

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO. 658 OF 2014

DNYANOBA S/O RAGHUNATH RANGIRE
VERSUS
GANGARAM S/O RAGHUNATH RANGIRE AND OTHERS

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Advocate for Appellant : Mr. Anil U. Pawar.
Advocate for Respondent Nos.1 to 4 : Mahesh V. Ghatge.
APP for Respondent No.5 : Mr. S. N. Morampalle.

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CORAM : **INDIRA K. JAIN, J.**
DATE : 11th April, 2016.

ORDER:

. This appeal is directed against the common judgment and order of acquittal passed by the learned Additional Sessions Judge, Gangakhed in Criminal Appeal Nos.2 of 2011 and 7 of 2011 acquitting Accused No.1 of the offence punishable under Section 323 of the Indian Penal Code and confirming the judgment and order of acquittal passed by the learned Judicial Magistrate First Class, Gangakhed in R.C.C. No.263 of 2002 acquitting the Respondents of the offences punishable under Sections 324, 504 and 506 read with 34 of the Indian Penal Code.

2 Prosecution case in brief is as under:

Complainant Dnyanoba Raghunath Rangire and Accused No.1 Gangaram are the real brothers. Accused No.2 is son, Accused No.3 is wife and Accused No.4 is married daughter of Accused No.1. On 7th May, 2002 Complainant visited his field at Dusalgaon, Taluka Gangakhed in the evening. He noticed that Accused No.1 had broken *Bandh* of the field due to which water was flowing from one field to another. Complainant restrained Accused No.1 from doing so. That time hot exchange took place between the duo and Complainant returned home.

3 According to prosecution at around 09:00 pm on the same day Complainant was going to answer nature's call and that time Accused Nos.1 to 4 came there. Accused Nos.3 and 4 caught hold the Complainant. Accused No.2 assaulted him by means of chopper and Accused No.1 assaulted on the head of Complainant by blunt side of an axe. He sustained bleeding injury. Many persons assembled on the spot. Report of incident was lodged with Gangakhed Police Station. Crime was registered for the offences punishable under Sections 324 and 506 read with 34 of the Indian Penal Code against the Accused. Complainant was referred to Rural Hospital, Gangakhed

for medical examination. During investigation scene of offence Panchanama was drawn, statements of witnesses were recorded and one chopper was seized. On completing investigation charge-sheet was submitted to the Court of learned Judicial Magistrate First Class, Gangakhed.

4 Charge was framed against the Accused. They pleaded not guilty and claimed to be tried. Defence of Accused was of false implication due to previous family property dispute.

5 Prosecution examined in all 7 witnesses in support of its case. Considering the evidence of material witnesses i.e. Complainant and his wife PW-3 Shivkanta Trial Court came to the conclusion that guilt of Accused under Sections 324, 504 and 506 read with 34 of the Indian Penal Code was not proved. However learned Magistrate found Accused No.1 guilty of offence punishable under Section 323 of the Indian Penal Code and sentenced him to suffer simple imprisonment till rising of the Court and to pay fine of Rs.1,000/- in default simple imprisonment for 8 days.

6 Being aggrieved by the judgment and order of acquittal State of Maharashtra has preferred Criminal Appeal No.7 of 2011 before the Sessions Court at Gangakhed. At the same time in

Criminal Appeal No.2 of 2011 Accused No.1 also challenged the judgment and order of conviction under Section 323 of the Indian Penal Code. On re-appreciation of evidence Appellate Court found that prosecution has failed to prove offence punishable under Section 323 of the Indian Penal Code against the Accused. Defence raised by Accused was found to be probable and acceptable. In consequence thereof criminal appeal preferred by Accused No.1 was allowed and criminal appeal by State was dismissed. These orders are the subject matter of present appeal.

7 Heard Mr. Pawar, learned counsel for Appellant and Mr.Ghatge, learned counsel for Respondent Nos.1 to 4. Perused record.

8 Mr. Pawar, learned counsel for Appellant vehemently contended that police station was at the distance of 10 km from the place of incident. FIR was lodged within two hours. Learned counsel submits that evidence of Complainant and his wife is consistent throughout and there was no reason to disbelieve their testimonies as no contradictions and omissions could be brought in their evidence by the Accused. In support of his submission learned counsel for Appellant placed reliance on the decision of this Court in the case of

Janardhan Ragho Mhatre and others Vs. The State of

Maharashtra¹ and submitted that in view of prompt FIR and consistent evidence impugned judgment and order of acquittal needs to be set aside.

9 Per contra learned counsel for Respondent Nos.1 to 4 vehemently contended that there was dispute over family property. Independent corroboration to the evidence of Complainant and his wife was available. Material witnesses have not supported the prosecution case. Learned counsel would submit that axe was not recovered during investigation. Panch witness was hostile. It is submitted that Appellate Court on re-appreciation of evidence rightly concluded that offences were not proved against the Accused and so no interference is warranted in this appeal.

10 It is not in dispute that Complainant Dnyanoba and Accused No.1 Gangaram are the real brothers. Certain facts elicited in the evidence of Complainant are material. It is admitted that there was partition between Accused No.1 and Complainant. An agricultural land admeasuring 2 Acres was standing in the name of mother of Accused No.1 and Complainant. There was a dispute between both the brothers regarding this land. It has also come on record that Accused

1 1996 CRI. L. J. 4180

No.1 alongwith his family and Complainant with his family reside in the same *Wada*. There is a courtyard in front of *Wada*. Place on incident as alleged by Complainant was the courtyard.

11 According to PW-1 Complainant Dnyanoba on the day of incident in the evening Accused No.1 broke the *Bandh* of field due to which water was flowing in his field. He asked Accused No.1 not to do so, on which exchange of words took place between him and Accused No.1. He further stated that at about 09:00 pm Accused No.1 with other Accused came when he was going to answer nature's call. That time Accused Nos.3 and 4 caught hold him, Accused No.2 Sopan inflicted blow with chopper on his head and Accused No.1 assaulted him by back of an axe. He sustained bleeding injuries.

12 PW-3 Shivkanta is wife of Complainant. She fully supports testimony of Complainant. It is pertinent to note that PW-5 Pandurang and PW-6 Narayan Langote were the eye witnesses to incident. Complainant and his wife have confirmed their presence at the time of incident. Both PW-5 Pandurang and PW-6 Narayan were declared hostile. They did not support prosecution case.

13 It goes without saying that in view of material facts elicited in the piercing cross-examination of Complainant and his wife

regarding dispute over property corroboration to the evidence of Complainant and his wife was essential. The Courts below have therefore rightly observed that for want of corroboration reliance cannot be placed on evidence of Complainant and interested witness PW-3 wife of Complainant.

14 Further from the scrutiny of evidence of prosecution witnesses this Court finds that the view taken by Trial Court and First Appellate Court is a reasonable and possible view. As no perversity is noticed in the impugned judgment and order of acquittal interference is not warranted in the present appeal. Hence the following order –

ORDER

Criminal Appeal No.658 of 2014 stands dismissed.

[INDIRA K. JAIN, J.]

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