

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 428 OF 2004

The State of Maharashtra

.. Appellant
(Orig. Complainant)

Vs.

1. Madhav s/o Tukaram Landge,
Age : 40 years, Occu.: Agriculture,
2. Pandhari S/o Tukaram Landge,
age : 50 years, Occu.: Agriculture,
Both r/o. Ramegaon, Tq. Ausa,
District Latur

.. Respondents
(Orig. Accused)

Smt. R.K. Ladda, A.P.P. for the appellant/State
Mr. Suhas Ghute, Advocate for the respondents

CORAM : M.T. JOSHI, J.

DATE : 05/10/2015

ORAL JUDGMENT:

. Heard both sides.

2. Aggrieved by the recording of acquittal of the present respondents in appeal by the learned Adhoc Additional Sessions Judge, Latur, from the offences punishable under section 324 and 427 of the Indian Penal Code, the present appeal is preferred by the State.

3. Originally, alongwith the present respondents, two other accused were also arrayed by alleging that all of them, in furtherance of their common intention, have caused hurt to the complainant and have broken the glass of the auto-rickshaw of the complainant. The learned Joint Judicial Magistrate First Class, Ausa however has acquitted the rest of the accused and the present respondents were convicted for the aforesaid offences.

. Respondent no.1 – Madhav was convicted for the offence punishable under section 324 of the Indian Penal Code while respondent no.2 – Pandhari was convicted for the offence punishable under section 427 of the Indian Penal Code.

. In appeal however, the learned Adhoc Additional Sessions Judge, Latur disbelieved the prosecution version and acquitted the present respondents also. Hence, the present appeal.

4. The prosecution case in short is as under:-

. That on 28/10/1997, complainant- PW1-Shivaji

alongwith PW4 - Digambar were proceeding in one auto-rickshaw from Latur to village Sindi-Jawalga. At about 10.30 pm, when they reached near Ramegaon Shivar, they found one bullock cart standing on the road and the bullocks were tied to the bullock-cart. At that time, the complainant asked accused - Pandhari, as to why the bullock-cart was kept standing on the road. Upon that, accused - Pandhari came near the auto-rickshaw of the complainant and gave a blow of one stick on the glass of the auto-rickshaw, due to which the windshield of the auto-rickshaw was broken. Then accused - Madhav came to the complainant alongwith two co-accused. These two co-accused pulled the complainant from the auto-rickshaw and immobilized him. At that time, accused - Madhav assaulted the complainant by an axe near his left ear. One another eye witness PW3 - Gautam had also come at the spot.

. The Investigating Officer has referred the complainant to the Medical Officer PW6 Dr. Maknikar, who found incised wound to the left cheek, which according to his opinion, could be caused by a sharp edged article. In the circumstances, the chargesheet

came to be filed.

5. Before the learned Jt. Judicial Magistrate First Class, Ausa, in all eight witnesses including the panch witnesses were examined. The defence of the respondents was that there was long standing enmity between the parties. Earlier, one criminal case was filed from the side of the respondents against the complainant party.

. Regarding the present incident also, since the respondent party members were injured, a complaint was filed with the Investigating Officer. He however failed to file the chargesheet and only proceeding under section 107 of the Indian Penal Code was launched.

. The respondents submitted that they had not caused any injury or committed any offence.

. The learned Jt. Judicial Magistrate First Class, however, found the deposition of two eye witnesses and of the complainant as reliable alongwith the corroboration found in view of the injury as deposed to by the Medical Officer. Therefore, the

conviction came to be recorded.

6. The learned Adhoc Additional Sessions Judge, Latur, however appreciated the evidence of the eye witnesses and the complainant and took into consideration the enmity between the parties and came to the conclusion that the offences are not proved beyond reasonable doubt and acquitted the respondents. Hence, the present appeal.

7. Smt. Ladda submits that the evidence on record clearly showed that the complainant has received incised wound to his left cheek. The eye witnesses were natural witnesses and, therefore, there was no reason for the learned Adhoc Additional Sessions Judge to come to the conclusion, as aforesaid.

8. On the other hand, Mr. Ghute took me through the evidence on record. He submits that while the learned Jt. Judicial Magistrate First Class failed to appreciate the evidence and directly concluded that the statement of the eye witness is corroborated, the learned Adhoc Additional Sessions Judge has taken pains to scrutinize the evidence on record. He therefore

submits that there is no reason to interfere in the reasoning of the learned Adhoc Additional Sessions Judge.

9. On the basis of this material, following points arise for my determination :-

I) Whether the prosecution has proved that on 28/08/1997 at about 10.30 pm at village Ramegaon, the respondent no.1 had intentionally and voluntarily caused hurt to complainant – Shivaji by means of an axe ?

II) Whether the prosecution has further proved that on the above date, time and place, the present respondent no.2 committed mischief by breaking the glass of the auto-rickshaw of the complainant ?

My findings to both the points are in the negative. The Appeal is therefore dismissed for the reasons to follow.

R E A S O N S

10. The enmity between the parties is an admitted fact. Additionally, the respondents have filed on

record the certified copy of the judgment regarding the earlier prosecution of the complainant by them. The learned Jt. Judicial Magistrate First Class has disbelieved the prosecution version regarding the involvement of the accused nos.3 and 4, however, believed the part of the prosecution case as regards the present respondents.

11. The learned Adhoc Additional Sessions Judge took into consideration that the evidence of the witness – Digambar is silent regarding breaking of the glass of the auto-rickshaw, though he is claimed to be in the bullock-cart since beginning.

. A chance witness i.e. witness Gautam's deposition would show that he was not witness to the actual incident but had come immediately after the incident.

. There is contradiction between the statements of all these witnesses as to whether the inhabitant of nearby slum area has immediately reached at the spot. While witness Digambar deposed that persons from slum had gathered, witness Guatam stated that no such

persons had gathered, thereby ruling out presence of any independent witnesses.

. It was further noted by the learned Adhoc Additional Sessions Judge that this chance witness Gautam is admittedly the brother-in-law of the complainant and, therefore, the learned Adhoc Additional Sessions Judge disbelieved his version. Considering all these facts, appreciation of the evidence was made by the learned Adhoc Additional Sessions Judge.

. The learned Jt. Judicial Magistrate First Class did not advert to any of these lacunae in the prosecution case. In the circumstances, the following order :-

12. The Appeal is hereby dismissed. Bail bonds, if any, of the respondents shall stand cancelled.

[M.T. JOSHI]
JUDGE

arp/