

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

CRIMINAL APPEAL NO.463 OF 2003

Sau. Narmadabai Kachru Kapse
Age 45 years, Occ. Agriculture,
Resident of Nagapur, Taluka Newasa,
District Ahmednagar ... APPELLANT
(Original Complainant)

VERSUS

1. Trimbak Shankar Kapse
Age 63 years, Occ. agriculture **(Abated)**
2. Babasaheb Trimbak Kapse
Age 41 years, Occ. Agriculture
3. Digambar Trimbak Kapse
Age 38 years, Occ. Agriculture
4. Dattatraya Trimbak Kapse
Age 33 years, Occ. Agriculture
5. Sau. Bhamabai Trimbak Kapse
Age 55 years, Occ. Agriculture
6. Sau. Shardabai Babasaheb Kapse
Age 35 years, Occ. Agriculture

All Resident of Nagapur, Taluka Newasa,
District Ahmednagar
7. The State of Maharashtra
(Copy to be served on the
Public Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad) ... RESPONDENTS

.....
Shri Vasant Shelke, Advocate holding for
Shri V.H. Dighe, Advocate for appellant
Shri A.M. Phule, A.P.P. for State
Shri C.K. Shinde, Advocate for respondent No.2 to 6
.....

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

DATED: 1st April, 2016.

JUDGMENT :

1. This appeal by original complainant Narmadabai Kapse has been filed against the acquittal of respondents - original accused 1 to 6 under Sections 323, 506, 504 read with Section 34 of the Indian Penal Code, 1860 (I.P.C. in brief). The appeal was admitted on 18th June 2003. The respondent No.1 (original accused No.1 Trimbak Kapse) expired during pendency of the appeal and appeal abated against him.

2. In brief, the case of prosecution is as follows :

Complainant filed Summary Trial Case No.343/1997 before the Judicial Magistrate, First Class, Newasa, claiming that she and the accused have got fields adjoining at Nagapur, Taluka Newasa. The incident occurred in Gat No.32 in the land owned by the complainant. The accused have been troubling the

complainant and her husband Kacharu to compel them to sell land to the accused. There had been earlier complaints in 1993 and also on 21.3.1997. On 10.4.1997, the complainant and her husband were working in their field, at which time the respondent No.2 Babasaheb unlawfully brought his bullock cart in the land of the complainant which was objected to by her husband Kacharu (P.W.3). Getting angry, the respondent No.2 called out other accused, who came to the spot. Respondent No.2, 3 and 4 had sticks in their hands and respondent No.1 instigated to kill Kacharu. Respondent No.2 tried to give stick blow to Kacharu, which was obstructed by him by hand, due to which the hand got injured. Respondent No.3 gave stick blow on the back of complainant and respondent No.4 gave stick blow on the thigh of husband of complainant. The complainant started shouting, at which time respondent No.5 pulled hair of the complainant and respondent No.6 gave kick blows to the complainant. The complaint mentions names of various persons who had gathered and intervened and separated the quarrel.

3. The trial Court recorded plea of the accused persons and they pleaded not guilty. Thereafter evidence of complainant Narmadabai was recorded as P.W.1. P.W.2 Ramdas was examined as the panch of the spot. The husband Kacharu

deposed as P.W.3. P.W.4 is Head Constable Dhondiram, who investigated in the matter when directions were given under Section 202 of the Code of Criminal Procedure by the Judicial Magistrate, First Class, who filed his report.

4. Considering the evidence, the trial Court recorded all the points for determination under Sections 323, 504 and 506 of the Indian Penal Code in negative. The trial Court recorded that the panch P.W.2 Ramdas is brother of the complainant and he could not even tell the boundaries. It was noted that, P.W.1 complainant Narmada and P.W.3 Kacharu are the only witnesses and the other witnesses have not been examined. The trial Court did not find that there was cogent evidence. It was also noticed that there was no medical evidence brought on record or any evidence that P.W.1 and P.W.3 were examined medically. For such reasons, the acquittal was recorded.

5. Learned counsel for the complainant has taken me through the evidence and according to him, the judgment recorded by the trial Court is not maintainable. It is argued that, the judgment is perverse and speculative. The evidence of complainant and her husband should have been accepted and the accused should have been convicted.

6. Per contra, the learned counsel for respondent - original accused submitted that the incident is dated 10.4.1997. The private complaint was filed on 11.4.1997. There is no material brought of making complaint to the police station. The complainant and her husband did not go to doctor and there is no medical evidence. The panch examined was also real brother.

7. Going through the material available, it may be seen that the complainant Narmadabai claimed that at the time of incident, the accused No.1 threatened to kill her husband and accused No.2 dealt a stick blow, which was warded off by her husband. She deposed that, because of the blow, her husband suffered injury to his right hand. However, there is no medical evidence coming in support. In evidence, she claimed that accused No.3 dealt stick blow on the back of her husband. In her complaint, however, it was stated that accused No.3 had given a stick blow on her back. In her verification statement, which was recorded, she simply claimed that accused No.3 gave stick blow to the back. In evidence, complainant claimed that, they had gone to the police station after the incident and her husband P.W.3 Kacharu lodged the complaint. Against this, her husband P.W.3 Kacharu claimed that when they had gone to the police

station, it was his wife who lodged the report. The cross-examination of P.W.3 Kacharu shows that the accused had filed one case before Tahsildar regarding entry in the field. The F.I.R. also mentions that, earlier there were disputes. In such background, it would be risky to convict the accused persons without corroboration to the evidence of this couple. Not only ocular corroboration is not coming forward, medical evidence is also not found to be there.

8. As such, it would not be appropriate to interfere with the judgment of acquittal recorded by the trial Court.

9. The Criminal Appeal is dismissed. Bail bonds of respondent Nos.2 to 6 are cancelled. Their acquittal recorded by the trial Court is confirmed.

(A.I.S. CHEEMA, J.)