

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.622 OF 2003

The State of Maharashtra,
Through Mohan Bali Dangat,
Age-35 years, Occu:Agri.,
R/o-Sakhewadi,
Tq. & Dist-Osmanabad.

...APPELLANT

VERSUS

- 1) Arun Dadarao Khattal,
Age-25 years,
- 2) Lahu Manohar Shirsat,
Age-32 years,
- 3) Sahebrao Sadashiv Dalve,
Age-25 years,
- 4) Bhaurao Sadashiv Dalve,
Age-30 years,
- 5) Anna Sadashiv Dalve,
Age-35 years,
- 6) Jivan Bhanudas Khatal,
Age-35 years,
- 7) Ram Bhanudas Khatal,
Age-40 years,
- 8) Netaji Durga Ingale,
Age-25 years,
- [9) Raosaheb Bhanudas Khatal,

Age-42 years,]
(Appeal abated as against
Respondent No.9 as per
Court's order dated 24.02.2010),

10) Vinayak Raosaheb Khatal,
Age-20 years,

11) Anil Gopinath Raibhan,
Age-29 years,

All R/o-Sakhewadi,
Tq. & Dist-Osmanabad.

**...RESPONDENTS
(Orig. Accused)**

...
Shri S.M. Ganachari, A.P.P. for Appellant.
Shri A.N. Irpatgire Advocate for Respondent
Nos. 1 to 8, 10 and 11.
Appeal abated as against Respondent No.9 as
per Court's Order dated 24.02.2010.

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

DATE OF RESERVING JUDGMENT : 22ND APRIL, 2016.

DATE OF PRONOUNCING JUDGMENT: 6TH MAY, 2016.

JUDGMENT :

1. The State has filed this Appeal against acquittal of Respondent Nos. 1 to 11 - original accused Nos.1 to 11. I will refer to them as accused. Respondent No.9 - original accused No.9 -

Raosaheb Bhanudas Khatal has been reported as dead during pendency of the Appeal and matter has abated for him.

2. The accused were tried before IIIrd Joint J.M.F.C. Osmanabad in R.C.C. No.322 of 2000 for offences punishable under Sections 147, 148, 324, 323, 504 read with 149 of the Indian Penal Code, 1860 ("IPC" in brief). They have been acquitted by the J.M.F.C. by the Judgment dated 12th June 2003.

3. In short, the case of the prosecution is as follows:-

A). Complainant Mohan Dangat filed FIR Exhibit 56 on 29th August 2000 at Police Station Osmanabad (Rural) and Crime No.89 of 2000 was registered. The complaint was that on that day at about 8.00 p.m. the complainant was near Maruti Temple at Saknewadi, Tq-Osmanabad. He was sitting in front of his house which is situated there. At that time, accused Nos.1 to 11 (FIR gives their

names) came there armed with sticks, axe and chain and started abusing him. Accused No.6 Jivan hit axe on the head of the complainant. Accused No.1 Arun gave blow by cycle chain which fell on right hand of the complainant. Accused No.2 Lahu hit stick on the back of the complainant. The other accused persons gave fist and kick blows and blows by sticks to the complainant. At that time his brother Ankush, Gunwant - son of Ankush, one Vikas Dangat, Mangal - wife of Ankush, Sunita - daughter of Ankush, Usha Dangat, Nirmalabai, Jivan Dangat, Agatrao Mane, Vitthal Salunke, Anil Ankush Dangat, Gopinath Dangat intervened and even they were beaten by stick, axe and cycle chain and they were injured. The FIR then gives names of couple of persons who saw the quarrel and had intervened and reached the complainant to his house. Thus, the complaint.

B). After the offence was registered, P.I. Pramod Koparde (PW-11) investigated the offence. The Spot-Panchnama (Exhibit 57) was recorded.

Blood stained clothes of the complainant and injured Vithal Salunke (PW-4) were seized vide Panchnama Exhibit 60. The accused came to be arrested. Medical certificates of the complainant and the injured (Exhibit 73 to 85) were collected as they were got medically examined. Statements of witnesses were recorded. After investigation, the charge-sheet was filed.

4. Charge came to be framed for offences as mentioned above. The accused pleaded not guilty. Their defence is of denial. According to them, there are two different groups in the village and because of political rivalry, false case has been filed.

5. Prosecution brought on record evidence of twelve witnesses. The trial Court, after considering the evidence, recorded reasons in its Judgment and acquitted the accused persons. Thus, this Appeal.

6. According to the learned A.P.P. for State, even if the complainant PW-1 Mohan turned hostile, there was evidence of PW-3 Chandrakant Mane, who was eye witness. PW-4 Vithal had also seen the incident and he was also an injured. There was then evidence as to how PW-5 Ankush, the brother of the complainant was hit by the accused persons. When his family members PW-6 to PW-9 intervened, even they were caused hurt. Medical evidence of injuries of these witnesses was available but that has been disbelieved. It was argued that the trial Court wrongly appreciated the evidence and the accused persons deserve to be convicted.

7. Per contra, the learned counsel for the accused referred to the oral evidence of witnesses to show that there were different versions and contradictions, and omissions were proved through the investigating officer. The counsel submitted that PW-4 Vithal had deposed that accused No.9 Raosaheb gave him axe blow while FIR says that it

was accused No.6 Jivan who had the axe. It was stated that PW-5 had deposed that accused No.9 Raosaheb rather had a stick. Although PW-7 claimed that he was injured in the incident, his parents did not refer to his presence. No weapons of assault were recovered and although clothes were seized, they were not sent to C.A. and C.A. Reports were not obtained. The case is outcome of political rivalry and the acquittal is rightly recorded by the trial Court and the Appeal should be dismissed.

8. I have gone through the evidence which was brought on record. The complainant PW-1 Mohan turned hostile and disowned contents of the FIR Exhibit 56. The evidence of PW-2 Suryakant Chavan read with the evidence of PW-11 Investigating Officer Pramod shows that vide Panchnama Exhibit 60 blood stained clothes of the complainant and injured witness PW-4 Vithal were seized. However, when these clothes were not sent to C.A., the evidence is not of much value.

9. PW-3 Chandrakant Mane denied in the cross-examination the suggestion that he had reached the spot after the incident was over, but in his examination-in-chief deposed only to the effect that accused No.1 gave stick blow to Ankush (PW-5) and complainant Mohan. The other evidence brought on record by the prosecution is about various other persons being assaulted, but PW-3 Chandrakant did not depose about any other thing. This witness was not named in the F.I.R. where couple of other names were recorded as persons who saw the incident.

10. There is evidence of PW-4 Vithal Salunke claiming that when he was coming towards the spot, he saw that people had gathered and complainant Mohan and PW-5 Ankush had been injured. According to him when he stopped there, accused No.9 Raosaheb gave axe blow to him causing injury to his left hand small finger and he was injured near his eye on left side. He does not depose about

any other persons intervening and being beaten by accused.

11. Then there is evidence of PW-5 Ankush Dangat, his wife PW-6 Mangal, his son PW-7 Anil, his other son PW-8 Gunwant and his daughter Sunita (PW-9). All of them referred to the injuries caused to PW-5 to PW-9.

12. When I have gone through the evidence of PW-3 to PW-9 who claimed either to be witnesses or injured, in nut-shell what these witnesses have deposed is about their arrival at the spot when the incident started or some time after it had started.

(a) As regards the assault on PW-5 Ankush, there is evidence of PW-3 Chandrakant that accused No.1 hit PW-5 Ankush by stick. PW-9 Sunita claimed that accused No.1 Arun hit stick on right elbow of Ankush. Against this, PW-5 Ankush himself claimed that he was hit by stick by accused No.9 Raosaheb

and accused No.6 Jivan. PW-8 Gunwant corroborates PW-5 on this count. However, if evidence of PW-6 Mangal is perused, she claims that accused Nos. 1, 3 to 6 and 9 beat Ankush by stick. PW-7 Anil, however, claimed that accused No.1, 3, 5, 7 and 9 had beaten PW-5 Ankush.

(b) If evidence of PW-4 Vithal Salunke is perused, he claimed that he was hit by axe by accused No.9 Raosaheb and was injured to his little finger. He also claims to have injuries near his eye. No other witness deposed regarding this assault.

(c) With regard to PW-6 Mangal, she claimed that accused No.1 Arun hit her by stick causing injury to her right elbow. PW-7 Anil merely claimed that accused No.1 assaulted his mother. However, omission was proved regarding such claim by PW-7.

(d) PW-7 Anil deposed that he was beaten by

accused No.1 on left hand shoulder. There does not appear to be any corroboration to his version.

(e) Regarding injury to PW-9 Sunita, PW-5 Ankush claimed that accused No.6 Jivan gave stick blow to Sunita on shoulder. However, that claim of his is proved to be an omission vis-a-vis police statement. PW-9 Sunita herself claimed that accused No.6 Jivan assaulted her on her right shoulder. However, PW-7 Anil has deposed that accused No.1 Arun had assaulted his sister. His claim has been proved to be an omission.

(f) PW-8 Gunwant claimed to have been hit by accused Nos.5 and 6 by stick on his head near right eye.

13. I am aware that in an incident of riot where actions take place in quick succession, there may be difference in versions. However, oral evidence of the incident needs to be cross checked with the medical evidence. The medical evidence

brought on record was of PW-10 Dr. Amol Jain, who examined the complainant and other injured persons.

(i) The evidence of Dr. Amol Jain shows that he had examined PW-8 Gunwant and found one contusion on his left shoulder and another contusion on left parital region.

(ii) PW-6 Mangal was examined by doctor and she had one Contused Lacerated Wound (CLW) on right wrist and one CLW on right elbow.

(iii) PW-9 Sunita had contusion to her right shoulder.

(iv) PW-4 Vithal claimed that he sustained injury due to axe blow to his little finger and near eye on left side. He was examined by doctor and doctor found him to be having one CLW on left ring finger and another CLW near left eye and CLW on right thumb.

(v) PW-7 Anil was examined and it was found that he has contusion on left arm.

14. The doctor examined other persons also but those witnesses were not examined.

15. Keeping above oral and medical evidence in view, it can be seen that there are inconsistencies and exaggerations also. It is material to note that apart from the fact that C.A. Reports were not obtained, in this matter although various instruments are said to have been used, including cutting instrument like axe and chain, they have not been seized. The evidence of doctor is that injuries of the witnesses were possible in scuffle. The evidence of prosecution, however, is one sided as if only the accused persons were attacking. The evidence of Panch PW-2 Suryakant shows admission in the cross-examination that there are two parties in the village. PW-3 Chandrakant who claims to have witnessed the

incident, pleaded ignorance to say that he did not have knowledge about two parties in the village. PW-4 Vithal, however, admitted that he belongs to opposite party of the accused, although he did not want to accept that there were two political parties in the village. Thus, clearly the parties had strained relations and tendency to avoid uncomfortable facts is seen in evidence.

16. Another important aspect in this matter is that from the mouth of none of the witnesses, it has come on record as to what was the cause of quarrel on the day concerned. Even if there are different parties, or strained relations were there, what happened on that particular date to trigger the incident, has not come on record. In fact in the cross-examination of PW-7 Anil and PW-9 Sunita, specific questions were put up but they deposed that they did not know as to what was the reason of quarrel. Thus the prosecution witnesses were not willing to bring on record the actual reason for trigger of the incident and looking to

the fact of injuries possible during scuffle, the evidence brought on record starts losing appeal. Yet another fact is the admission of PW-5 Ankush that, at the time of incident, electric supply was disconnected for five minutes. The other witnesses either pleaded ignorance regarding electric supply or denied that electric supply was not there. There is evidence in the cross-examination of these witnesses showing that many people had gathered. However, independent eye witnesses do not appear to have been examined.

17. The trial Court considered the evidence and observed that although PW-3 Chandrakant Mane claimed to be eye witness and FIR gave details of various persons who witnessed the incident, still PW-3 Chandrakant was not named as eye witness of the incident. The trial Court found that the doctor in medical certificates had failed to mention identification marks of the patients and the evidence of doctor shows that the injuries were possible while working in field. Trial Court

also observed that there is no evidence of use of cycle chain. The weapons were not produced or identified and they were not recovered also. Trial Court kept in view reported Judgments with reference to cases relating to riots. Referring to the facts of the present matter, the trial Court observed that there were two groups and the accused were from opposite party and PW-5 to PW-9 were closely related to each other and PW-3 Chandrakant had not been referred in the FIR and PW-4 Vithal had not referred regarding the assault on other witnesses. Considering these aspects and the contradictions and omissions proved, the trial Court was not convinced with the evidence and acquitted the accused persons.

18. I have also gone through the evidence and for reasons discussed, find that the conclusions ultimately drawn by the trial Court to acquit the accused finding the evidence as not appealing, is possible view. There is no reason to interfere in this Judgment of acquittal. There is no substance

in the Appeal.

19. The Appeal is rejected. Bail bonds of
accused are cancelled.

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

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