

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.51 OF 2003

The State of Maharashtra,
Through P.P.H.C. Aurangabad.

...APPELLANT
(Ori. Complainant)

VERSUS

- 1) Bhimrao Dattatraya Pathare,
Age : 30 Years,
(Appeal abated as against
Respondent No. 1 as per
Court order dated 01/03/2016)
- 2) Narayan Dattatraya Pathare,
Age 28 Years,
- 3) Sudam Bhanudas Pathare,
Age 25 Years,
- 4) Dattatraya Vilas Wabale,
Age 25 Years.

All R/o-Banpimpri, Tq. Shrigonda,
Dist. Ahmednagar.

...RESPONDENTS
(Ori. Accused)

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Shri. A.M. Phule, A.P.P. for Appellant.
Shri. P.R. Nangare Advocate h/f. Shri. S.R.
Dheple Advocate for Respondent Nos. 2 to 4.
Appeal abated as against Respondent No. 1 as
per Court order dated 01/03/2016.

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

DATE OF RESERVING JUDGMENT : 15TH APRIL, 2016

DATE OF PRONOUNCING JUDGMENT: 3RD MAY, 2016

JUDGMENT :

1. State filed this Appeal against acquittal of Respondent - Original Accused Nos. 1 to 4. During pendency of the Appeal, Original Accused No. 1 - Bhimrao Dattatraya Pathare expired and the Appeal has abated against him. The Respondents came to be acquitted in R.T.C. No. 166 of 1994 by Judicial Magistrate First Class, Shrigonda, Dist. Ahmednagar on 16th October 2002. They were charged with the offence punishable under Sections 452, 323, 324, 504, 506 read with 34 of the Indian Penal Code 1860 ("I.P.C." in short) on the Complaint of one Bhanudas Borude.

2. Case of the prosecution in nut-shell is as follows :-

A) Complainant Bhanudas Borude (hereafter referred as "Complainant") filed First Information Report (Exhibit 45) at Mandavgan out-post of Police Station Shrigonda. Crime No. 174 of 1994 came to be registered. It is the case of the Complainant that on 11th August, 1994 there was a quarrel between accused No. 1 and his son Sudam Borude (PW-4) who were both doing the work of transporting of passengers by Jeep and PW-4 Sudam had got an offence registered. Because of this accused Nos.1 to 4 came to his house at Ghogargaon on 12th August, 1994 in the morning at about 7.00 a.m. and entering his house, accused No.1 beat him by cycle chain, accused No.2 beat him by stick and accused nos. 3 and 4 beat him by fist and kick blows. The wife of the Complainant and neighbouring people had intervened. The Complainant started to go to the Police Station and saw that the accused persons were near the Post Office and they were beating his son PW-4

Sudam by chain, stick and kicks and blows. He intervened. Thus, the report was filed and the offence came to be registered.

B) The matter was investigated by Head Constable Shrikrishna Wadinkar (PW-5). He drew Spot Panchanama Exhibit 48 on the same day. PW-1 Bhanudas and PW-4 Sudam were sent for medical examination and the certificates were obtained from Dr. Uttam Medhe (PW-7). Accused were arrested and accused No.1 gave discovery of the chain and stick from the place of hiding, for which Panchanama was drawn (Exhibit 53). Completing the investigation, charge-sheet came to be filed.

3. The J.M.F.C. framed charge under Sections mentioned above. The accused pleaded not guilty. Their defence as appearing from the cross-examination of prosecution witnesses is that of denial. According to them, there were two political groups in the village and due to

political rivalries the Complaint came to be filed and that the PW-1 and PW-4 had suffered injuries due to their vehicle meeting with an accident in the village.

4. Prosecution examined 7 witness in the matter. The J.M.F.C. discussed the evidence and found that there was no independent witness examined although the evidence of PW-4 Sudam showed that, in the part of incident near the post office 100-200 people gathered. Trial Court noticed that the Complainant was Police Patil. He had preferred to go to Rural Hospital, Shrigonda instead of the Primary Health Center which was available at Mandavgan itself. The Trial Court suspected the medical certificates also and said that they were doubtful. Trial Court observed that the spot panch PW-2 Mohan had stated that after drawing of the Panchanama he had gone away and thus the Trial Court suspected that it was not clear where this panch had put his signature. The

Trial Court discussed the evidence and found that there was no consistency in the oral evidence of the incident. Consequently the Trial Court acquitted the accused persons.

5. I have heard counsel for both sides. Learned A.P.P. submitted that there was evidence available of the witnesses regarding the incident. There was clear motive, as on earlier day PW-4 Sudam had filed F.I.R. against accused No.1 and getting agitated, the accused persons had reacted to cause injury to son of the Complainant. The instrument by which the injury was caused had been seized and there was medical evidence regarding the injuries caused. Thus, according to the learned A.P.P. the accused must be convicted.

6. Against this, the counsel for Respondents - Accused submitted that although the independent witnesses could have been available, they were not examined. According to him, the medical

certificate was obtained by the Complainant from a far away hospital ignoring primary health center which was locally available. According to counsel, the Complainant was Police Patil and the evidence shows that it was an admitted position that he was familiar with the medical officers as well as the police machinery. Thus, according to the counsel the reasonings recorded by the trial Court are proper and correct to acquit the accused.

7. I have gone through the documentary and oral evidence available on record. There is evidence of PW-1 Bhanudas and his wife Hirabai (PW-3), both stating that the accused persons entered their house in the morning at about 7.00 a.m. and the incident taking place. According to the Complainant, the incident occurred at his house at about 7.00 a.m. to 8.00 a.m. These witnesses say that the accused entered their house and suddenly started beating. Accused No.1 had cycle chain and he hit the Complainant on neck and

back and accused No.2 hit the Complainant with the help of stick on back and hip. Accused Nos.3 and 4 gave fist and kick blows according to this couple. Although it was mentioned in the F.I.R. that the Complainant had, after accused left, started to go to the Police Station and saw further incident near the post office where he had seen PW-4 Sudam being beaten, at the time of evidence PW-1 Bhanudas and PW-3 Hirabai did not say anything about the incident near the post office.

8. PW-4 Sudam, however, deposed that the incident near post office took place between 7.30 a.m. to 8.00 a.m. The incident took place at Ghogargaon. He deposed that accused Nos.1 to 4 came there abusing him and beat him, and his father (PW-1) separated the quarrel. This witness has also claimed that Accused No.1 hit him by chain and Accused No.2 hit him by stick and Accused Nos.3 and 4 hit him by fist and kick blows. He claims that he suffered injuries to left

forearm and back. Thus, although PW-4 Sudam deposed regarding presence of his father PW-1 Bhanudas in the incident which took place near the post office, PW-1 Bhanudas in oral evidence does not depose about the same.

9. The Spot Panchanama Exhibit 48 shows that near the house of Complainant after open space there is *Harijan Vasti* on the East and to the West there are houses of one Eknath Bhaurao, Raosaheb Bhaurao and to the North there is house of one Sopanrao Banaji. FIR Exhibit 45 says that neighbours had intervened. Still, there is no other witness deposing in favour of PW-1 and PW-3. As regards the incident which took place near the post office, admittedly 100-200 people had gathered but there is no corroborative evidence coming before the Court. Corroboration becomes necessary looking to the fact that on one day before admittedly dispute had arisen between Accused No.1 and PW-4 Sudam, for which it appears

that he filed one F.I.R. Exhibit 54. PW-4 Sudam himself did not prove that document and investigating officer PW-5 Shrikrishna brought it on record. Corroborative evidence is also appearing to be necessary because PW-3 Hirabai had admitted in cross-examination that it was true that there were disputes between her and accused No.1 since before.

10. As regards the discovery, although the investigating officer stated that accused No.1 gave discovery of chain and stick from the place of hiding mentioned in Exhibit 53, Panch PW-6 Navnath turned hostile and did not support the prosecution.

11. As regards the medical evidence, there is PW-7 Dr. Uttam who deposed that he examined PW-4 Sudam on 11th August 1994 for abrasion with wheel marks. For such injuries, he had issued certificate Exhibit 57. In the certificate he

earlier recorded history of assault by vehicle chain. He also recorded the object with which the injuries could be caused as vehicle chain. However, at both places he subsequently scored out the word "vehicle chain" and regarding the object with which injury was caused, added "hard and blunt". In the evidence this doctor deposed that said abrasion with wheel marks was possible by hard and blunt objects. To the further questions asked by the A.P.P., however, he deposed that injury No.1 as recorded in the medical certificate Exhibit 57 was possible by cycle chain.

. PW-7 Dr. Uttam further claimed that on 12th August, 1994 also he examined PW-4 Sudam. This time he issued medical certificate Exhibit 58 and as regards injury No.1, recorded that it was contusion with dotted abrasions. He deposed that such injury of contusion with dotted abrasions was possible by vehicle chain. Thus for same instrument he was sometime writing it as causing

wheel mark and sometime "dotted abrasions". This doctor claimed that he had examined PW-1 Bhanudas also for whom he issued medical certificate Exhibit 59. That certificate shows four injuries of contusions with wheel marks. The certificates Exhibit 57 to 59 do not bear dates on which they were issued, although they claim date and time of examination. Looking to Exhibit 57 where doctor writes the history as assault by vehicle chain and then scores it out and at the time of evidence again claims the same to be by vehicle chain, there appears to be substance in the arguments for the accused that the Complainant purposely avoided going to the Primary Health Center which was available at Mandavgan and preferred to go to Rural Hospital, Shrigonda. It is argued that the Complainant being Police Patil was knowing the doctors and police personnel and thus he chose the hospital he wanted to go. The trial Court has also suspected the medical certificates and I find that there is room to doubt the medical evidence which

was brought on record. In the absence of independent corroboration and the medical evidence not inspiring confidence, and looking to the admitted fact that the parties had strained relations, acquittal recorded by the trial Court can not be interfered with. The view taken by the trial Court of the material on record, is possible view and there do not appear to be good and strong reasons to interfere with the acquittal.

12. There is no substance in the Appeal. The Criminal Appeal is dismissed. Bail Bonds of Respondents - accused are cancelled.

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