

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.785 OF 2014

Smt. Savita w/o Madhav Akhade

...APPELLANT
(Orig. Complainant)

VERSUS

- 1) The State of Maharashtra,
- 2) Ravi Dada Pawar,
- 3) Shrirang alias Shriram Hausrao Pawar,
- 4) Dipak haribhau Bhagde,
- 5) Parmeshwar Indrajit Fadtare,
- 6) Sudhir Chhagan Fadtare,
- 7) Satish Namdeo Kirdat,
- 8) Vithal Raghunath Sawant,
- 9) Sandip Raghunath Sawant,
- 10) Aba Kaka Fadtare,
- 11) Dattatraya Dnyandeo Pawar,
- 12) Raghunath Tukaram Sawant,
- 13) Balu Bhanudas Pawar,
- 14) Vilas Pandurang Pawar,

15) Arun Bhanudas Pawar,

16) Pappu Shivaji Fadtare.

...RESPONDENTS
(Resp. Nos.2 to 16 – Orig. Accused)

...
Mr.A.D. Ostwal Advocate for Appellant.
Mr.P.S. Patil, A.P.P. for Respondent No.1.

...

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

DATE : 25TH JANUARY, 2016

ORDER :

1. Heard learned counsel for the Appellant – original complainant.

2. The learned counsel for Appellant submits that Respondent Nos. 2 to 16 were original accused in Sessions Case No. 352 of 2012. It is stated that the accused persons, on 15th June 2012, initially abused Madhav, husband of Appellant Savita on caste when he was waiting for bus at the

S.T. Bus Stand at Takli Khandeshwari and the husband was assaulted, in which incident one Shivaji Anna Patil intervened. It is stated that the complainant came back home with her husband, at which time the accused persons followed the complainant and her husband to their home and the accused persons were armed with weapons and they abused on caste and assaulted the complainant and her husband as well as Pws 2 to 4, 7 and 8 regarding whom medical certificates were issued by doctor and the doctor was examined.

3. Learned counsel for Appellant submitted that the trial Court has disbelieved the injured witnesses and the medical certificates have also been ignored on the basis that there were only simple injuries. According to learned counsel, the trial Court observed that all the witnesses regarding the incident were closely related. According to him, the relationship is not reason to discard the witness if otherwise the witness is

reliable. It is argued that first incident took place at 7 a.m. at the bus stop and it was immediately followed by the second part of the incident at 7.30 a.m. near the residence of the complainant. The trial Court wrongly observed in Para 10 that the second incident took place at 7.30 p.m.

. Learned counsel pointed out the observations of the trial Court in Para 11 of its Judgment where it is observed that statement of Madhav was not recorded by the investigating officer. It is submitted that that statement indeed was recorded and it was in the file of the trial Court but the trial Court did not notice it. It has been submitted that Madhav died on 20th June 2012 and thus his evidence did not come on record and the trial Court wrongly observed that Madhav was not examined. According to the learned counsel, it was the duty of the prosecutor to point out the death of Madhav and the trial Court

also should have been careful in asking for evidence of Madhav instead of being only spectator. It is stated that point for determination did not refer to the incident at S.T. Bus stand. It is further stated that the trial Court wrongly observed in Para 16 of the Judgment that the investigating officer should have recorded the statements on 15th June 2012 when the spot panchanama was recorded but the same were recorded on 16th June 2012. According to the learned counsel, contradictions in the matter were not such that the prosecution case should have been thrown away. The counsel, however, agrees that there was no public witness supporting the prosecution as PW-11 Anna examined, turned hostile.

4. The Record and Proceedings have been called and going through the material available on record, if the Judgment of the trial Court is perused, what appears is that the trial Court

although in point for determination No.1 did not refer to the earlier incident which took place at the S.T. Stand, did refer to the case of prosecution in that regard and did discuss the evidence which was brought in that context. The time of second part of incident is correctly recorded in point for determination but in discussion there appears typing mistake. The trial Court was conscious that the investigating officer had not recorded the spot panchanama regarding the incident which took place at S.T. Stand and spot panchanama was recorded only in respect of the incident which took place in front of the house of the complainant. The trial Court discussed that statement of Madhav was not recorded. Even if this observation is erroneous, that by itself is not sufficient to interfere in the Judgment of acquittal. Madhav was not examined in the trial Court. Learned counsel has not been able to show that the death of Madhav was brought on record or was informed to the Court. The trial Court

discussed the evidence to find that the evidence of other prosecution witnesses brought on record regarding the incident which took place at S.T. Stand was hear-say. The independent person PW-11 Shivaji has not supported the prosecution.

5. The trial Court further discussed the evidence regarding the further incident and referred to the incident of abusing as well as assault referred to by the different witnesses. This has been discussed in Paragraph Nos. 12 to 14 and the observations of the trial Court show that it clearly referred to the statements of the witnesses regarding what were the utterances regarding caste and what was the evidence regarding actual assault. The utterances mentioned by the different witnesses are different and the reasons recorded show that the evidence regarding actual incident was vague and general in nature, leading to the observation of the trial Court in Para 15 of the Judgment that if 10 to 11 persons

were to beat 6 to 7 persons by sticks and stones, there should be multiple injuries whereas in the present matter the witnesses had simple injuries. It appears genesis of the incident did not come before Court.

. The trial Court has further observed that the statements of witnesses were recorded on 16th June 2012 and admittedly spot panchanama was recorded on 15th June 2012. Trial Court observed that it had come in the evidence of prosecution witnesses that when spot panchanama was being conducted, the investigating officer was making inquiry with prosecution witnesses. With such evidence on record, the trial Court questioned recording of statements of witnesses on 16th June 2012.

6. The present Appeal is against acquittal. Considering the record and submissions made by the learned counsel with the Judgment of the trial

Court, the findings recorded are possible view. In that case, it would not be appropriate to entertain the present Appeal against acquittal.

7. For the above reasons, admission of the Appeal is declined. Criminal Appeal stands dismissed, accordingly.

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

asb/JAN16