

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.113 OF 2016

Kamlakar s/o Motiram Mane,
Age-40 years, Occu:Labour,
R/o-Bansarola, Tq-Kaij,
Dist-Beed.

...APPELLANT

VERSUS

- 1) The State of Maharashtra,
- 2) Rajabhau s/o Sambhaji Dhaigude,
Age-33 years, Occu:Agri.,
- 3) Sambhaji s/o Ganpati Dhaigude,
Age-56 years, Occu:Agri.,
- 4) Bapu s/o Sambhaji Dhaigude,
Age-25 years, Occu:Agri.,
- 5) Yuvraj s/o Mahadeo Dhaigude,
Age-36 years, Occu:Agri.,
- 6) Surekha d/o Sambhaji Dhaigude,
Age-26 years, Occu:Agri.,
- 7) Shila w/o Sambhaji Dhaigude,
Age-51 years, Occu:Agri.,
- 8) Bhagirthi w/o Sambhaji Dhaigude,
Age-33 years, Occu:Agri.,

All R/o-Bansarola, Tq-Kaij,
Dist-Beed.

...RESPONDENTS

...
Mr. Sachin S. Panale Advocate for Appellant.
Mr. R.V. Dasalkar, A.P.P. for Respondent No.1.
...

CORAM: A.I.S. CHEEMA, J.

DATE : 3RD AUGUST, 2016

ORDER :

1. Heard learned counsel for the Appellant and learned A.P.P. for State. This Appeal is against acquittal.

2. It is stated by the learned counsel for the Appellant that the J.M.F.C. who tried the Regular Criminal Case No.35 of 2002 had the opportunity to observe the witnesses and after recording the evidence, the J.M.F.C. had convicted the accused. The evidence in the concerned matter was recorded after more than ten years and minor differences were required to be ignored. According to the learned counsel, regarding the incident, there was evidence of complainant Kamlakar Mane as

PW-1 and in support there was evidence of one PW-3 Shamal Pawar, in front of whose house the incident took place. The complainant was further corroborated by his father PW-4 Motiram Mane. In spite of such evidence, the Sessions Court wrongly reversed the conviction. The incident had taken place on 30th September 2001 on road at village Kawadgaon, Taluka-Kaij. The Sessions Court wrongly reversed the conviction on the basis that the name of PW-3 Shamal Pawar did not reflect in the F.I.R. which was filed. The Sessions Court wrongly doubted the bona fides of the complainant in going to Ambejogai to file F.I.R. on the basis that P.S.O. PW-8 Uttam Mantri was known to him. The evidence showed that PW-8 was P.S.O. at Yusufwadgaon which was police station of Kawadgaon, in 1975 - 1980, at which time the complainant looking to his age at the time of filing of F.I.R., must have been a child. The complainant had gone to Dr. Dattatraya Tat PW-7 immediately after the incident and the medical

certificate was obtained. According to the learned counsel, because of such reasons, the interference of the Sessions Court in the conviction was improper. According to him, the Appeal deserves to be admitted.

3. The Record and Proceedings have been received. Looking to the material available, what is required to be seen in order to admit the Appeal against acquittal is whether the reasons recorded by the Sessions Court for acquittal of the accused could be stated to be perverse or containing reasons or observations which are not based on record. Even if it is stated that the P.S.O. PW-8 was at Yusufwadgaon long before the present incident of 2001, that posting alone cannot necessarily be reason for knowing the person.

4. Looking to the reasons recorded by the Sessions Court what appears is that the Sessions

Court discussed the evidence which shows that even the recovery and spot of incident was not clearly appearing on record. In Para 9 of its Judgment, Sessions Court noticed the evidence that the spot panchnama was silent regarding cycle chain and stick lying on the spot but one Panch and the Investigating Officer stated that such articles were lying on the spot. Another Panch claimed that the cycle chain was produced by accused No.1 Rajabhau and Babul stick was produced by accused No.2 Sambhaji in the Police Chouki. Although PW-3 Shamal Pawar claimed that incident took place in front of her house, the Sessions Court noted that evidence of Panch was that the spot was in front of the house of one Manchak Pawar. The Sessions Court recorded that the complainant and his father were resident of Bansarola, Taluka-Kaij, while the incident took place at Kawadgaon and Sessions Court found it difficult to accept that the father should also happen to be passing from the same spot when the incident took place with reference

to his son. The Sessions Court also noticed that the medical certificate recorded simple injuries, although the incident stated was of beating by babul stick as well as by cycle chain but no such injuries were found. Although the evidence led was that immediately after the incident the complainant went to the primary health center at Bansarola and only simple injuries were there, instead of filing complaint at the local police out-post, he went to 35 K.m.s away to Ambajogai to file the F.I.R., which was registered by Zero Number and later on transferred to Yusufwadgaon Police Station. For such reasons, the Sessions Court found that the conviction could not be maintained. The argument now that complainant went to Ambajogai for better treatment is not appealing when medical certificate of simple injuries is kept in view.

5. Going through the material available, the evidence and reasons recorded by the Sessions

Court, the opinion recorded by the Sessions Court for acquittal is possible view of the evidence. It would not be appropriate to interfere in the Judgment of acquittal of accused persons.

6. The Admission of the Appeal is declined. The Appeal is disposed of, accordingly.

[A.I.S.CHEEMA, J.]

asb/AUG16