

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 719 OF 2002

The State of Maharashtra,
at the instance of
Ravindra Radhakrishana Kakde,
R/o Newasa Kd.
Through P.S.O., Newasa,
District : Ahmednagar

.. Appellant

VERSUS

1. Shivaji Bhaguji Borude,
Age : 32 years, Occ.: Agri.,
2. Mohan Bhaguji Borude,
Age : 42 years, Occ.: Agri.,

Both r/o Gomalwadi Shivar,
Tal. Newasa, Dist. Ahmednagar

.. Respondents

WITH
CRIMINAL REVISION APPLICATION NO. 318 OF 2002

Ravindra s/o Radhakrishna Kakde,
Age : 30 years, Occu.: Agri.,
R/o. Newasa (Kd.), Tq. Newasa,
Dist. Ahmednagar

.. Petitioner
(Ori.Complainant)

VERSUS

1. The State of Maharashtra,
2. Shivaji Bhaguji Borude,
Age : 32 years, Occ.: Agri.,
R/o Gomalwadi Shivar,
Tal. Newasa, Dist. Ahmednagar
3. Mohan Bhaguji Borude,
Age : 42 years, Occ.: Agri.,
R/o Gomalwadi Shivar,
Tal. Newasa, Dist. Ahmednagar

.. Respondents

Mr. A.R. Kale, A.P.P. for the Appellant-State in both matters

Mr. V.R. Autade, Advocate for the respondents in Cri. Appeal
No. 719/2002

Mr. R.N. Dhorde, Senior Advocate for the petitioner in Cri.
Revision Application No.318/2002

CORAM : M.T. JOSHI, J.

DATE : 08/01/2016

ORAL JUDGMENT :

Heard both sides.

2. Aggrieved by the acquittal of the respondents by the learned Judicial Magistrate First Class, Newasa vide judgment and order dated 21/08/2002 passed in Regular Criminal Case No. 177 of 1999 from the offences punishable under section 324, 504, 506 r/w. 34 of the Indian Penal Code, while the State has preferred the Criminal Appeal, the original complainant - Ravindra Kakde has preferred the Criminal Revision Application.

3. The prosecution case in short is as under:-

. That the present two respondents as well as the complainant are resident of village Dhangarwadi, Taluka - Newasa. Complainant - Ravindra Kakde was the Police

Patil during the relevant period. The complainant's father had earlier filed a complaint with the Police Station against the present respondents that they had threatened and abused him.

. In the circumstances, on 14/08/1999 at about 6:30 pm, PW3 - Police Constable Galphade of the said Police Station alongwith his colleague came to the village to make enquiry in the said complaint. At that time, the complainant and his brother Dharmendra were carrying agricultural works in their field at gat no. 100. PW3 - Police Constable Galphade enquired about the whereabouts of the present respondents, whereupon the complainant shown the place of the respondents and, therefore, the Police proceeded towards the said place.

. The respondents however immediately rushed to the complainant and his brother and assaulted them by an iron rod and sticks. Respondent no.1 - Shivaji gave blows with iron rod on the head and right shoulder of the complainant, respondent no.2 - Mohan was assaulting with stick. He gave blow of it on the forehead and left hand of Dharmendra and bite his right ear. The Police officials present at the spot rushed to them and

the respondents ran away from the spot.

4. The investigation was carried by PW5 – PSI Kande. Medical examination of the complainant, his brother was carried by PW4 – Dr. Pedpallikar. Upon arrest, both the respondents made statement leading to the recovery of the respective weapons and later-on the chargesheet came to be filed.

5. Before the learned Judicial Magistrate First Class, Newasa, in all 5 witnesses were examined. Those were complainant – PW1 – Ravindra, his brother PW2 – Dharmendra, PW3 – Constable Galphade, PW4 – Dr. Pedpallikar and A.S.I. Kande as PW5. The medical certificates as well as various panchanamas were pressed into service.

6. During the cross-examination, the complainant has admitted that already one civil suit was filed in respect of the land gat no.100 against him. Respondent no.2 however was cultivating the said land on behalf of Harde – the original plaintiff in the suit, as a power of attorney holder. Due to this admission during trial, the learned Judicial Magistrate First Class found that

there was already a civil dispute between the parties. Further, taking into consideration the lacunae in the prosecution case, the learned Judicial Magistrate First Class observed that benefit of doubt will have to be extended and the respondents came to be acquitted.

7. The learned A.P.P. for the appellant/State as well as Mr. Dhorde, learned senior counsel appearing for the petitioner in the Criminal Revision Application submitted that the injuries on the person of the complainant and his brother as proved by the Medical Officer would clearly corroborate the prosecution case. Not only this, the independent witness i.e. PW3 – Constable Galphade, who had been at the spot has also corroborated the version of the complainant and, therefore, it was submitted that the reasoning of the learned Judicial Magistrate First Class is perverse.

8. On the other hand, Mr. Autade, learned counsel for the respondents took me through the evidence and the impugned judgment and submits that the reasons forwarded by the learned Judicial Magistrate First Class are reasonable and probable.

9. On the basis of this material, following points arise for my determination :-

I) Whether the prosecution has proved that on 14/08/1999 at about 6:30 pm in gat no. 100 of village Gomalwadi, the present respondents, in furtherance of their common intention voluntarily caused hurt to the complainant and PW2 - Dharmendra by dangerous weapons ?

II) Whether the prosecution has further proved that the respondents, in furtherance of their common intention abused the complainant and provoked him to the extent that he may commit breach of peace and also has committed criminal intimidation ?

My findings to both the above points are in the negative. Criminal Appeal and the Criminal Revision Application are therefore dismissed for the reasons to follow.

R E A S O N S

10. The prosecution case was that earlier, the present respondents had threatened and abused the father

of the complainant and, therefore, the complaint was filed against them. The fact that the complainant had earlier filed a suit against one Harde in which the accused no.2 was the power of attorney holder of Harde, was not disclosed. Thus, this animus was suppressed by the prosecution. In the circumstances, the learned Judicial Magistrate First Class has rightly observed that due to civil dispute, there was already enmity between the parties.

11. In the circumstances, though learned Judicial Magistrate First Class was right in observing that enmity is a double edged weapon, suppression of the said enmity from the prosecution side speaks in volumes.

12. Further, the injuries found by the Medical Officer did not match with the number of injuries deposed to by the complainant and his brother PW2 – Dharmendra. While according to the prosecution, the complainant has suffered two injuries, the Medical Officer found three injuries on his person. As regards Dharmendra, the prosecution case was that he has sustained three injuries while five injuries were found on his person by the Medical Officer.

. In the situation, the observations of the learned Judicial Magistrate First Class that there was exaggeration in the version, is not logical. The fact however remains that the evidence of the injured witnesses do not match with the description of the injuries on their person allegedly found by the Medical Officer.

13. Perusal of the injury certificates would show that all the injuries were simple in nature and a suggestion was given to the Medical Officer that without examining the witnesses, he had passed the certificate.

14. Without any material on record, it would have been difficult to accept the said case of non-examination of the witnesses. However, the history of the trial itself would reveal that while the complainant was the Police Patil of the village, the presence of PW3 – Constable Galphade at the spot is shrouded in suspicion. The Constable has deposed that he was orally instructed by PW5 – Kande to visit the village to make enquiry regarding the incident. PW5 – Kande however deposed that he had however in-fact issued written

direction to PW3, but those directions were not produced on record. Further, the deposition of PW3 – Galphade and of the complainant would show that there is much variance between their evidence, as to at what distance Constable – Galphade was when the incident had started.

15. Not only this, though, according to the prosecution, both the respondents while in the Police custody made a statement leading to the recovery of the respective weapons, none of the panch witnesses to the panchanamas and the activities in this regard were at all examined by the prosecution and those panchanamas were proved from the mouth of the Investigating Officer. Even, the weapons were not sent for chemical analysis. Thus, the entire investigation is shrouded in suspicion.

16. In the circumstances, though normally if corroboration to the oral deposition of the injured witnesses is found by the injuries on his person, the conviction can be recorded, all the peripheral material on record, as detailed supra, would show that the learned Judicial Magistrate First Class has taken a reasonable and probable view of the material before him. Therefore, in the present appeal against acquittal, no

interference is warranted. In the circumstances, Criminal Appeal as well as the Criminal Revision Application are hereby dismissed. Bail bonds, if any of the respondents shall stand cancelled.

Sd/-

[M.T. JOSHI]
JUDGE

arp/