

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.590 OF 2003

The State of Maharashtra,
through complainant
Tatyasaheb Waman Gholap,
Age 40 years, occ. Agri.,
r/o. Chinchwadgaon,
Tq.Wadwani, Dist.Beed ..Appellant

Versus

- 1] Pratap s/o. Sudam Gholap,
Aged Adult, occ.Aгри.,
r/o. Chinchwadgaon,
Tq. Dharur, Now Wadwani,
Dist. Beed
- 2] Narsu s/o. Sudam Gholap,
Aged Adult, occ. and
r/o.as above ..Respondents

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

Mr.S.S.Choudhari, advocate for respondent nos.1
and 2

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CORAM : M.T. JOSHI, J.
DATE : JULY 14, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by recording of acquittal of present respondents from the offences punishable under Section 326, 504 read with 34 of Indian Penal Code by learned Judicial Magistrate F.C., Majalgaon, Dist. Beed in R.C.C. No.201 of 1999, present appeal is preferred by the State.

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

. That the complainant PW 1 – Tatyasaheb and his brother PW 4 – Asaram were having lands at village Chinchwadgaon, Tq. Wadwani, Dist. Beed. Present respondents were also having lands in the neighborhood. On 23rd June, 1999 in the noon, PW 4 – Asaram as well as respondent – Pratap had cut one Babool tree each, out of the two Babool trees from the common Bandh. Thereafter, Asaram and one Nana Patole brought a bullock cart to take the stem of one Babool tree. At that time, PW 1 – Tatyasaheb,

who was working somewhere in the field, was called for help. However, present respondents restrained them from loading the stem of Babool tree in the bullock cart. The respondents claimed that Babool trees were owned by them. They threatened the complainant and his brother. Respondent no.1 – Pratap assaulted PW 4 – Asaram by an axe on his head. When PW 1 – Tatyasaheb tried to rescue, he was also given axe blows on his both the hands and back. Asaram and Tatyasaheb fell down. Thereafter, respondent no.2 – Narsu also assaulted them by stick. Nana Patole, one Raosaheb Bapmare and one Anurath Gholap had mediated in the quarrel and the injured were brought to the hospital.

4] On the same day, F.I.R. of PW 1 – Tatyasaheb was recorded and investigation was carried out. Panchnama of spot of occurrence was conducted. The respondents were taken in custody. They made statement leading to discovery of the stick and axe

hidden by them. Besides this, the blood stained clothes of the injured were seized. The medico-legal certificate was collected.

5] Before learned Judicial Magistrate F.C., the Medical Officer and the Investigating Officer were not examined. Injured Tatyasaheb was examined as PW 1 while, injured Asaram was examined as PW 4 and Raosaheb was examined as PW 5. Besides them, two panch witnesses namely, Rambhau and Govind, were examined as PW 2 and PW 3, respectively.

6] Learned Judicial Magistrate F.C. found that none of the witnesses had deposed about any insult in order to give provocation to the injured. Therefore, holding that there was no evidence in this regard, the respondents were acquitted of the offence punishable under Section 504 of Indian Penal Code.

7] As regards the offence of voluntarily causing grievous hurt, learned Judicial Magistrate F.C. held that in absence of evidence of the Medical Officer, it is difficult to find out that any voluntary grievous hurt was caused. Learned Judicial Magistrate F.C., therefore, tried to find out as to whether, there was any material to come to the conclusion that there was hurt by a grievous weapon. He, however, found that the evidence placed on record was insufficient and full of doubts and therefore, the respondents came to be acquitted also from the offence punishable under Section 326 of Indian Penal Code.

8] Mr.Palnitkar, learned A.P.P. for appellant – State submits that the evidence of the injured and eye witness is sufficient to come to the conclusion that the respondents caused voluntary grievous hurt to the injured persons.

9] On the other hand, Mr.Choudhary, learned counsel for the respondents, supports the reasonings recorded by learned Judicial Magistrate F.C.

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

a] Whether the prosecution has proved that on 23rd June, 1999, at 2:30 p.m., in the field at village Chinchwadgaon, present respondents voluntarily caused grievous hurt to PW 1 and PW 4 ?

b] Whether the prosecution has further proved that at the given date, time and place, present respondents insulted PW 1 and PW 4 thereby giving provocation to them intending that such provocation would cause them to 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

11] As regards provocation or insult, there is no iota in the evidence of any of the witnesses. The reasonings of learned Judicial Magistrate F.C. in this regard, cannot be assailed.

. As regards the grievous hurt, the record would show that the Medical Officer was not examined. Learned Judicial Magistrate F.C. has taken into consideration the omissions in the statements of PW 1 – Tatyasaheb, complainant and PW 4 – Asaram as well as the eye witness PW 5 – Raosaheb. According to the prosecution, said Nana Patole and one Sunil were the eye witnesses. However, none of them were examined. According to the witnesses, PW 1 –

Tatyasaheb was digging pipeline in the field and when he was called on the spot, by that time, the alleged incident was over.

12] Considering all these facts on record, learned Judicial Magistrate F.C. has extended reasonable benefit of doubt. Considering the evidence on record and overall facts, in my view, in the present appeal against the order of acquittal, no interference is warranted.

13] The appeal is, therefore, dismissed. Bail bonds of the respondents shall stand cancelled.

[M.T. JOSHI, J.]