

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Appeal No.223 of 2003

* Shankar S/o Namdeo Kamble,
Age 40 years,
Occupation : Service,
R/o. Renapur, District Latur. .. **Appellant.**

Versus

- 1) Babruwahan Venkatrao Gomare,
Age 37 years,
Occupation : Service.
- 2) Tatyrao Baliram Waghmare,
Age 40 years,
Occupation Service.
- 3) Suresh Manik Jadhav,
Age 35 years,
Occupation Service.
- 4) Mohammed Abdul Razzak,
Age 62 years,
Occupation Pensioner.
- 5) Arjun Shamrao Raut
Age 60 years,
Occupation Pensioner.
- 6) Janardhan Vithalrao Gaware,
Age 35 years,
Occupation Service.
- 7) Kisan Shankar Bharti (Died)
- 8) Kishan Baliram Gawali (Died)
- 9) Santram Kondiba Sonkamble (Died)
- 10) State of Maharashtra. .. **Respondents.**

Shri. Vijay Sharma, Advocate, for appellant.

Shri. P.K. Deshmukh, Advocate, for respondent Nos.1 to 6.

Shri. P.N. Muley, Additional Public Prosecutor, for respondent No.10.

CORAM: T.V. NALAWADE, J.

DATE : 13th AUGUST 2015

JUDGMENT:

1) The appeal is filed against the judgment and order of Criminal Appeal No.27/1999 which was pending in the Court of the Additional Sessions Judge, Latur. The Chief Judicial Magistrate, Latur had convicted and sentenced accused Nos.1 to 6 and 8 and 10 for offence punishable under section 323/34 of the Indian Penal Code and accused No.9 was convicted and sentenced for offence punishable under section 379 of the Indian Penal Code in a private complaint filed by the present appellant which was numbered as R.C.C. No.476/1987. This decision is set aside by the appellate Court and all the accused are acquitted. Both the sides are heard.

2) During pendency of present proceeding, accused Nos.7 to 9 viz. Kishan Bharti, Kishan Gawali and Santram Sonkamble died. The remaining respondents were convicted and sentenced for the offence punishable under section 323/34 of the Indian Penal Code. The incident in question took place on 27-11-1987. The Chief Judicial Magistrate had convicted them on 21-8-1999.

3) The complainant Shankar was serving in Military at the relevant time. According to him he had come to the native place on leave. According to him, on 27-11-1987 at about 3.15 p.m. he was present at Renapur Bus Stand, his native place as he wanted to go to Latur. According to him, his cousin was present in his company. According to him, when he was standing in the queue for boarding the bus proceeding to Latur, at that time, accused No.1, police constable, pulled him out of the queue and quarreled with him. It is his case that he was then taken to police lock up Renapur where accused No.9 took away cash of Rs.1618/- from the pocket of his pant and the remaining accused assaulted him.

4) It is the case of the complainant that on 29-11-1987 he gave complaint of aforesaid incident to the District Superintendent of Police but no action was taken by police. The private complaint came to be filed on 18-12-1987. Except one, all the 10 accused were working as police constable in Renapur Police Station and one accused was working as A.S.I. The case was tried as warrant case filed on private complaint.

5) For proving the offence, the complainant examined himself and he examined Govind Kamble, his cousin, Manohar, his real brother and one Bapusaheb who is resident of Renapur. Bapusaheb and Govind have given evidence as eye witnesses and Manohar has given evidence that on 8-12-2987 the incident was disclosed by the complainant to him and he had helped the complainant for collecting identity card of the complainant from the police station. The complainant examined one Satish, Photographer and Medical Officer, Dr. Ajit to prove that he had sustained injuries in the incident.

6) Complainant (PW 1) has given evidence that he was standing in queue and the bus was already there which was to proceed to Latur. He has given evidence that he was having cash amount of Rs.1618/- with him and also his identity card and he wanted to purchase clothes in Latur. He wanted to make some transaction in Latur in respect of immovable property. He has given evidence that Govind (PW 3) was standing behind him in the queue.

7) The evidence of the complainant shows that accused No.1 was in police uniform and he was arranging the passengers to make them stand in queue. The complainant has deposed that accused No.1 caught hold him, pulled him out of the queue and accused did not allow the complainant to board the bus. The complainant has given evidence that when he questioned accused No.1 as to why he was not allowing him to board the bus when some persons who were not even in queue, were boarding the bus, accused No.1 gave threats to him. The complainant has given evidence that accused No.1 left the place by saying that he will teach him a lesson.

8) The complainant has given evidence that he and Govind then boarded the bus and the bus started leaving the station. He has deposed that when the bus had crossed distance of hardly 100 feet, the bus was intercepted by the accused persons, accused No.1 entered the bus and then he was forcibly taken out of the bus. He has taken specific names of other accused like Rajjak, Bharti, Gavali and Santram as other police officials who used force against him for taking him to Renapur Police Station.

9) The complainant has given specific evidence against each accused to narrate the incident of assault. According to him, accused Razzak gave him abuses and he gave slaps on his chick. According to him, accused No.2 then gave beating by using stick on his back, thigh and arm. According to him, accused Nos.4 and 6 had caught hold of his leg and accused Nos.8 and 10 had caught hold of his hands when other accused gave beating to him. According to him, accused No.5 gave beating on his neck and his neck was twisted by accused No.5. According to him, accused Nos.4 and 6 and 8 and 10 gave beating to

him by slaps and fists blows. According to him, accused Nos. 1 and 3 assaulted him by using stick. He has given evidence that witness Nos.1 to 4 mentioned in the private complaint were present there and in their presence he was assaulted. He has given evidence that Bapusaheb (PW 2) requested the police not to assault but they did not pay any heed to the request of Bapusaheb. He has given evidence against accused No.9 that when he was kept in lock up, his clothes were removed and from his clothes cash amount of Rs.1618/- was taken by accused No.9 and it was not returned to him.

10) In the year 1987 amount of Rs.1618/- was a big amount. There is nothing with the complainant to show as to why he had taken such amount with him on that day. Though he has tried to say that he wanted to make one transaction in respect of plot, no witness is examined to show that he was really taking such amount after collecting it from bank or other place. There are other circumstances against the complainant. He admits that accused No.1 was arranging the passengers to make them stand in queue and accused No.1 took him aside in that

process. He admits that police case was filed against him for offences punishable under sections 353, 332 of the Indian Penal Code in respect of the incident dated 27-11-1987 which took place at Renapur Bus Stand. There is allegation that he caused injuries to at least three police constables in that incident and the record of that case is produced. Copy of charge sheet is also produced. Though the complainant came to be acquitted in the said case, this material can be used to ascertain as to whether the material has created any probability in favour of the accused.

11) On one hand, the complainant has deposed that prior to the incident he had never visited police station but he has given evidence that on the date of incident he knew all the ten police officers who are made accused by him in the private complaint. He has given specific role played by each accused in the complaint and also in the evidence by taking their names and this circumstance creates doubt about his case. It creates probability that there is exaggeration and false implication of few. No reason is given as to how he was knowing the

names of the accused when he had not visited the police station in the past.

12) Bapusaheb (PW 2) has given evidence that he witnessed both the incidents which took place at the bus stand and the second in which the accused persons allegedly assaulted the complainant in Renapur Police Station. The evidence of this witness and the evidence of Govind (PW 3) is highly improbable in nature. It does not look probable that police had allowed these witnesses to enter police station and in the presence of these two witnesses they had assaulted the complainant. Bapusaheb has tried to say that he was standing inside the gate of the police station but he did not specifically depose as to where the incident of assault was going on. He has tried to say that one Somani was with him. But this Somani is not examined. He is from Renapur but he has tried to say that prior to the date of the incident he had never met the complainant. He has given evidence that he had not visited the police station in the past but he has given names of all the police constables and he has attributed specific act played by each accused in the incident of

assault. No reason is given as to how he knew names of all the accused persons. If he had not seen the complainant he had no reason to follow the police when they were taking the complainant to police station. There is nothing on the record explaining as to how the complainant knew Bapusaheb and as to when Bapusaheb showed his readiness to give evidence in the case.

13) Govind (PW 3), cousin of the complainant, has given evidence which is similar to the evidence of the complainant and it is mainly on the alleged assault. His evidence does not show that he had seen Bapusaheb on the spot when the incident of assault was going on. His evidence does not show that he had seen Bapusaheb at the bus stand. He has tried to say that he was not knowing names of the accused persons prior to the date of incident and the names were told to him after 4 days of the incident by real brother of the complainant. This circumstance creates reasonable doubt about the version given by Govind.

14) In the complaint, no contention was made by the complainant as to when and where he was produced before the Magistrate in the case which was filed against him. Only during evidence he tried to say that he was not actually produced before the Magistrate but he was taken near the residence of the Magistrate. His evidence shows that he was released on bail on 28-11-1987 i.e. the next date. In ordinary course the Magistrate must have made inquiry with the complainant as to whether he had grievance against police as he was arrested by police and he was in custody of police for more than 20 hours. There is record to show that the Magistrate had made such order on the charge sheet and the provisions of section 114(e) of the Evidence Act need to be used in such cases. Thus, there is clear probability that the Judicial Magistrate had made inquiry with the complainant but the complainant had not expressed his grievance against police on 28-11-1987, on the next day of the incident.

15) The application at Exhibit 117 dated 1-12-1987 was given in the case filed against the complainant by the complainant to the Chief Judicial Magistrate. In this

application he had requested for sending him to medical officer for medical examination and order was made by the Chief Judicial Magistrate on this application. In this application he had made allegation that on 27-11-1987 beating was given to him in the police station on two different occasions. The allegations made in the application are of different nature and the evidence given by the complainant and the two witnesses is different.

16) When the incident took place on 27-11-1987 the complaint came to be filed on 18-12-1987. The medical officer has given evidence that he examined the complainant on 1-12-1987 and he found nine contusions on the person of the complainant. The basis for giving the age of the injuries is not mentioned in the MLC. In any case due to these contusions, simple injuries, inference is not possible that present respondents had voluntarily inflicted those injuries in view of the aforesaid circumstances. When admittedly case was filed against the complainant for offences punishable under sections 353, 332 of the Indian Penal Code by the police on 28-11-1987 there was the reason for him to implead the accused

in such a case. The aforesaid circumstances show that no independent witness has come forward to support the case of the complainant and he exaggerated all the things. These circumstances create doubt about the case of the complainant and the evidence of the witnesses. This Court holds that the Appellate Court has not committed any error in giving benefit of doubt to the accused. This Court sees no reason to interfere in the decision of the Appellate Court.

17) In the result, the appeal is dismissed.

Sd/-
(T.V. NALAWADE, J.)

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