

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

CRIMINAL APPEAL NO.473 OF 2003

The State of Maharashtra

...Appellant

versus

1. Bhagwan Sukhadeo Sonawane,
Age: 36 years, Occ: Agri.,
2. Babasaheb Paraji Kale,
Age: 44 years, Occ: Agri.,
3. Manjabapu Tukaram Kale,
Age: 34 years, Occ: Agri.,
4. Sanjay Tukaram Kale,
Age: 30 years, Occ: Agri.,
5. Laxman Kisan Chavhan,
Age: 44 years, Occ: Agri.,
6. Nandkumar Kisan Chavhan,
Age: 34 years, Occ: Agri.,
7. Karbhari Kisan Chavhan,
Age: 42 years, Occ: Agri.,
(Abated as per order
dtd. 29.08.09).

All R/o. Khokar, Tal. Shrirampur,
District Ahmednagar.

...Respondents

WITH

CRIMINAL REVISION APPLICATION NO.127 OF 2003

Dnyandeo s/o Namdeo Pawar,
Age: 54 years, Occ: Agri.,
R/o. Khokar, Tq. Shrirampur,
Dist. Ahmednagar.

...Applicant

versus

1. The State of Maharashtra

2. Bhagwan Sukhdeo Sonwane,
Age: 36 years, Occ: Agri.,
3. Babasaheb Paraji Kale,
Age: 44 years, Occ: Agri.,
4. Manjabapu Tukaram Kale,
Age: 34 years, Occ: Agri.,
5. Sanjay Tukaram Kale,
Age: 30 years, Occ: Agri.,
6. Laxman Kisan Chavhan,
Age: 44 years, Occ: Agri.,
7. Nandkumar Kisan Sonwane,
Age: 34 years, Occ: Agri.,
8. Karbhari Kisan Chavhan,
Age: 42 years, Occ: Agri.,
(Abated as per order
dtd. 29.08.09).

All respondent Nos. 2 to 8
R/o. Khokar, Tal. Shrirampur,
District Ahmednagar.

...Respondents

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Mr. R.V. Dasalkar, A.P.P. for appellant in Criminal Appeal No. 473 of 2003 and for respondent No. 1 Cri. Revn. Appln. No. 127 of 2003
Mr. T.M. Tandale, Advocate h/f Mr. A.B. Kale, Advocate for respondent Nos. 1 to 6 in Criminal Appeal No. 473 of 2003 and for respondent Nos. 2 to 7 in Cri. Revn. Appln. No. 127/2003
Mr. Sandesh Hange, Advocate h/f Mr. V.R. Dhorde, Advocate for applicant in Criminal Revision Appln. No. 127 of 2003
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CORAM : N.W. SAMBRE, J.

DATE : 9th MARCH, 2016

ORAL JUDGMENT :

Present Criminal Appeal and Criminal Revision
Application are preferred against the verdict of acquittal of

respondents for the offence punishable under Sections 143, 147, 148, 149, 326, 324, 323 of Indian Penal Code read with Section 37(1)(3) of Bombay Police Act.

2. The facts, as are necessary, for deciding the present appeal and revision, are as under :-

Complainant Dnyandeo Namdeo Pawar vide complaint Exhibit-58 dated 05/01/2001 claimed that out of political rivalry, the respondents herein have assaulted him and his companions by causing serious injuries resulting into crime in question.

3. Uttam Rajaram Shelke, PW-10 who was examined at Exhibit-74, received the said complaint after registration by Head Constable Bhite. Complainant Dnyandeo was hospitalized on the same day and the said complaint has resulted into registration of Crime No. 01/2001. After the investigation is set in motion, he has drawn spot panchnama and recovered three sticks and two metal rods from the accused Manjabapu. He then recorded statement of complainant on 15/01/2001, wherein three more accused were added in addition to earlier accused vide supplementary statement Exhibit-75. He then investigated the matter and charge sheeted the accused persons.

4. So as to bring home the guilt, the prosecution examined PW-1 Ramesh Kisan Thorat at Exhibit-42, PW-2 Munna Mehboob Sayyad at Exhibit-44, panch witness on the spot panchnama, PW-3 Devidas Salalkar, eye witness at Exhibit-46, PW-4 Karbhari Baban Badakh, panch witness on weapon seizure panchnama at Exhibit-48, PW-5 Bhausahab Eknath Wagh, panch witness on weapon seizure panchnama at Exhibit-49, PW-6 Dnyandeo Namdeo Pawar, complainant at Exhibit-57, PW-7 Dr. Anil Mahadeo Shinde at Exhibit-64, PW-8 Dr. Sumeet Agrawal at Exhibit-69, PW-9 Dr. Ravindra Bhausahab Jagdhane at Exhibit-71 and PW-10 Uttam Rajaram Shelke at Exhibit-74, the Investigating Officer.

5. The complaint is at Exhibit-58, supplementary statement of the complainant is at Exhibit-75, spot panchnama at Exhibit-45, seizure panchnama at Exhibit-49, medical certificate of injured complainant Dnyandeo, who was examined by three different Medical Officers are at Exhibits-65, 70 and 72, the statements of accused were recorded under Section 313 of Code of Criminal Procedure at Exhibits-77 to 83.

6. Upon appreciation of the evidence of above referred witnesses, learned Magistrate acquitted the accused of the offence,

with which they are charged, on 24/03/2003. As such, Criminal Appeal No. 473 of 2003 is filed by the State and Revision No. 127 of 2003 is filed by complainant Dnyandeo Namdeo Pawar against acquittal of the accused persons.

7. While trying to make out a case for reversing the acquittal and ordering conviction, learned A.P.P. and learned Counsel for the complainant would urge that learned Magistrate has ignored the evidence of eye witness and complainant. He would then submit that the injury certificates at Exhibits-65, 70 and 72 and panchnama of seizure of weapon from accused Manjabapu at Exhibit-49 depicts *prima facie* involvement of the respondents in the crime in question. He would then submit that the medical evidence coupled with the statement of eye witness speak of strong *prima facie* case of conviction of the respondents and as such, the Court below has committed an error, which calls for indulgence in revisional jurisdiction.

8. The sum and substance of the submission of learned A.P.P. and learned Counsel for the complainant is that there is strong case for conviction of the respondents and this Court should reassess the entire evidence.

9. Learned Counsel for the respondents-accused would submit that the prosecution has failed to bring home guilt based on the evidence, which has prompted learned the Court below to accord acquittal of the respondents. According to him, there is no substance in appeal and revision, as such, prayed for rejection of the same.

10. With the assistance of learned A.P.P., and respective Counsel, I have scanned the record of the learned Court below including that of evidence recorded.

11. It is required to be noted that the charge came to be framed at Exhibit-28 against the accused persons. Thereafter, the evidence of eye witnesses are recorded. PW-1 Ramesh Kisan Thorat, the eye witness, though narrated about the alleged incident, however, upon scrutiny of his cross examination, it could be easily noted that there was political enmity in between the group of the complainant and that of accused persons. In his cross examination, he has brought on record that accused Babasaheb is Director of the Ashok Co-operative sugar factory and accused Laxman is Sarpanch of the village Khokar. The other accused are the relatives of each other and accused Nandkumar and Laxmikant are brothers. He then admits that there are two groups, which are identified by one Murkute group and another by Sasane group. According to him, Dnyandeo,

complainant belongs to Murkute group, whereas the accused persons belong to Sasane group. He then narrates that accused Manjabapu gave blow of iron rod below right knee on front side of the leg to the said witness.

12. It is required to be noted that Dnyandeo, complainant claimed that he became unconscious because of beating, however, the said fact is conspicuously absent in the complaint.

13. It is further required to be noted that vide Exhibit-49, it is claimed that weapons, which are used in the commission of crime, were seized from accused Manjabapu, however, it is required to be noted that panch witnesses to the seizure memo have turned hostile.

14. Apart from above, the alleged claim that seizure panchnama Exhibit-48 could be termed to be proved by the evidence of Investigation Officer is concerned, if the evidence of Kashinath and Bhausaheb Wagh, panch witnesses to the seizure panchnama is evaluated, in my opinion, there is no other corroboration to accept the said submission that seizure panchnama was proved. It is further required to be noted that the said witnesses have turned hostile. The complainant then claims that he has suffered fracture injuries on ulnar staypaid and right femoral candyle over tibia and fibula.

Dr. Jagdhane, Medical Officer, who was examined to prove grievous hurt has stated that X-ray films were handed over to the complainant, however X-ray films are not produced on record to prove the injuries. Even if medical certificate at Exhibit-70 is considered, still it is required to be noted that the complainant has tried to improve his story of alleged assault, as is apparent from his testimony.

15. Learned Magistrate, having regard to the nature of evidence, as is brought on record, has inferred that the prosecution has failed to bring on record the sufficient evidence, so as to have verdict of guilt against the accused persons. In my opinion, the evidence, as is brought on record, is not sufficient to held guilty the accused-respondents for the crime, which with they were charged. As such, present appeal and revision, both sans merit and are accordingly dismissed.

[N.W. SAMBRE, J.]