 11th November, 1999 at around 05:30 pm

when he was going towards his field for bringing fodder for his oxen and reached near a village bridge at about 06:00 pm Accused Ramrao came there and obstructed Complainant. Thereafter other Accused arrived on the spot. They were armed with sticks in their hands.

- ii. It is alleged that Accused Madhavrao assaulted Complainant with stick on his back, Accused Kuberrao assaulted with stick on right shoulder and right knee. Complainant raised cries. On hearing cries of Complainant his daughters Shobha and Jayashree and son Sharad rushed to the place of occurrence. They rescued the quarrel.
- iii. On the basis of report Crime No.107 of 1999 was registered under Sections 324, 323 and 504 read with 34 of the Indian Penal Code. Complainant was referred to Rural Hospital,

Kalamnuri. During investigation Spot panchanama was drawn. Statements of witnesses were recorded. Sticks were seized at the instance of Accused. On completing investigation charge-sheet was submitted to the Court of Judicial Magistrate First Class, Kalamnuri.

- iv. Trial Court framed charge at Exhibit 15. Accused pleaded not guilty and claimed to be tried. Their defence was of total denial and false implication.
- v. In support of its case prosecution examined in all 7 witnesses. Considering the evidence adduced by prosecution Trial Court found that guilt of Accused was not established. In the result Accused were acquitted. Being aggrieved State has filed present appeal.

5 Considering the prosecution case and on perusal of evidence on record for the below mentioned reasons this Court is of the opinion that order of acquittal recorded by Trial Court cannot be said to be based on incorrect, illegal or perverse findings as prosecution has failed to bring home the guilt of Accused beyond reasonable doubt.

6 Prosecution case is mainly based on the evidence of Complainant Ganesh Mhaske, PW-6 Sharad Mhaske and PW-7 Jayashree Shikhare. According to Complainant on the day of incident between 05:00 pm and 06:00 pm he was going towards his field. That time Accused persons assaulted him with sticks. In complaint Exhibit 21 specific role is attributed to each of the Accused. Complainant could not state in his evidence about the role attributed to each of the Accused in complaint. In the evidence vague allegations have been made that all the Accused assaulted him with sticks. In the absence of evidence attributing individual role to each of the Accused Trial Court found that testimony of Complainant would not help the prosecution.

7 So far as PW-6 Sharad and PW-7 Jayashree are concerned, they rushed to the spot on hearing cries of Complainant Ganesh Mhaske. It is stated by PW-6 Sharad that on hearing cries when he rushed to the spot he saw Accused Ramrao beating his father with fists and kicks. He further stated that Ramrao abused his father. No where in the evidence Complainant had stated that he was beaten with fists and kicks by Ramrao and Ramrao abused him. PW-6 Sharad is son of Complainant and he is an interested witness.

8 So far as PW-7 Jayashree Shikhare is concerned she stated that Accused Kanbarao gave a stick blow on the head of her father. She is daughter of Complainant. The evidence of Complainant, eye witnesses PW-6 Sharad and PW-7 Jayashree is not consistent in respect to the role attributed to each of the Accused. Prosecution did not examine independent witness. In this premise it would not be safe to rely upon their testimonies.

9 Another contention raised on behalf of prosecution is regarding seizure of sticks at the instance of Accused. PW-2 panch witness Baburao Mhaske examined on seizure panchanama does not support the prosecution. Even seizure panchanama could not be duly

proved by the prosecution through the independent evidence.

10 With the assistance of learned counsel for the parties this Court has gone through the entire evidence of prosecution witnesses. Reasons recorded by the Trial Court are found in consonance with the evidence. No perversity is noticed in the findings recorded by Trial Court. As such no interference is warranted. Hence the following order –

ORDER

- I. Criminal Appeal No.159 of 2004 is dismissed.
- II. Bail bonds of Accused stand cancelled.

[INDIRA K. JAIN, J.]