

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

CRIMINAL APPEAL NO.282 OF 2015

Rajendra s/o Ratan Surse,
Age 49 years, Occu. Agri.,
R/o Bel-Pimpalgaon,
Taluka Newasa,
District Ahmednagar

..Appellant

Versus

1. The State of Maharashtra,
through SDPO, Shevgaon,
Taluka Shevgaon
2. Balu Mandeo Tarhal,
Age 51 years, Occu. Agri.,
3. Satish Laxman Tarhal,
Age 27 years, Occu. Agri.,
4. Prakash Bhaskar Tarhal,
Age 22 years, Occu. Agri.,
5. Rajendra Babanrao Sherkar,
Age 33 years, Occu. Agri.,
6. Sopan Maruti Tarhal,
Age 61 years, Occu. Agri.,
7. Machhindra Damu Tarhal,
Age 28 years, Occu. Agri.,
8. Ashok Sopan Tarhal,
Age 32 years, Occu. Agri.,

All R/o Bel-Pimpalgaon,
Taluka Newasa, Dist.Ahmednagar

..Respondents

Mr B.N. Magar, Advocate for appellant
Mr D.V. Tele, A.P.P. for respondent No.1
Mr S.B. Bhapkar, Advocate for respondents No.2, 3 to 8

CORAM : N.W. SAMBRE, J.

DATE : 17th March 2016

PER COURT

Heard.

2. This is an appeal under Section 372 of the Code of Criminal Procedure by the victim-complainant against an order of acquittal delivered by learned Assistant Sessions Judge, Shrirampur on 30th November 2013 in Sessions Case No.37 of 2012.

3. It is the case of the present appellant that he was residing along with his family at Bel-Pimpalgaon village. On 30th August 2011, when the wife of the present appellant was Sarpanch, at about 10.00 a.m. he dropped his wife for the Gram Panchayat meeting and was sitting on a platform of temple waiting for her arrival after the meeting. According to him, he saw some people coming down from the Gram Panchayat meeting making hue and cry and upon his enquiry about it with one Balu, the accused herein, said Balu assaulted him by uttering caste based insulting attributions, as the complainant-appellant belongs to reserve category. According to him, the other accused persons thereafter within ten minutes came on the spot armed with sticks, axe and sickle and assaulted him. He then suffered serious injuries on the left and right hands etc. and after he was saved by the Deputy Sarpanch, he became unconscious.

4. Crime No.179 of 2011 for the offences punishable under Sections 143, 147, 148, 326, 323, 504, 506 read with Sec.149 of the Indian Penal Code and under Section 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and under Section 135 of the Bombay Police Act came to be registered vide Exh.22.

After the investigation, charge-sheet came to be filed against the accused persons. Learned trial Court, after framing the charge against the accused vide Exh.10 has recorded the evidence vide Exh.53 to Exh.59 and upon appreciation thereof, delivered verdict of acquittal, as such, present appeal against acquittal.

5. While trying to make out the case for indulgence by this Court under the appellate jurisdiction, learned Counsel for the appellant would urge that the learned Court below has failed to consider that all the accused persons formed an unlawful assembly and with a common object, executed the crime in question with the help of weapons by causing grievous injuries to the appellant at public place and also uttered caste based insulting attributions. According to him, the evidence of the witnesses was not properly appreciated and the acquittal as ordered, is required to be reversed.

6. Learned A.P.P. assisted the Court, whereas the learned Counsel for the accused has invited attention of this Court to the evidence of respective witnesses and submits that the learned Court below has rightly acquitted the accused.

7. With the assistance of respective Counsel, I have perused the record and proceedings of the learned trial Court. There are in all eight witnesses examined by the prosecution. P.W.1 is the complainant, P.W.2 is the wife of complainant, and P.W.3 is the Deputy Sarpanch who was on the spot for attending the Gram Panchayat meeting. The appellant is examined at Exh.21, whereas his wife P.W.2 at Exh.23, who stated that after the monthly meeting of

the Gram Panchayat, respondent No.2 - Balu uttered caste based insulting attributions. It is then narrated by them that all the accused persons armed with various weapons assaulted the present appellant with the help of stick, iron pipe and axe.

8. P.W.3 - Santosh who is examined at Exh.24 claimed to be an eye witness to the incident being Deputy Sarpanch. So far as all these three witnesses are concerned, it was brought on record that they belong to the rival group in the village panchayat to that of P.W.2 and P.W.3.

9. It is required to be noted that the story as narrated by P.W.1 in his statement under Section 164 of Code of Criminal Procedure and with that of his evidence before the Court, certain omissions and improvements were noticed. Amongst other, he stated that he had been to the flour mill, telephone call given by the accused Balu and the other statements given to the Police which he was unable to remember. It is required to be noted from the perusal of evidence of P.W.1 that there are certain improvements, so also exaggerations.

10. The evidence of P.W.2 wife of present appellant who is examined at Exh.23 was unable to narrate about the subject of the monthly meeting. He then stated that about 10 to 12 persons assaulted her husband and attributed use of iron pipe by accused No.2. She has also improved her story. P.W.3 the Deputy Sarpanch has admitted that the accused persons have never assaulted him by stick and were not aware about who assaulted whom from the crowd that was gathered. He has rather admitted in his cross-examination

that he has never attended Gram Panchayat meeting since last one year. The other witness P.W.4 Balasaheb at Exh.25, P.W.5 Mohan at Exh.26 though have sought to support the prosecution case, their statements were recorded after two-three days.

11. P.W.6 Sanjay Shinde at Exh.28, a panch witness has stated that the panchnama was already prepared and he was required to sign the same as per Police say. P.W.7 Vijay Gade at Exh.31, Medical Officer has stated that M.L.C. 122 was registered in the case and it is claimed that P.W.1 has given history of assault. The medical certificate is at Exh.32. P.W.8 Ganesh, who has carried out the investigation partly and P.W.9 Anil from the medical hospital at Shirdi stated that the history, as narrated by the present appellant in the case papers was that he fell down from the bike having suffered road accident. He has also noted down the injuries.

12. The utterances as are claimed, which is formed to be basis for registration of crime under the Prevention of Atrocities Act, particularly in the background of the political enmity and in absence of specific evidence to that effect could be inferred as false one.

13. Having overall view of the above referred evidence, in my opinion, no case for conviction is made out. As such, the appeal fails, stands dismissed.

(N.W. SAMBRE, J.)

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