

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

CRIMINAL REVISION APPLICATION NO. 340 OF 2003

Sakharam s/o Rangnath Musmade,
age 39 years, occ. agril.,
R/o Deolali Pravara,
Tq. Rahuri, Dist.Ahmednagar

...Applicant
[Orig.Complainant]

VERSUS

- 1] Bhika s/o Laxman Musmade,
age 63 years, occ. Agril.,
- 2] Babasaheb s/o Bhikaji Musmade,
age 34 years, occ. Agril.,
- 3] Haribhau s/o Yadav Kadam,
age 53 years, occ.agril.,

All R/o Deolali Pravara,
Tq. Rahuri, Dist. Ahmednagar,

- 4] The State of Maharashtra

...Respondents
[Orig. Accused nos. 1 to 3]

.....
Shri R.R.Karpe, advocate for applicant
Smt. Pratibha Bharad, advocate for respondent no.4/State
.....

CORAM : V.M.DESHPANDE, J.

DATED : 7th August, 2015

ORAL JUDGMENT : -

1] Heard Shri R.R.Karpe, learned counsel for the applicant and Smt. Pratibha Bharad, learned counsel for the State/respondent no.4. Nobody appeared for respondent nos. 1 to 3, though duly served.

2] By the present Revision, the judgment and order of acquittal, passed by the Judicial Magistrate, First Class, Rahuri on 1.7.2003 in Regular Triable Case No. 88 of 1999 is questioned. By the said judgment, the learned trial court acquitted respondent nos. 1 to 3 for the offence punishable under Sections 325, 323, 504 r/w 34 of the Indian Penal Code.

3] Sakharam (PW 2) is the first informant. He is having his agricultural land bearing Gat No.602 at Deolali Pravara. Accused no.1-Bhika and accused no.2-Babasaheb are having their lands adjacent to each other. There was a dispute in between the first informant and accused no.2-Babasaheb on account of bandh and measurement which was already carried out.

4] On 14.8.1999 at 8.00 a.m. the bullocks of Babasaheb entered into the agricultural land of first informant, due to which there was damage to his sugarcane crop. Shevantabai (PW 1) sister of the first informant, when tried to have a dialogue with accused persons, they abused her and assaulted her with kick and fist blows. When the first informant tried to intervene in the said quarrel, he was

also assaulted. It is stated that accused no.2 Babasaheb gave a teeth bite to his left ear due to which he suffered bleeding injury.

5] In order to bring home the guilt of the accused, the prosecution examined in all five witnesses. The learned trial court, after appreciation, found that the prosecution has failed to prove the case against the accused persons beyond reasonable doubt, and therefore, they were acquitted.

6] The first information report is at Exh.25. The learned trial court has observed that, Exh.25 is silent in respect of the assault on Shevantabai (PW 1) by stick on her face and forehead. Therefore, in my view, the learned trial court has reached to the correct conclusion that the said version of Shevantabai is an improvement.

Further, in so far as bite is concerned, PW 4 Dr. Prakash, who has examined Sakharam and issued injury certificate (Exh.34) has admitted that when he examined Sakharam, he could not notice any teeth injury. Further, he failed to obtain the identification mark of the injured on Exh.54. The learned Judge of the court below was right, in my view, to notice the lacuna in the prosecution case, since it was not put to the doctor, who has examined Sakharam, that the injury can be caused by teeth bite.

7] The learned Judge of the court below, in my view, has appreciated the evidence and reached to the conclusion on the basis of the material placed before the court. The view taken by the learned trial court, in my opinion, is not perverse. It is a possible

view.

Further, though it was a State case, the State has not filed any appeal against acquittal. The incident is of the year 1999.

With the cumulative effect of the afore said evaluation, I see no reason to upset the well reasoned judgment of acquittal passed by the learned trial court.

8] Hence, Revision is dismissed. Rule is discharged.

(V.M.DESHPANDE, J.)

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