

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 203 OF 2000

Vasant Balwant Gore,
aged Adult. Occp. Service,
r/o Bhuinj, Tq. Wai,
Distt. Satara.

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APPELLANT

-: Versus :-

1. Bhimrao Baburao Jadhav,
aged about 43 years.
2. Shivaji Baburao Jadhav,
aged about 46 years.
3. Sanjay Shivaji Jadhav,
aged about 24 years.
4. Dinkar Bhimrao Jadhav,
aged about 19 years.

All residing at Bhuinj, Tq. Wai,
Distt. Satara.

5. The State of Maharashtra
(to be served through Public Prosecutor,
High Court, Appellate Side,
Mumbai).

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RESPONDENTS

None for the appellant.

None for respondents No. 1 to 4.

Ms G. P. Mulekar, A. P. P. for respondent No.5-the State.

CORAM : S. B. SHUKRE, J.
29th JUNE, 2015

ORAL JUDGMENT

1. This is an appeal preferred against the judgment and order dated 15/6/1999 passed in Sessions Case No. 34/97 by Additional Sessions Judge, Satara. Briefly stated, the facts of the case are as under.:

Complainant in this case is one Vasant Gore who resided in the year 1996 at Bhuinj, taluka Wai, district Satara. Respondents No. 1 to 4, who were accused Nos. 1 to 4 in the sessions case, were neighbours of the complainant with just one lane separating their house from the house of the complainant. There used to take place some quarrels intermittently in between complainant on the one hand and respondents No. 1 to 4 on the other on such issues as throwing of waste water by respondents No. 1 to 4 into the lane, using of lane by respondents No. 1 to 4 for urination and so on and so forth.

On 08/01/1996 at about 8.30 a.m., respondent No.1-Bhimrao Jadhav engaged one labour for digging the lane and on his instructions, the labour started digging the lane. Complainant objected and told respondent No.1 to stop the digging work. Respondent No.1 got annoyed and there was a heated exchange of words between him and complainant. At that point of time, respondent No.2 - Shivaji Jadhav, respondent No.3 - Sanjay

Jadhav and respondent No.4 - Dinkar Jadhav arrived in the lane to lend support to respondent No.1. Respondent No.1 then abused complainant on caste lines. Respondent No.2 pushed down the complainant and beat him up by means of fist and kick blows. Respondent No.3 gave a slap on the cheek of the complainant. By that time, nephew of the complainant Mahesh Gore arrived there. He too was beaten up by respondents No.3 and 4. Family members of complainant; Parvatibai, Savitri and Yeshoda came to the place where quarrel was taking place and they intervened in the dispute. They separated the complainant and respondents No. 1 to 4 from each other. At that time also, respondents No. 1 to 4 hurled abuses at wife of the complainant.

About one month thereafter, i.e. on 20/02/1996, complainant filed complaint with police station, Bhuinj against respondents No. 1 to 4 on the basis of which offences punishable under Sections 323, 504, 506 read with Section 34 of the Indian Penal Code and also under Section 3(1)(x) and 3(1)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as, 'the Atrocities Act', for short) came to be registered against respondents No. 1 to 4. Spot panchanama of the spot of incident was drawn up, one stick was seized and statements of witnesses were recorded. After completion of investigation, a charge-sheet was filed against

respondents No.1 to 4 before the Court of Additional Sessions Judge, Satara.

Charge for the offences punishable under Sections 323 and 506 read with Section 34 of the Indian Penal Code and also Sections 3(1)(x) and 3(1)(ii) of the Atrocities Act read with Section 7(1)(d) of the Protection of Civil Rights Act, 1955 were framed against respondents No. 1 to 4. As they pleaded not guilty, they were tried by the Additional Sessions Judge. On merits of the case, learned Additional Sessions Judge found that the offences against the respondents were not proved beyond reasonable doubt by the prosecution and, therefore, by his judgment and order dated 26/6/1998, the learned Additional Sessions Judge acquitted all the accused persons i.e. respondents No. 1 to 4 of the said offences. Not being satisfied with the same, the complainant (hereinafter referred to as the appellant) has preferred the present appeal.

2. This appeal is on the final hearing board for quite some time. However, nobody has appeared on behalf of the appellant to prosecute his appeal. Today also when the matter was taken up for hearing, nobody turned up for the appellant. The appeal is very old and the mandate of Section 386 of the Criminal Procedure Code requires the Court to decide the appeal on merits of the case after hearing the appellant only if he appears and also

hearing the respondents, if they appear, but, on perusal of the record of the case. Accordingly, I have decided to proceed with disposal of this appeal on its own merits. I have heard learned A.P.P. for respondent No.5-the State, who is present. Nobody has appeared on behalf of respondents No. 1 to 4. I have carefully gone through the record of the case and also the impugned judgment and order.

3. It is seen from the impugned judgment and order that learned Additional Sessions Judge has found the evidence of main prosecution witnesses; P.W.-1 Vasant Gore, the complainant, P.W.-3 Meena w/o Vasant Gore and P.W.-4 Parvati w/o Mahadeo Gore, one of the family members of the complainant, as not completely supporting the prosecution case. The learned Additional Sessions Judge has also found that evidence of other witnesses, namely P.W.-2 Suryakant Gore, the panch witness for spot panchnama, P.W.-5 Ramesh Bhosale and P.W.-6 Ganpatrao Bhosale, the panch witnesses for seizure panchanama, to be of no use as they were hostile. The learned Additional Sessions Judge, therefore, concluded that on the basis of such evidence, it cannot be said that prosecution has proved beyond reasonable doubt the offences charged against respondents No. 1 to 4.

4. The learned Additional Sessions Judge also found that there was delay of about more than one month in lodging of

complaint, which delay not being explained at all by the complainant, created serious doubt about genuineness of the allegations made against respondents No. 1 to 4. The learned Additional Sessions Judge also found that the evidence given by the prosecution witnesses particularly by P.W.-1 Vasant and P.W.-3 Meena regarding the number of labours working in the lane in question created a doubt about quarrel having taken place itself between Vasant Gore on the one hand and respondents No. 1 to 4 on the other.

5. The reasons so given by the learned Additional Sessions Judge, on perusal of the prosecution evidence, are found to be consistent with the record of the case.

6. P.W.-1 Vasant states that when he took an objection over carrying on of digging work in the lane, respondent No.1 Bhimrao started beating him by stick, fist blows and kick blows and also he uttered abusive words to the effect, "*Chambhardya, tula marun takato*" and then remaining respondents No. 2 to 4 together with respondent No.1 entered his house and subjected his wife and children to beating. He also states that as a result of this beating, his nephew, Mahesh fell unconscious. However, the story narrated by P.W.-1 Vasant in his complaint is some what different. He states in the complaint that digging was being done by one labour of respondent No.1, whereas in his deposition

before the Court he states that it was being done by more than one person. In his complaint, he states that at the spot of incident, which was the lane in question, after heated exchange of words with respondent No.1 Bhimrao, respondent No.2 Shivaji, respondent No.3 Sanjay and respondent No.4 Dinkar, all arrived in the lane and thereafter, respondent No.1 hurled abuses at him on caste lines. In his evidence before the court, P.W.-1 Vasant states that first abuses were given to him and later on respondent No.2 Shivaji, respondent No.3 Sanjay and respondent No.4 Dinkar together with respondent No.1 Bhimrao, straightway entered into his house and beaten up his wife and children. He does not state in his evidence before the Court that before entering the house, respondents No. 2 to 4 had first arrived in the lane. In the complaint, P.W.-1 Vasant does not say that respondents No.2 to 4 had entered in his house.

7. P.W.-3 Meena w/o Vasant Gore comes out with a somewhat different version of the incident. According to her, there were more than one person who were carrying on digging work when P.W.-1 Vasant, her husband, asked them to stop the digging work. She states that thereupon, respondent No.3 Sanjay and respondent No.2 Shivaji along with his companions held fast Mahesh and beat him as a result of which Mahesh fell unconscious and that respondent No.1 Bhimrao dealt stick blows to P.W.-

Vasant. This witness does not say anything about entering of her house by respondents No. 1 to 4 and then their beating herself and her children in the house. She narrates some different abuses given by respondent No.1. She, in particular, omits the threat “*Tula marun takto*” or “*shall kill you*” as deposed to by P.W.-1. In the cross-examination, she admits that respondents No. 1 to 4 did not enter the lane and that the exchange of words was between her husband (P.W.-1 Vasant) and a worker. She also admits that quarrel was going on between Vasant and the worker at noon time, quite in contrast to what is stated by P.W.-1 Vasant, which was in between himself and respondents and in the morning time.

8. P.W.-4 Parvati, as seen from her evidence, does not appear to have any personal knowledge about the incident and that is the reason why she stated in her examination-in-chief that on the day of incident, she was in kitchen and was allowed to be cross-examined by the learned A.P.P. Even, during her cross-examination, she did not support the prosecution case. She refused to admit that respondents No. 2, 3 and 4 had beaten up Vasant and that even respondent No.1 had dealt stick blows to Vasant. She also refused to admit that respondent No.1 had abused P.W.-1 Vasant by calling him, “*Chambhardya*”.

9. The above referred evidence clearly shows that the

testimonies of important prosecution witnesses, namely P.W.-1 Vasant, P.W.-3 Meena and P.W.-4 Parvati are discrepant and inconsistent with each other. They differ on material aspects relating to the manner in which and the time at which the incident took place. Therefore, their evidence does not inspire any confidence and some corroboration would be required, which is not forthcoming in this case. Then, there is also a delay of about more than one month in lodging of the first information report, which has not been explained by complainant, P.W.-1 Vasant. It gives rise to a possibility of the complaint being a product of afterthought churned out to settle scores with the respondents. This possibility has not been ruled out by the prosecution evidence, rather it has gained strength from it.

10. The above lacunae only suggest that possibility of complainant, P.W.-1 Vasant, filing a false or exaggerated complaint against respondents No. 1 to 4 was very much there. I must say that it is an admitted fact that there was a long standing dispute brewing between P.W.-1 Vasant and respondents No. 1 to 4 over the issue of lane existing between their respective houses and this dispute appears to be a cause for falsely framing respondents No. 1 to 4 in the present case by trying to give whatever had happened between the complainant and respondents No.1 to 4 a different colour. The finding of

innocence of respondents No. 1 to 4 recorded by the learned Additional Sessions Judge, therefore, cannot be said to be perverse or erroneous or illogical. No case has been made out for making any interference in the impugned judgment and order. The appeal deserves to be dismissed.

The appeal stands dismissed.

S. B. SHUKRE, J.