

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

CRIMINAL APPEAL NO. 842 OF 2015

Sahebrao s/o dharma Divate Age 72 years, Occu: Agri. R/o Pedgaon, Tq. Shrigonda, Dist. Ahmednagar	...	Appellant (Orig. Complainant)
--	-----	--

VERSUS

1. The State of Maharashtra,
Through Police Station
Officer, Shrigonda Police
Station, Dist. Ahmednagar.

2. Jagannath Rajaram Khedkar
Age 65 years, Occu: Agri.
R/o Pedgaon, Tq. Shrigonda,
District: Ahmednagar.

3. Kantilal Rajaram Khedkar
Age 51 years, Occu: Agri.
R/o As above.

4. Navnath Rajaram Khedkar,
Age 42 years, Occu: Agri.
R/o As above.

5. Hanumant Rajaram Khedkar Age 38 years, Occu: Agri. R/o As above.	...	Respondents (R-2 to 5 ori. accused)
---	-----	--

Mr. Nitin V. Gaware, Advocate for the appellant,
Mr. A.M. Phule, APP for Respondent No.1 State.

WITH

CRIMINAL APPLICATION NO. 6729 OF 2015

The State of Maharashtra, Through Police Station Incharge, Shrigonda Police Station, Dist. Ahmednagar.	...	Appellant
---	-----	------------------

VERSUS

- | | | |
|----|--|------------------------------------|
| 1. | Jagannath Rajaram Khedkar
Age 65 years, Occu: Agri.
R/o Pedgaon, Tq. Shrigonda,
District: Ahmednagar. | |
| 2. | Kantilal Rajaram Khedkar
Age 51 years, Occu: Agri.
R/o As above. | |
| 3. | Navnath Rajaram Khedkar,
Age 42 years, Occu: Agri.
R/o As above. | |
| 4. | Hanumant Rajaram Khedkar
Age 38 years, Occu: Agri.
R/o As above. | ... Respondents
(Orig.accused) |

Mr. A.M. Phule, APP for Applicant State.

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

DATE : 04th May, 2016

ORDER:

1. Criminal Application No. 6729/2015 has been filed by the State against acquittal of the accused. Criminal Appeal No. 842 has been filed by the original complainant against the same acquittal.
2. Heard learned APP for the State and Advocate Shri Gaware for the original complainant. Perused the original record which is available and the reasons recorded by the trial court.
3. It is stated on behalf of the complainant that there were two incidents took which place. First was on 20.12.2012 at which time when the complainant, along-

with his son, with the help of poclain machine, were digging well and soil had been put on the road side, at that time, accused persons had gone to the spot and abused and assaulted the complainant. When son of the complainant had intervened, the son was also abused. The complainant gave complaint in writing to the police but police did not take any action.

4. Subsequently, on 25.12.2012, further incident took place when the the complainant was returning to home. At that time, the accused persons obstructed him and abused him on the basis of his caste and the complainant was also given fist blows because of which he had bleeding nose. This subsequent incident was seen by PW Nos. 3 and 4 as well as one Nitin Pimple who had intervened. The complainant gave complaint in writing to the police but police did not take any action. The learned counsel for the complainant submits that subsequently, the complainant filed private complaint with the J.M.F.C Shrigonda and the J.M.F.C, called report under section 156 (3) of the Criminal Procedure Code and later on, State case came to be filed. It is stated that the trial court wrongly discarded the evidence of PW Nos. 2 to 4. He submits that the accused persons should have been convicted.

5. I have gone through the evidence of PW-4 and the material available on record. The counsel for the complainant has taken me through the reasonings recorded by the trial Court for discarding evidence. According to the learned counsel, reasonings recorded by the trial court of PW Nos. 3 and 4 not helping the complainant to go Hospital and going away to residence is unacceptable. The counsel stated that the evidence recorded about the presence of the witness cannot be doubted and it is necessary to interfere in the acquittal.

6. The trial court has taken note of the evidence regarding the two instances. The trial court observed that PW-4 Raju has admitted that his mother and others have filed application to Tahsildar for getting road to the land Gat No. 166 from the land of accused in Gat No. 175 and the said application was decided in 2006 against the accused persons. The trial court also found from the case papers that S.D.P.O. has filed charge sheet but he has not himself carried out investigation in connection with the case. It was noted that PW-3 Bhagwat had filed one complaint against accused on 28.03.2015, PW-4 Raju Machale had filed private complaint No. 245/2014 against accused and others in

the court of J.M.F.C. Son of complainant- Balbhim also had filed NC complaint against accused on 26.01.2013. Balbhim is stated to have been present at the time of first incident but he was not examined.

7. For such reasonings, the trial court found it risky to rely on the evidence of such witnesses. The evidence of complainant shows the presence of one Nitin Pimple at the time of second incident. That witness is not examined. The trial court has considered these factors and weighing the evidence it was not convinced and has acquitted the accused person. The poclain machine operator was also not examined. Thus independent witnesses were not examined.

8. Looking to the record before the trial Court and discussion of evidence brought before it, the view taken is a possible view and there is no reason to interfere in the acquittal. As such admission of the Criminal Appeal No. 842 of 2015 is declined. Criminal appeal is dismissed. Permission sought in Criminal Application No. 6729 of 2015 is refused. Application is rejected.

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