

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 435 OF 2003

The State of Maharashtra;
through Police Sub Inspector,
Ashti Police Station, Taluka Partur,
District Jalna

APPELLANT

VERSUS

1. Hanumanlal s/o Rajaram Jaiswal,
Age : 73 years, Occupation: Business,
2. Ratanlal s/o Hanumanlal Jaiswal,
Age : 37 years,
3. Dilip s/o Hanumanlal Jaiswal,
Age : 33 years,
4. Ashok s/o Hanumanlal Jaiswal,
age : 30 years, Occupation: Business,
All residents of Kanhaiya Nagar,
Jalna Taluka & District Jalna

RESPONDENTS

AND

CRIMINAL REVISION APPLICATION NO. 155 OF 2003

Shaikh Moosa s/o Shaikh Dagdu,
age : 50 years, Occu.: Private Service,
R/o Ashti (Dhotarjoda)
Tq. Partur, Dist. Jalna

APPLICANT

VERSUS

1. Hanumanlal s/o Rajaram Jaiswal,
aged : 67 years,
2. Ratanlal s/o Hanumanlal Jaiswal,
age : 32 years,

3. Dilip s/o Hanumanlal Jaiswal,
age : 27 years,

4. Ashok s/o Hanumanlal Jaiswal,
age : 25 years,

All are r/o Kanhaiya Nagar
Jalna

5. The State of Maharashtra
Through P.S. Ashti Tq. Partur,
District Jalna

RESPONDENTS

(In view of death of respondent no. 1 - Hanumanlal,
his name has been deleted from the array of
respondents in both proceedings, as per order dated
04.04.2005)

Mr. R.B. Bagul, A.P.P. for the appellant-State in
Criminal Appeal No. 435/2003

Mr. Ajinkya Kale, Advocate h/f Mr.S.B. Talekar, Advocate
for the revision-petitioner in Criminal Revision
Application No. 155/2003

Mr. R.B. Deshpande, Advocate for the respondent nos. 2
to 4 in Criminal Appeal as well as Criminal Revision
Application

CORAM : M.T. JOSHI, J.

DATE : 11/01/2016

ORAL JUDGEMENT :

1. Heard learned A.P.P., learned counsel for the
revision petitioner and learned counsel for the
respondents/original accused.

2. Aggrieved by the acquittal of the present respondents in Criminal Appeal No. 5 of 2001 by the Additional Sessions Judge, Jalna, vide order dated 16th April, 2003, from the offence punishable under section 323 of the I.P. Code, the present appeal is preferred by the State and aggrieved by the same order of acquittal of the present respondents, Criminal Revision Application No. 155 of 2003 is preferred by the original complainant.

. The learned Judicial Magistrate First Class, Partur, vide judgement and order dated 28th February, 2001 passed in Regular Criminal Case No. 77 of 1993 had convicted the present respondents i.e. original accused no.1 – Hanumanlal, accused no.2 – Ratanlal, accused no.3 – Dilip and accused no.4 – Ashok, for the offence punishable under section 323 of I.P. Code and sentenced them to suffer simple imprisonment for one month each and to pay a fine of Rs.50/- each, in default to suffer imprisonment for one day.

. Aggrieved by the said conviction and sentence all the present respondents filed Criminal Appeal No.5/2001 in the Court of Additional Sessions Judge at Jalna. The learned Additional Sessions Judge, vide

judgement and order dated 16th April, 2003, acquitted all the original accused/present respondents. Hence, the present Criminal Appeal by the State as well as the Criminal Revision Application by the original complainant.

4. Complainant – PW1 Shaikh Moosa Shaikh Dagdu filed complaint at exhibit-76 on 13th February, 1993. His case, in short, is as under:

. That, he was appointed as watchman by one Shashibhushan Chandanlal Jaiswal to look after his house at village Ashti. On 12th February, 1993 at about 8.30 p.m., while he was sitting outside of the house, two jeeps came there. At that time, about 10 to 12 persons including accused No. 1 Hanumanlal Rajaram Jaiswal, accused No. 2 Ratanlal Hanumanlal Jaiswal and accused No. 4 Ashok Hanumanlal Jaiswal came there. They started breaking open the lock of the house with a hammer. The complainant, therefore, questioned them. Upon that, the original accused No. 1 Hanumanlal, accused No. 2 Ratanlal and accused No. 4 Ashok alongwith others bet him with fists, kicks and slap. Out of them, accused No. 2 Ratanlal and accused No. 4 Ashok rushed towards

the jeep and from the jeep, they hurled 2 to 3 country liquor bottles after breaking them towards him. He received injuries in the beating and therefore, the complaint came to be filed.

5. The investigation was conducted. The complainant was sent for medical examination. PW3 Dr. Laxman Waghmare examined the complainant on 13th February, 1993. He found one abrasion on the back of right shoulder admeasuring 1/2 inch x 1/2 inch x 1/8 inch. It was a simple injury. According to the Medical Officer, it may have been caused by a blunt weapon. Besides the complainant and the Medical Officer, the prosecution has examined one eye witness PW2 Munja Jijabhau More.

6. The learned Judicial Magistrate First Class believed the prosecution case and convicted all the four accused.

. The learned Additional Sessions Judge, however, found that the prosecution case is full of suspicious circumstances and therefore, the appeal filed by the accused came to be allowed.

7. The learned A.P.P. as well as learned counsel for the revision petitioner submitted that the deposition of the complainant is corroborated by the medical evidence. Besides, there is an eye witness and therefore, the learned Additional Sessions Judge ought not to have allowed the appeal.

8. On the other hand, learned counsel for the respondents/accused took me through the evidence on record and submitted that the reasoning forwarded by the learned Additional Sessions Judge cannot be faulted with.

9. On the basis of above material on record and the submissions advanced on behalf of both sides, the following points arise for my determination :-

(I) Whether the prosecution has proved that the present respondents, in furtherance of their common intention, committed criminal trespass at the given date, time and place regarding the house in custody of the complainant ?

(II) Whether the prosecution has proved that at the given date, time and place, all the present respondents,

in furtherance of their common intention, being members of unlawful assembly, voluntarily caused hurt to complainant – Shaikh Moosa Shaikh Dagdu ?

(III) Whether the prosecution has proved that at the given date, time and place, all the present respondents, being members of unlawful assembly, had intentionally insulted the complainant with intent to provoke breach of the public peace and also caused criminal intimidation ?

My findings to all the above points No. (I) to (III) are in the negative. The criminal appeal as well as criminal revision application are, therefore, dismissed, for the reasons to follow :

R E A S O N S

10. The complaint at Exh-76 would show that accused no.1-Hanumanlal, accused no.2-Ratanlal and accused no.4-Ashok are named in the complaint. Accused no.3-Dilip, the son of accused no.1-Hanumanlal, is not named in the F.I.R. The cross-examination of the complainant would reveal that he was previously serving all these accused

persons for three years. Still, he could not name accused no.3-Dilip as one of the members of unlawful assembly or actor in the incident as detailed in the F.I.R. though the F.I.R. was filed on the second day of the incident.

. The evidence of complainant would show that on the same day, accused no.1-Hanumanlal also had filed a complaint regarding forcible possession of the house in question by the master of the complainant namely, Shashibhushan Chandanlal Jaiswal.

11. Not only this, the independent eye witness PW2 - Munja Jijabhau More examined by the prosecution did not name any of the accused, nor he identified any of them during investigation or during trial at the time of recording his statement by the learned Judicial Magistrate First Class. He is resident of same village Ashti, he is very well acquainted with the master of the complainant namely Shashibhushan Jaiswal. He merely deposed that some persons came by a jeep and caused the incident.

. Thus, the independent eye witness did not establish any identity of any of the accused. We have

already found that in the complaint the name of accused no.3-Dilip does not find place, yet he is chargesheeted for commission of the offence.

. The Medical Officer - PW3 Dr.Laxman Waghmare has found one abrasion on the person of the complainant which is of a very minor nature, as detailed supra.

12. If all these facts are taken into consideration, in my view, the prosecution has failed to prove beyond reasonable doubt that any of the present respondents/accused have committed any of the offences with which they were charged. The reasoning forwarded by the learned Additional Sessions Judge, therefore, cannot be faulted with. In the result, the following order.

13. The Criminal Appeal as well as Criminal Revision Application are hereby dismissed. The bail bonds of the respondents, if any, shall stand cancelled.

[M.T. JOSHI]
JUDGE