

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Criminal Appeal No. 189 of 2004
[State of Maharashtra Vs. Shiva Shripat Bhoyar & three others]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. M.J. Khan, APP for Appellant-State.
None for respondents.

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CORAM : A. B. CHAUDHARI, J.

DATE : 07th January, 2016.

The State of Maharashtra has challenged the Judgment and Order dated 10th December, 2003 passed by learned Second Ad Hoc Assistant Sessions Judge, Bhandara, in Sessions Trial No. 98 of 2001, acquitting the respondents-accused of the offences punishable under Sections 307 and 324 read with Section 34 of Indian Penal Code.

I have perused the impugned Judgment, so also the evidence of the witnesses. Keeping in mind the ratio of the decision in the case of **Darshanssingh Vs. State of Punjab** [2010 (2) SCC 333] [para 61], I have examined the evidence as well as the reasons recorded by the Trial Judge. It would be appropriate to quote the

following relevant portion from para 14 of the impugned Judgment:-

“14.
.....

PW 1 stated in his evidence that accused no.2 was assaulted to Sudhakar Urkude with a sharp weapon but that part does not find place in his complaint. So also it is not mentioned in his statement that accused no.1 banged the weapon like stick on bicycle due to which he was injured. So also witness No.5 Raju Dinaji Urkude deposed that Smt. Rekha Urkude had been to his house and told that Shiva assaulting her husband and that he should rush to save him. It does not find place in his statement. So also he deposed that he saw accused Nos. 1 and 2 running with weapon but it does not find in his statement. So also he deposed that Kundlik Urkude was lying in front of his house and that Sudhakar Urkude was lying in front of shop of Ramdas Thavkar but it is not find place in his statement. PW 6 Kundlik Dhadu Urkude deposed that on hearing the voice of accused Nos. 1 and 2 he came out of his house and that he asked accused why he is quarreling but it is not find place in his statement before police. So also he deposed that then accused No. 1 went to Sudhakar Urkude and accused Nos. 1 and 2 assaulted him but the same find no place in his statement. Hence, injuries are not supporting to each other on the point of assault. Witnesses have admitted that on the date of incident, there was darkness. Witness No.2 admitted that he was prosecuted at the instance of Harish and Mukesh, and also admitted that there are no light to the electric pole at his village on the main road and that power supply failed at the relevant time. PW 5 in addition to the contradiction by way of omission has not

even identified the stick Muddemal Article-B, whereas PW 2 has identified the same. It is also worth noting that witness No.2 deposed that he was assaulted with weapon like spear but he identified the weapons before the Court Muddemal Article-B which is knife and by no means it resembles spear. It also gives reason due to enemy falsely involved in the matter. In this case admittedly, there is a darkness, weapon of assault not being properly identified by PW 1 and PW 5. The above mentioned contradiction by way of omission and there there is no mention in the statements of the witnesses that they identified the accused in the light of lamp in absence of electricity and also in view of manner of assault being spelled out by each witness in different manner. Under the circumstances, though the injuries on the persons are admitted in set of fact, i.e., contradiction by way of omission, contradiction between the evidence of the witnesses intersay and in view of the darkness at the time of incident and specially incident have not happened around midnight. In my opinion, the prosecution has failed to establish the charge of attempt to murder and assault against the accused beyond reasonable doubt and benefit of reasonable doubt should go to the accused as matter of course.”

Perusal of the above reasons clearly shows that the Trial Judge had a clear doubt in his mind about the witnesses noticing the assault in view of the fact that the incident had taken place in the midnight and one witness admitted that there was no electric light burning on the road near the spot of incident. The Trial Judge, thus, found that it was risky to convict the respondents and, therefore, in his judgment decided to record the

order of acquittal.

I do not think that the said assessment of evidence made by the Trial Judge can be said to be faulty or perverse, in any manner. It is not possible for me to substitute the opinion recorded by the learned Trial Judge while recording the order of acquittal. Hence I have proposed not to interfere with the order of acquittal. In the result, I make the following order:-

Criminal Appeal No. 189 of 2004 is **dismissed**.

Judge

[hedau]