

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

CRIMINAL APPEAL NO.26 OF 2005

The State of Maharashtra
through : Police Station, Wadhone,
Tq. Udgir, District Latur. ... APPELLANT
(Original Complainant)

VERSUS

1. Laxman s/o Venkati Chavan,
Age 55 years,
2. Satyabhamabai w/o Laxman Chavan,
Age 45 years,

Both R/o Hipparga, Tq. Udgir,
District Latur. ... RESPONDENTS
(Original Accused No.1 and 3)

.....
Shri A.M. Phule, A.P.P. for appellant / State
Ms Supriya L. Pansambal, Advocate holding for
Shri V.D. Gunale, Advocate for respondents
.....

WITH

CRIMINAL APPEAL NO.27 OF 2005

The State of Maharashtra
through : Police Station, Wadhone,
Tq. Udgir, District Latur. ... APPELLANT
(Original Complainant)

VERSUS

Babu s/o Laxman Chavan,
Age 26 years,
R/o Hipparga, Tq. Udgir, ... RESPONDENT
District Latur. (Original Accused No.2)

.....
Shri A.M. Phule, A.P.P. for appellant / State
Ms Supriya L. Pansambal, Advocate holding for
Shri V.D. Gunale, Advocate for respondent
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CORAM: A.I.S. CHEEMA, J.

DATED: 29th April, 2016.

Date of reserving judgment : 13th April 2016
Date of pronouncing judgment : 29th April 2016.

J U D G M E N T :

1. These appeals have been filed by the State. Criminal Appeal No.26/2005 is filed against the acquittal of the respondent Laxman Venkati Chavan and Satyabhamabai Laxman Chavan (original accused Nos.1 and 3 in R.C.C. No.412/1999) vide judgment passed by the Jt. Judicial Magistrate, First Class Udgir, District Latur on 25.10.2004. By the same judgment, the Judicial Magistrate, First Class convicted accused No.2 Babu Laxman Chavan (original accused No.2) for offence under Section 324 of the Indian Penal Code, 1860 (I.P.C. in brief). The trial Court passed sentence against respondent Babu directing him to suffer simple imprisonment till rising of the Court and to pay fine of Rs.1000/- and in default to suffer simple imprisonment for

three months.

Criminal Appeal No.27/2005 is for enhancement of the sentence which was imposed against accused No.2 Babu. I will refer to the respondents as accused Nos.1 to 3, the manner in which they were arrayed in the R.C.C. No.412/1999 before the Judicial Magistrate, First Class.

2. The case of the prosecution in brief is as follows :

- (a) On 23.10.1999, at about 3.30 p.m., complainant Nivrutti Hanumant Chavan (hereinafter referred as complainant) filed F.I.R. with Wadhona Police Station, which came to be registered as Crime No.117/1999. He informed that, on that day he along with his wife Kashibai (P.W.3) and two daughters-in-law Anuradha (P.W.4) and Meena (P.W.5) and son Vijay (P.W.2) had gone to their field situated at Hipparga Shivar and were working in their field. At about 2.30 p.m., accused No.2 Laxman Chavan and his son accused No.2 Babu were working in their field which is adjoining and

they were ploughing their field. In the process, they broke the common bandh and when he objected, they along with wife of accused No.1 Laxman (Satyabhama) came abusing and by stone and "Tutati" (i.e. handle of whip for bullock) hit on his head, back and ear and he started bleeding. When his wife and son Vijay came to intervene, these three accused beat them also and his son was hit on the back and his wife (Kashibai) also suffered blow on tooth. While the quarrel was going on, his two daughters-in-law intervened and separated the quarrel. Thus, the F.I.R.

- (b) The offence was registered and Head Constable Sabiyoddin (P.W.9) investigated the matter. The injured were sent to hospital and medical certificates were obtained. On 24.10.1999, the Head Constable went to the spot and prepared spot panchanama (Exh.34). The Tutati came to be seized from accused No.2 Babu on 25.10.1999. Statements of witnesses were recorded and after investigation was completed, charge sheet came to be filed.

3. The Judicial Magistrate, First Class framed charge against the accused persons under Section 324 read with Section 34 of the I.P.C. The accused pleaded not guilty. Their defence is of denial. According to the accused persons, the complainant wants to grab their land and for this purpose, the false complaint is filed.

4. In the trial Court, the complainant Nivrutti deposed as P.W.1 and proved the F.I.R. at Exh.22. His son Vijay (P.W.2), wife Kashibai (P.W.3) daughter-in-law Anuradha (P.W.4) and daughter-in-law Meena (P.W.5) entered witness box in support of the complainant. Out of these, P.Ws.1 to 3 claimed to be also victims of the assault. Vinayak Chavan (P.W.6) is panch of seizure of Tutati from accused No.2 Babu for which panchanama Exh.31 was prepared on 25.10.1999. As regards the spot, Panch Pandhari (P.W.7) deposed in support of prosecution and spot panchanama Exh.34 was proved. On day of incident, at about 5.30 p.m., Dr. Ranjit had examined P.W.1 to 3 and issued medical certificates Exh.52, 53 and 54 in their faovur regarding the injuries which were simple. This doctor deposed as P.W.8. Investigating

officer came on record as P.W.9.

5. The trial Court, after hearing the evidence, has passed judgment observing that there was consistency in the evidence as regards injury caused by accused No.2 Babu with the aid of Tutati to P.W.1 Nivrutti, but there was no consistency as regards the acts of assault attributed to accused No.1 and 3 by the witnesses. On such analysis, the trial Court acquitted the accused No.1 Laxman and his wife accused No.3 Satyabhamabai, but convicted accused No.2 Babu as mentioned above.

6. It has been argued by the learned A.P.P. for State that, the trial Court could not have acquitted accused No.1 Laxman and his wife Satyabhamabai as P.W.1 to 5 had given various details as regards acts of these accused for causing hurt to P.Ws.1 to 3. It is argued that, after holding accused No.2 Babu also guilty for offence under Section 324, disproportionately low sentence has been passed and the punishment was grossly insufficient and the sentence of accused No.2 Babu needs to be enhanced and he should be suitably punished.

7. Against this, the learned counsel for the accused persons submitted that between the parties, there were disputes and in the present matter, there were counter complaints. This can be seen from the judgment itself as on same day the other matter, in which the present complainant and his family were accused, was also before the trial Court. According to the learned counsel, the reasonings recorded by the trial Court for appreciation of the evidence need to be upheld and the acquittal of accused No.1 and 3 was correct. The learned counsel submitted that, looking to the fact that there was a sudden quarrel, the sentence passed is correct and proper. There are no earlier criminal cases and the sentence passed against accused No.2 Babu need not be interfered with.

In reply, the learned A.P.P. submitted that, looking to the facts of the matter, the trial Court could have at least granted compensation to the complainant.

8. I have gone through the evidence which was brought before the trial Court. Complainant Nivrutti deposed before the trial Court as to how he, his wife, son and two

daughters-in-law were working in the field. He deposed that, accused No.2 Babu at that time was ploughing in his field at about 2.30 p.m. and damaged the common bandh. According to him, he went and questioned accused No.2, at which time accused No.2 Laxman came and he started ploughing and accused No.3 Satyabhama instigated accused No.2 Babu against the complainant, who thereafter caught the shirt of the complainant and hit him by Tutati, causing bleeding injury. When his wife Kashibai and Vijay intervened, accused persons assaulted them also by stone, causing injury to teeth of Kashibai and to waist and back of Vijay. The daughters-in-law intervened and the quarrel was separated.

9. The evidence of P.W.2 to P.W.5 also is that, the quarrel started because of damaging of the common bandh between the field of accused persons and the complainant and thereafter the quarrel took place, in which these witnesses claimed that, in addition to the complainant Nivrutti, P.W.2 Vijay and P.W.3 Kashibai were also injured.

10. When I peruse the judgment of the trial Court, I find that, the trial Court referred to the specific evidence of

these witnesses and after reproducing in brief the details given by the witnesses, the trial Court analysed the evidence of these P.W.1 to P.W.5 in para 16 and 17 of its judgment. The trial Court also kept in view the contents in the complaint for analyzing and weighing the evidence of these witnesses. Trial Court discussed that, P.W.1 Nivrutti deposed that accused No.2 Babu assaulted him by means of handle of whip i.e. Tutati and that accused No.1 had assaulted P.W.2 and P.W.3 by stone. The trial Court observed that, P.W.2, however, did not depose that accused No.1 assaulted him or his mother by means of stone. Trial Court observed that, P.W.2 claimed that all accused Nos.1 to 3 assaulted him and his mother by stone. The trial Court then compared the complaint Exh.22 with the oral version to find that there was no corroboration to such evidence that accused No.1 assaulted P.W.2 and P.W.3 by stone. Trial Court discussed that, P.W.3 Kashibai claimed that accused No.1 and 2 assaulted her and her son Vijay by kicks and blows. P.W.1 and P.W.2 did not depose anything on this count. It was observed that, the complaint did not state that accused No.1 and 2 assaulted by means of kicks and blows. Reasonings of the trial Court show that it analysed the evidence of P.W.3 that the witnesses

claimed that accused No.1 assaulted her by means of stone over her teeth, but this did not find place in the complaint as well as the evidence of P.W.2, P.W.4 and P.W.5. The trial Court further discussed the evidence of these witnesses to highlight that the witnesses were not corroborating each other with regard to alleged acts of accused Nos.1 and 3.

11. The trial Court then referred to the medical evidence which was brought on record and observed that, it had not found corroboration in the evidence of P.W.1 to P.W.5 as regards assault by accused No.1 and 3 to P.W.2 Vijay and P.W.3 Kashibai. Trial Court observed that, it found corroboration with regard to only injury caused to complainant by means of Tutati at the hands of accused No.2 Babu. Trial Court accepted the evidence regarding seizure of Tutati and the spot panchanama. For such reasons, the trial Court proceeded to acquit the accused No.1 and 3 and convicted the accused No.2.

12. Having gone through the complaint as well as the evidence and the manner in which the trial Court has analysed the evidence of different witnesses to hold that there was no

corroboration between the witnesses as regards the acts of assault attributed to accused No.1 Laxman and accused No.3 Satyabhamabai, I do not find any reason to interfere as the reasonings recorded are a possible view of the evidence. Only because it may be possible to appreciate the evidence in another manner would not be a reason to interfere in a judgment of acquittal. Thus, I do not find any substance in Criminal Appeal No.26/2005, which deserves to be dismissed.

13. As regards Criminal Appeal No.27/2005 for enhancement of the sentence passed against accused No.2 Babu, I find that the trial Court convicted him for offence under Section 324 of the Indian Penal Code. The accused No.2 has not raised grievances before me to submit that conviction against him was bad. Still I have gone through the evidence and I do not find any reason to interfere with the conviction. As regards the sentence, the judgment of the trial Court shows that, it considered the fact that this accused No.2 Babu was a first time offender and had no previous conviction and that he had old parents to look after. On such basis, leniency was sought from the trial Court, but the trial Court observed that, in its opinion, the act of accused No.2 was

serious and so, deterrent punishment will be awarded to him. Although the trial Court observed thus, the sentence was passed of only sentence till rising of Court and fine of Rs.1000/-.

14. It has to be remembered that, the cause of the quarrel was due to the act of accused No.2 Babu damaging the common bandh. As such, when the trial Court was of the opinion that deterrent punishment should be awarded, this accused should have been made to compensate the complainant in case the trial Court concluded that sentence of imprisonment was not necessary. The learned A.P.P. rightly submitted that, the order of compensation should have been passed. It would have compensated the complainant for the injury caused and the order of compensation would have worked as a deterrent to the accused No.2 Babu to be careful with regard to the common bandh, damaging of which causes concern to the neighbour, which is natural. In my view, the sentence needs to be modified and instead of fine, the respondent No.2 should be made to pay compensation.

15. I am keeping in view judgment of the Hon'ble

Supreme Court in the matter of **Hari Singh Vs. Sukhbir Singh & ors. (1988) 4 SCC 551**, which has been considered in the matter of **Suganthi Suresh Kumar Vs. Jagdeeshan**, reported in **(2002) 2 SCC 420**. and I will direct imprisonment in default of payment of compensation.

16. For the above reasons, I pass the following order:-

ORDER

(i) Criminal Appeal No.26/2005 against acquittal of respondents – original accused No.1 and 3 is dismissed.

(ii) Criminal Appeal No.27/2005 for enhancement of sentence passed against respondent – original accused No.2 Babu is allowed. The sentence of imprisonment till rising of the Court, as passed by the Joint Judicial Magistrate, First Class, Udgir on 25.10.2004 in R.C.C. No.412/1999 against respondent No.2 Babu is maintained. The sentence directing payment of fine of Rs.1000/- and direction that in default of payment of fine, he should suffer further simple imprisonment for three months is quashed and set aside. Instead, it is

directed that, under Section 357(3) of the Code of Criminal Procedure, 1973, respondent Babu (original accused No.2) shall pay compensation of Rs.10,000/- (Rupees ten thousand) to the complainant Nivrutti Hanumant Chavan. In default of payment of fine, he shall suffer simple imprisonment for a period of three months. The amount of Rs.1000/- deposited by this accused earlier in the trial Court as above, shall be adjusted in this amount of compensation.

(iii) Bail bonds of respondents – accused No.1 and 3 in Criminal Appeal no.26/2005 are cancelled. As regards respondent Babu – accused No.2 in Criminal Appeal No.27/2005, he is directed to surrender to his bail bonds before the trial Court on 3rd May 2016 and deposit the amount of compensation as directed. In default, the trial Court shall ensure his presence and execution of these orders. On recovery of the compensation, the same shall be paid to P.W.1 Nivrutti Hanumant Chavan.

(A.I.S. CHEEMA, J.)