

vks

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.719 OF 1998

The State of Maharashtra	]	
(Through Vaduj Police Station, Vaduj,	]	 <u>Appellant</u>
District: Satara.	]	Ori. Complainant

V/s.

1. Namdev Baba Nikam	]	
age: 45 years	]	
	]	
2. Shivaji Abaji Deshmukh	]	
Age: 55 years,	]	
	]	
3. Jaywant Tatyasaheb Deshmukh	]	... <u>Respondents</u>
age: 45 years,	]	Original accused.
	]	
4. Sou. Janabi Namdeo Nikam	]	
Age: 35 years,	]	
	]	
All are r/o Autawadi, Tal. Khatav.	]	
Dist. Satara.	]	

Mr. Shrikant Yadav, APP, for the Appellant-State.
Mr. Viral K. Rathod I/by Harshad E. Palwe, for respondent No.1.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 16th APRIL, 2016.

ORAL JUDGMENT. :

1. The State has preferred this appeal challenging the acquittal of respondents, for the offences punishable under Sections 143, 147, 148, 325, 324, 504, 506 of the Indian Penal Code read with Section 37(1) (c), 135 of the Bombay Police Act, as recorded by the Judicial Magistrate First Class, Vaduj, vide his judgment and order dated 20.3.1998 in R.C.C. No.114 of 1995.

2. Brief facts of the appeal can be stated as follows :-

P.W.1. Lilabai, her husband P.W.2 Sahibrao and her brother-in-law -Sadashiv are the residents of village Autawadi. Respondents herein are also the residents of same village. On account of dispute relating to boundaries of their lands and access to the road, the relations between them were strained. Criminal Case was also filed against P.W.1 Lilabai and her husband Sahibrao by respondent No.1.

3. In this backdrop, quarrel took place on 6.9.1995 between them, again in respect of said dispute. After the quarrel, P.W.2 Sahibrao and his brother Sadashiv went to Mayani police station for lodging complaint against respondents. They returned to the house at 11.p.m. After taking dinner in the house, P.W.2 Sahibrao went outside to wash his hands. At that time, respondent No. 1 Namdeo came there and scolded

him and gave blow of stick on the head of Sahibrao. Respondent No.1 Namdeo also confronted P.W.2 Sahibrao as to why he had been Mayani to lodge complaint. When P.W.2 Sahibrao's brother Sadashiv and his wife P.W.1 Lilabai came to intervene. They were also assaulted with stick by respondent Nos 2, 3 and 4. As a result of the assault, P.W.1 Sahebrao sustained bleeding injury on his head. His wife P.W.1 Lilabai and brother Sadashiv also sustained injuries in that assault. On the next day, they went to police station. On the complaint of P.W.1 Lilabai (Exh.22), offence came to be registered against the respondents. All the three injured were referred to Primary Health Centre, Mayani. P.W.3 Dr. Pawar examined and issued injury certificate.

4. During the course of investigation, the weapons of assault four sticks produced by respondents came to be seized under panchnama. Respondents were arrested and further to completion of investigation, chargesheet was filed in the trial Court against them.

5. The trial Court framed charge against respondents vide Exh.12. Respondents pleaded not guilty and claimed trial. In support of its case, prosecution examined in all four witnesses, viz. 1) P.W.1 Lilabai, P.W.2 Sahibrao. P.W.3 Dr. Pawar and P.W.4 panch witness Mathura Shinde, who has not supported the prosecution case and hence declared hostile.

6. On appreciation of their evidence, the trial Court found several inconsistencies and discrepancies in the evidence of eye witness and medical evidence and as a result thereof extended benefit of doubt to the respondents and acquitted them.

7. This judgment of the trial Court is challenged in this appeal by learned APP by submitting that evidence of injured witnesses in the present case gets complete support and corroboration from the medical evidence and hence the trial Court has committed an error in acquitting respondents by giving them the benefit of doubt.

8. On the contrary, learned counsel for respondents has supported the impugned judgment of the trial Court, by pointing out interse inconsistencies between evidence of injured witnesses and also medical evidence.

9. In the instant case, it is admitted fact that the relations between the injured witnesses and respondents were not cordial, conversely they were strained on account of disputes relating to the boundary of the lands and access to the road. Complaints were filed against each other. On the date of incident also, in respect of quarrel that took place regarding dispute relating to road, P.W.2 Sahibrao and his brother Sadashiv had gone to Mayani police station for lodging the complaint.

10. In the backdrop of this enmity between parties, it is necessary to scrutinize the evidence of these witnesses who are injured in the incident and are closely related, with care and caution. Except for the evidence of P.W.1 Lilabai and her husband P.W.2 Sahibrao prosecution has not examined any other independent witness though the incident has taken place in thick residential locality with surrounding houses nearby. The prosecution has also failed to examine the injured Sadashiv who was material witness to corroborate the evidence of P.W.1 Lilabai and P.W. 2 Sahibrao. As per evidence of these two witnesses, after the incident, they had gone to the house of Raghunath. He is also not examined by prosecution to prove that in the incident, these witnesses had sustained injuries and as to what was their immediate version about occurrence of the incident.

11. As observed by the trial Court, there are interse inconsistencies in the evidence of P.W.1 Lilabai and her husband P.W.2 Sahibrao. According to P.W.1 Lilabai, her husband Sahibrao has received only one stick blow which has resulted in the bleeding injury on the head of her husband. P.W.2 Sahibrao has also not stated about any further blows at the hands of respondents. However, the evidence of P.W.3 Dr. Pawar, reveals that there were in all three injuries on the person of Sahibrao, one was over occipital parietal region, the other was over left

lumber region on backside of size 2" x ½" and the third was diffuse swelling over the right middle 1/3 forearm. No explanation is offered about these injuries Nos. 2 and 3 as to how they were sustained.

12. Further, according to evidence of P.W.1 Lilabai, when she went to rescue her husband, respondent No.2 Shivaji assaulted her and hence she sustained injuries on her both hands; whereas her brother-in-law Sadashiv was assaulted by juvenile accused Chandrakant and respondent No.4 Janabai. However, according to evidence of P.W. 2 Sahibrao, respondent No.2 gave blow of stick on her left hand and respondent No.4 gave blow of stick on forefinger his brother Sadashiv. The trial Court found that this material version in respect of the incident and the cause of injuries sustained by these two witnesses is not fully supported and corroborated from the medical evidence as discussed above.

13. None of the witness has stated about the respondent No.2 Shivaji assaulting P.W.1 Lilabai with sticks. The seizure of the sticks from the possession of respondents or at their instance is also not proved, as panch witness has not supported the prosecution case and prosecution has failed to examine the Investigating Officer. The alleged blood stained clothes of the witnesses are also not seized in the course of investigation. According to P.W. 3 Dr. Pawar, when he examined P.W.2

Sahibrao, there was no blood oozing from the injury.

14. In view of these lacunas and considering enemical relations between the parties, non examination of any independent witness and having regard to the inconsistencies and the oral version of the injured witnesses and medical evidence, it cannot be said that the judgment of trial Court suffers from any illegality, much less perversity, so as to warrant interference therein. The view adopted by the trial Court of extending the benefit of doubt to the respondents being an equally possible view on the assessment of entire evidence on record, the appeal needs to be dismissed and accordingly stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]