

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 404 OF 2003

The State of Maharashtra
Through Police Station Officer
Police Station, Gangakhed

.. Appellant
(Ori.Complainant)

Vs.

1. Ram S/o Babrao Thaware,
Age : 40 years, Occu.: Agri,
 2. Manchak S/o Babarao Thaware
Age : 35 years, Occu.: Agri,
R/o Anandwadi,
 3. Deorao Babaro Thaware
Age : 50 years, Occu.: Labourer,
 4. Bhaskar Babaro Thaware
Age : 35 years, Occu.: Labourer,
All R/o. Anandwadi, Tq. Palam.
- .. Respondents
(Ori. Accused)

Appeal as against respondent no. 3 is abated vide
order dated 22.01.2010.

Mrs. B.B. Gunjal, A.P.P. for the appellant-State.
Mr. S.V. Mundhe, Advocate for the respondent nos. 1, 2 and 4

CORAM : M.T. JOSHI, J.
DATE : 16/04/2015

ORAL JUDGMENT :

1. Heard both sides.

2. Aggrieved by the acquittal of the present respondents by the learned Judicial Magistrate First Class, Gangakhed, vide judgment and order dated 27/2/2003 passed in R.C.C. No.298 of 1997 from the offences punishable under section 324 r/w. 34 of the Indian Penal Code, the present appeal is preferred by the State.

3. Prosecution case is as under:-

. The complainant P.W. 1 – Raosaheb had gone to village Gangakhed on 19/7/1997 at 12:30 pm for weekly market purpose. At that time, the present respondent nos.1 to 4 met him there and questioned him as to why he (complainant) and his brother Ambadas were raising dispute on the point of common boundary between the fields. In the said incident, respondent – Deorao caught hold the complainant while respondent – Bhaskar bet the complainant on his face by a stone which was put in a wire bag. The complainant therefore sustained injury on his face.

. Sons of the complainant Sheshrao and Subhash came at the spot to separate the quarrel. Respondents

Ram and Manchak gave blows of stone and iron rod on the head and back of Sheshrao and Subhash. Therefore, Sheshrao sustained injury on his head. At that time, two independent witnesses, namely, Vikram and Mariba had separated the quarrel.

4. On the basis of the report filed by the complainant, the investigation was started. The injured were referred to the Medical Officer i.e. P.W. 2 – Dr. Sidharth. Their injury certificates were collected. Panchanama of the spot of occurrence was recorded and, thereafter, the chargesheet came to be filed.

5. Before the learned Judicial Magistrate First Class, Gangakhed, in all four witnesses were examined. Out of them, P.W. 2 – Dr. Sidharth was the Medical Officer while P.W. 1 was Raosaheb, P.W. 3 – Ambadas and P.W. 4 – Sheshrao are the injured.

. From the side of the respondents, D.W.1- Shrihari was examined to show that two days prior to the present incident, i.e. on 16/7/1997, mother of the respondent – Deorao had died and, therefore, said respondent had no occasion to visit Gangakhed for weekly

market. P.W.2 - Dr.Sidhardh Bhalerao, the Medical Officer had deposed about the injuries found by him on the person of the injured and proved the injury certificates at Exhibit 37, 38 and 39. The learned Judicial Magistrate First Class, however, disbelieved the prosecution case.

6. Perused the reasons forwarded by the learned Judicial Magistrate First Class, Gangakhed, including the inconsistencies between the medical evidence and the statements of the injured witnesses. It was found that independent witnesses were not examined. Panchanama of the spot of occurrence is not proved and the colour of the stone which was used in the offence is not mentioned by the injured witnesses. The respondents therefore were acquitted.

7. Learned A.P.P. submits that the learned Judicial Magistrate First Class has taken a microscopic view of the matter. It should have been found that the statements of the injured have been corroborated by the injuries found by the Medical Officer, however, minute scrutiny of the evidence is made and even the prosecution case was disbelieved as inter-alia the

injured witnesses were not able to tell the colour of the stone used in the offence. She therefore submits that the appeal be allowed.

8. On the other hand, learned counsel for the respondents submits that though according to the prosecution, there were eye witnesses named in the FIR, those were not examined. Further, the enmity between the parties is admitted. In those circumstances, close scrutiny of the statements of the so-called injured witnesses was required to be made. The same was, therefore, carried by the learned Judicial Magistrate First Class. There is difference between the injuries found by the Medical Officer and the oral account of the injuries given by them. He therefore submits that though the learned Judicial Magistrate First Class had observed about the inability to state the colour of the stone, ultimately, the learned Judicial Magistrate First Class has taken a reasonable and probable view of the overall material. Therefore, in the present appeal against acquittal, no interference is warranted.

9. On the basis of this material, following point arises for my determination:-

. Whether the prosecution has proved that on 19/7/1997 at 12:30 pm., the present respondents, in furtherance of their common intention, at village Gangakhed has intentionally and voluntarily caused hurt to the complainant - Raosaheb and his brother and sons with iron rod and stone?

My finding to the said point is in the negative. The appeal is therefore dismissed for the reasons to follow.

R E A S O N S

10. According to P.W. 2 - Dr. Sidharth Bhalerao, the following injuries were found on the person of P.W.

1 - Raosaheb :

i) CLW over upper lip. inner side having size 1 X 1/2 X 1/2 cm.

ii) Erosion of gum. Gum has bruises because of canine having size 1/2 X 1/4 X 1/8 cm.

iii) Swelling over right wrist it was, tender, swollen.

iv) Abrasion laceration over nose 2 X 4 cm.

. Further, on the person of Sheshrao, the following two injuries were found:

i) Contused lacerated wound over right parietal area scalp 4 X 1 X 1 cm.

ii) Abrasion laceration over left forearm. This injury circular, 4 X 6 cm.

. As regards the injured – Ambadas, following two injuries were found :

i) Contused lacerated wound over left parietal area 6 X 1 X 1 cm.

ii) Abrasion ah and swelling over left scapula area 2 X 3 cm.

As against this, we have the testimony of P.W.1 – Raosaheb, who deposed that respondent no.3 – Deorao caught him while respondent – Bhaskar gave stone blow on his face, causing bleeding injury. So far as P.W. 4 – Sheshrao and Subhash are concerned, when they came to rescue P.W.1 – Raosaheb, the respondent Ram and Manchak bet them. Therefore, Sheshrao suffered bleeding injuries. P.W. 3 – Ambadas deposed that respondent –

Deorao caught hold of Raosaheb and, thereafter, respondent - Bhaskar gave blow of stone to Raosaheb. Subhash and Sehshrao were beaten by Ram and Manchak by stone and iron rod, respectively. As against this, P.W. 4 - Sheshrao deposed that while respondent - Deorao caught hold his father, respondent - Bhaskar gave a blow of stone to his father. When he himself and Subhash tried to intervene, accused Manchak gave blow of iron rod and Ram gave a blow of stone to his brother Subhash.

. Thus, there is material variance between the statement of these witnesses and the injuries found on their person. It is an admitted fact that two independent witnesses, namely, Vikram and Mariba were allegedly present. They, however, were not examined. Enmity between the parties is an admitted fact.

11. Looking into all the material on record, in my view, the learned Judicial Magistrate First Class has taken a reasonable and probable view of the matter. Therefore, in the present appeal against acquittal, there is no need to interfere in the reasoning forwarded by the learned Judicial Magistrate First Class. In the result, the following order:-

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

[M.T. JOSHI]
JUDGE

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