

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.161 OF 2003

The State of Maharashtra ..Appellant

Versus

- 1] Pandurang Laxman Khairnar
Age 50 years, occ. Farming,
- 2] Aba Pandurang Khairnar,
Age 25 years, occ. Farming,
- 3] Vijay Pandurang Khairnar,
Age 23 years, occ. Farming
- 4] Bhimabai Pandurang Khairnar,
Age 45 years, occ. Farming

All residents of village Banoti,
Tq. Soygaon, Dist. Aurangabad ..Respondents

WITH

CRIMINAL REVISION APPLICATION NO.374 of 2002

Pandit s/o Sukhdeo Patil ..Applicant

Versus

The State of Maharashtra and ors. ..Respondents

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Mr.S.R. Palnitkar, A.P.P. for State

Mt.Vijay Sharma, Advocate for R.Nos. 1 to 4 in

Cri.Appl.No.161/2003 and for R.Nos. 3 and 6 in
Cri.Revn.Appln.No.374/2002.

Mr.N.L.Jadhav, advocate for applicant in
Cri.Revn.Appln. No.374/2002

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CORAM : M.T. JOSHI, J.

DATE : JUNE 19, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by the judgment and order dated 27th
November, 2002 passed by learned Judicial
Magistrate F.C., Soygaon, Dist.Aurangabad in
Regular Criminal Case No.405 of 2000, thereby
acquitting the respondents/accused from the
offences punishable under section 326, 504, 506
read with section 34 of Indian Penal Code, present
appeal is preferred by the State.

. The complainant has also filed the Revision
Application.

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

. The incident in question took place on 10th November, 2000 in the field of the complainant – Pandit Patil, PW 1, at village Banoti. There was a dispute between the complainant and present respondents/accused over the boundaries of the fields of the complainant and the respondents, which were adjoining to each other. About two days prior to the incident, the complainant had started work of laying pipeline from the side of the Bund itself. Two labours i.e. PW 2 and PW 3 were also working in the field of the complainant. On the day of the incident, present respondents came on the spot at about 3:00 p.m. – 3:30 p.m.

4] It is alleged that Respondent no.1 – Pandurang questioned the complainant about laying of the pipeline to which, the complainant told that he

was laying the pipeline in his own field, therefore, the respondent nos.3 and 4 started abusing the complainant. Respondent no.2 – Aba fell the complainant on the ground and respondent no.1 – Pandurang inflicted a blow of axe on the head of the complainant as a result of which, the complainant suffered a bleeding injury. At that time, other respondents were instigating to kill the complainant – Pandit. Respondent no.2 – Aba beat the complainant by fist and kick blows. PW 2 and PW 3 i.e. the labours separated the complainant from the respondents. One of the labours went to the house of the complainant and gave information to the son of the complainant i.e. PW 4 – Sunil. Thereafter, PW 4 – Sunil came on the spot and the complainant was removed to the Primary health Centre, Banoti, for medical aid. Thereafter, he was shifted to Ghati Hospital, Aurangabbad and while he was in the Ghati Hospital, the complaint came to be registered.

5] Thereafter, investigation was carried by the Investigating Officer and panchnama of the spot of occurrence was recorded. Blood stained clothes of the complainant were seized and statements of the witnesses were recorded. Respondent no.1 produced the axe used in the offence, which was seized and charge sheet came to be filed.

6] In all, seven witnesses were examined. The material witnesses were complainant – Pandit Patil, PW 1, his two labours i.e. PW 2 – Sheshrao Gofane and PW 3 – Bhagwan Thakre and PW 7 –Medical Officer Dr.Kulkarni.

7] Learned Sessions Judge, however, acquitted the respondents by disbelieving the prosecution case.

8] Learned A.P.P. for appellant – State submits that though there are two independent eye

witnesses to the incident and injury on the person of the complainant were corroborated by the evidence of the Medical Officer, learned Sessions Judge unnecessarily took a microscopic view of the matter and acquitted the respondents. He, therefore, submits that the appeal may be allowed.

9] On the other hand, Mr.Sharma, learned counsel for the respondents, submits that the reasons recorded by learned Sessions Judge would show that a reasonable and probable view of the matter has been taken and therefore, in the present appeal against the order of acquittal, no interference is called for.

. On the basis of above, following points arise for my determination :-

i) Whether the prosecution has proved that on 10th November, 2000, at about 3 to 3:30 p.m., in the field of PW 1 – Pandit

Patil, present respondent no.1 in furtherance of common intention with the other accused, voluntarily caused grievous hurt to PW 1 – Pandit Patil ?

ii) Whether the prosecution has proved that on the same date, time and place, present respondent no.1 in furtherance of common intention with other accused, gave provocation to PW 1 – Pandit Patil intending that such provocation would cause him to break the public peace ?

iii) Whether the prosecution has proved that on the same date, time and place present respondent no.1 in furtherance of common intention, committed criminal intimidation by giving threats to cause injury to PW 1 – Pandit with intent to cause alarm ?

10] My answers to above points are in the negative. The appeal is, therefore, dismissed for the reasons to follow.

R E A S O N S

11] While the incident is stated to have occurred on 10th November, 2000 at about 3:30 p.m., the complainant was admitted to the Primary Health Centre at Banoti by 4:00 p.m., the FIR, however, came to be filed after two days from the date of the incident while the complainant was taking treatment in Ghati Hospital, at Aurangabad. PW 7 – Dr.Kulkarni, Medical Officer of Primary Health Centre of Banoti had, admittedly, communicated about admission of the complainant there vide letter at Exhibit 30. The distance between the Primary Health Centre and the police station was of 10 minutes, however, the statement of the complainant was not recorded at the Primary Health Centre, Banoti. It was tried to show that the complainant was semi-conscious and therefore, the FIR could not be recorded for two days. However, said statement was belied by the prosecution

witnesses. Further, PW 7 – Dr.Kulkarni deposed that though the son of the complainant i.e. PW 4 was with him, no incident was disclosed to him regarding the assault.

. The prosecution case is that the labours had narrated the incident to the sons who, thereupon, had reached the field and took the complainant to the health centre. Learned Sessions Judge, therefore, held that the FIR is belated one and there is no explanation for the delay.

12] Another fact which is fatal to the prosecution case is regarding the nature of the injury as alleged by the prosecution and as were found by the Medical Officer. We have already found that according to PW 1 – Pandit, complainant, the assault was caused by blunt side of the axe. PW 7 – Dr. Kulkarni, however, categorically opined that the injury was not possible by reverse side of an

axe. In his cross-examination, he clarified that the margin of injury was regular and may have been caused by certain sharp article. Besides, it was admitted by PW 7 - Dr.Kulkarni that eraser was used in the injury certificate regarding the size of the injuries.

. Injury noted by the Medical Officer is as under :-

Type of the injury	Site or part of the body on which inflicted and extent	Size	Sharp Margins Directions etc.
CLW	(Lt)Parieto - occipital region extending from below (Lt) parietal ----to obliquely downwards and forwards upto 2 cm. above upper level of left. Ext ear	10 X 2A 1 c.m.	Margins sharp

13] The last lacunae in the prosecution case is that the clothes were not sent to the C.A. though

the prosecution case is that the clothes of the complainant were soaked with blood.

14] Further, the facts admitted during the cross-examination, either by the complainant or his son, are that the field of the complainant ad-measures 30 Gunthas. At the time of the incident, the complainant was digging for pipeline from the side of the neighboring land of the respondents. Respondent no.1 – Pandurang had already filed a suit in the Court for removal of the encroachment after getting the land measured through Surveyor, who has certified that there was encroachment from the side of the complainant in the land of the respondents. According to PW 4 – Sunil, son of the complainant, he himself had asked the respondents to get the land measured and if any portion of the respondent's land would be found in his possession, he would deliver the same to the

respondents. However, ultimately, the suit was filed by the respondents.

15] If all this material is taken into consideration, the finding of learned Judge that the prosecution case is not proved beyond reasonable doubt, needs no interference and the appeal deserves to be dismissed.

16] In the result, the following order :-

a] The appeal is hereby dismissed. The bail bonds of the respondents stand cancelled.

b] Consequently, Criminal Revision Application No.374 of 2002 filed by the complainant also stands dismissed.

[M.T. JOSHI, J.]