

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.540 OF 2003

The State of Maharashtra,
Daithana Police Station,
Parbhani

..Appellant

Versus

1] Ramrao Kishanrao Gavli,
Age 40 years, Occu.Aгри.,
R/o.Wakli, Tq. and Dist.
Parbhani

2] Bhagirathibai w/o. Ramrao
Gavli, Age 35 years,
Occu. Agri., r/o. as above ..Respondents

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Mrs.B.B.Gunjal, APP for appellant – State

Mr.S.B.Bhapkar, advocate for respondent nos.1 and 2

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CORAM : M.T. JOSHI, J.

DATE : JULY 17, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by recording of acquittal of present respondents from the offences punishable under Section 324 and 504 read with 34 of Indian Penal

Code in R.C.C. No.275 of 2001 by learned 2nd Joint Judicial Magistrate F.C., Parbhani, present appeal is preferred by the State.

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

. That, PW 1 - Dhondiram, complainant was providing fodder to his bullocks on 13th March, 2001 at about 6:30 a.m. At that time, present respondent no.1 - Ramrao tethered his cow just in front of the bullocks of the complainant. As the complainant was providing fodder to his bullocks, he asked respondent no.1 to tether his cows away from the bullocks. Upon that, respondent no.1 started abusing him. In the incident, respondent no.1 thrown a stone, which caused injuries to the backside of head of the complainant. At that time, respondent no.2 - Bhagirathibai i.e. wife of respondent no.1, came there and caught hold hands of the complainant. Son of respondent no.1 - Mokinda also came there and

assaulted the complainant with stick. Ultimately, the complainant was rescued by PW 2 - Rajeshwar Bochare and PW 3 - Balasaheb. The complainant, therefore, filed a complainant with Police Station, Daithana at about 8:00 am. on the same day. He was examined by PW 5 - Dr.Ramesh Kanakdande, Medical Officer and he found following injuries on the person of the complainant :-

	Kind of injury	Measurements	Part of Body	Simple or Grievous
1	C.L.W.	5 x 1 x $\frac{1}{2}$ c.m.	Left occipital	simple
2	Abrasion	10 x 15 c.m.	Left back scapula to loin	simple
3	Contusion	3 x 2 c.m.	Right shoulder	simple
4	Contusion	5 x 3 c.m.	Lumber region	simple

4] PW 7 - Pundlik Garad, A.S.I. conducted investigation in the crime. He prepared panchnama of the spot of occurrence in presence of the panch

witnesses. The medical certificate was collected. Statements of eye witnesses were recorded and ultimately, charge sheet came to be filed.

5] Before learned Judicial Magistrate F.C., in all, seven witnesses, including PW 1 - Dhondiram, complainant and two eye witnesses i.e. PW 2 - Rajeshwar and PW 3 - Balasaheb, were examined. Learned Judicial Magistrate F.C., however, expressed reasonable doubts in the prosecution case and acquitted the respondents. Hence, present appeal.

6] Learned A.P.P. for appellant - State submits that though, the statement of the injured complainant is corroborated by two independent eye witnesses and the Medical Officer regarding presence of the injuries, learned Judicial Magistrate F.C., however, has taken a technical view as regards investigation by the Investigating Officer and unnecessarily acquitted the respondents/accused.

7] On the other hand, learned counsel for the respondents submits that the inimity between the complainant and the respondents was proved. He submits that PW 2 – Rajeshwar and PW 3 – Balasaheb, alleged eye witnesses, made vast improvements in their versions before the court. Though the Medical Officer has deposed that the injured was referred by police to him, the injury certificate at Exhibit 33 proved by him, would show that the injured was not referred by anybody. Further, admittedly, there is no seizure of blood stained clothes or recovery of any weapon. Therefore, according to him, accidental injuries on the person of the complainant were used to frame the present respondents. He, therefore, submits that learned Judicial Magistrate F.C. has taken a reasonable view of the matter and therefore, the appeal may be dismissed.

8] On the basis of this material, following points arise for my determination :-

(i) Whether the prosecution has proved that on 13th May, 2001 at about 6:30 a.m., present respondents, in furtherance of their common intention, have voluntarily caused hurt to complainant - Dhondiram by means of a stone ?

(ii) Whether the prosecution has proved that on the given date, time and place, the respondents, in furtherance of their common intention, have voluntarily insulted the complainant and thereby gave provocation of such a nature that the complainant would break public peace ?

. My findings to the above points are in the negative and the appeal is, therefore, dismissed for the reasons to follow.

R E A S O N S

9] The complaint itself would show that there was dispute regarding the place of tethering of animals. In the FIR, the complainant has stated that cow of respondent no.1 was tethered just near bullocks of the complainant. Therefore, the complainant asked respondent no.1 to tether his cow away from bullocks so that, he can provide fodder to his bullocks. During cross-examination of the complainant, a suggestion was given to him regarding the dispute of certain common wall, which was denied by him.

10] PW 2 – Rajeshwar, during cross-examination, admitted that the complainant is his cousin uncle. This witness made improvements in his statement by assigning a definite role to each of the respondents, which was absent in the statement recorded by police. Similar is the case of next of

the eye witness i.e. PW 3 – Balasaheb. He also made material improvements while making statement before the court than the statement recorded by police as regards the actual incident.

11] Considering all these facts on record, learned Judicial Magistrate F.C. has extended reasonable benefit of doubt. In the present appeal against the order of acquittal, since no perversity in the reasonings recorded by learned Judicial Magistrate F.C. is found, there is no need to interfere with the same.

12] In the result, the appeal is dismissed. Bail bonds, if any, of the respondents shall stand cancelled.

[M.T. JOSHI, J.]