

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1241 OF 2017

The State of Maharashtra
through Wadvani Police Station,
Wadvani

APPLICANT

VERSUS

1. Ganesh balasaheb Ghatе,
Age : 32 years
2. Babasaheb Balasaheb Ghatе,
Age : 36 years
3. Yogesh Balasaheb Ghatе,
Age : 56 years
4. Chitravati balasaheb Ghatе,
Age : 56 years
5. Vidya Yogesh Ghatе,
Age : 30 years
6. Archana Babasaheb Ghatе,
Age : 28 years

All r/o Pathri,
District Parbhani

RESPONDENTS
(ORIG. ACCUSED NOS.1
AND 3 TO 7)

Mr. B.A. Shinde, A.P.P. for the applicant/State
Mr. Chaitanya C. Deshpande, Advocate holding for
Mr. C.R. Deshpande, Advocate for the respondents

CORAM : SANGITRAO S. PATIL, J.

DATE : 23rd AUGUST, 2017

ORAL ORDER :

Heard the learned A.P.P. for the State/prosecution and the learned counsel for the respondents.

2. This is an application seeking leave to file appeal against the judgment of acquittal, dated 6th December, 2016 passed in Summary Criminal Case No.240 of 2010 by the learned Judicial Magistrate First Class, Wadwani.

3. The alleged incident is stated to have taken place in the Court premises of Wadwani on 22nd September, 2010 at about 1.30 p.m. It is alleged that respondent No.1, who is the husband of the informant namely Swati, his father Balasaheb (since deceased), brothers Babasaheb (respondent No.2) and Yogesh (respondent No. 3), Chitrawati (respondent No.4), the mother of respondent No.1 Ganesh and the wives of Yogesh and Babasaheb viz. Vidya (respondent No.5) and Archana (respondent No.6), respectively, formed an unlawful assembly in the Court premises of Wadwani, hurled abuses against the informant, threatened her of death for not withdrawing the case filed by her against Ganesh and

others and further beat her and her father Mahadeo with kicks and fists causing them injuries.

4. The prosecution examined the informant Swati, her father Mahadeo (PW2), PHC Mhetre (PW3), Kalyan (PW4), Dnyaneshwar (PW5) and Shaikh Sudoddin (PW6) to prove occurrence of the incident. Dr. Renge (PW8) has been examined to prove the injuries sustained by the informant and her father Mahadeo (PW2).

5. The learned A.P.P. submits that the evidence of ocular witnesses is supported by the medical evidence. The learned Magistrate ought to have believed the said evidence and convicted the respondents. However, the learned Magistrate acquitted the respondents on the ground that no independent witness was examined. According to him, the impugned judgment is not at all sustainable. He, therefore, seeks leave to file appeal against the said judgment of acquittal.

6. On the other hand, the learned counsel for the respondents supports the impugned judgment on the say that a false case was lodged against the respondents.

7. I perused the evidence of ocular witnesses. There is absolutely nothing against respondent Nos.4, 5

and 6 in their evidence to show involvement of these respondents. It is ex facie clear that respondent Nos.4, 5 and 6 have been unnecessarily implicated in this case, perhaps with a view to pressurize the husband and inlaws of the informant to surrender to the claims of the informant made by her in the court proceedings filed by or against her on account of their family dispute. As such, there is absolutely no reason to grant leave to file appeal against respondent nos.4 to 6.

8. The informant deposes that on 22nd September, 2010 at about 1.30 p.m., she attended the Court at Wadwani in connection with the criminal case instituted at her instance for the offence punishable under Section 498-A of the IPC against her husband and inlaws. At that time, the respondents hurled abuses against her on the say as to why she did not withdraw that criminal case. They further threatened her of death and beat her with fists and kicks.

9. Mahadeo (PW2) has tried to support her. He states that respondent Nos.1,2 and 3 beat the informant on the ground as to why she did not withdraw the case filed against them.

10. PHC Mhetre (PW3) does not state that he actually witnessed the incident. His evidence is hearsay and has been rightly discarded by the learned Magistrate.

11. Kalyan (PW4), Dnyaneshwar (PW5) and Sk. Sudoddin (PW6) claim themselves to be the eye witnesses to the incident. Kalyan (PW4) states that all the respondents beat the informant by fists and kicks, which fact is not even stated by the informant and Mahadeo (PW2). It has come in his cross-examination that he is acquainted with the informant and Mahadeo (PW2) since before the incident. He further states that when he reached the spot of incident, about 10 to 20 persons had already gathered there. Considering the vague and general nature of his evidence and his acquaintance with the informant and Mahadeo (PW2), a strong doubt is created about his presence at the time of the incident.

12. Dnyaneshwar (PW5) is the maternal uncle of the informant. His evidence also is vague and general. He has made an omnibus statement that all the respondents beat the informant and Mahadeo (PW2).

13. Sk. Sudoddin (PW6) also has made a vague and

general statement, which indicates that he was not an eye witness to the incident.

14. The spot of the incident is the court premises of Wadwani. A number of persons were present near the spot of the alleged incident. None of the independent witnesses has been examined without assigning any reason.

15. Dr. Renge (PW8) received the letter (Exh-98) from the Police Station, Wadwani on 23rd September, 2010 at about 11.10 a.m., whereby he was requested to examine the informant and Mahadeo (PW2). Accordingly, he examined them and found the injuries as mentioned in the certificates (Exh-99 and Exh-100), respectively. He deposes that the age of the injuries found on the persons of the informant and Mahadeo (PW2) was within 8 to 12 hours. Even if it is accepted that he examined the informant and Mahadeo (PW2) at 11.10 a.m., the approximate time of causing of the said injuries would be about 11.00 p.m. of 22nd September, 2010. The incident in question took place on 22nd September, 2010 at about 1.30 p.m. Consequently, the injuries noted on the persons of the informant and Mahadeo (PW2) cannot be connected with the incident that took place at 1.30 p.m.

on 22nd September, 2010. Thus, the medical evidence would not support the case of the prosecution that the informant and Mahadeo (PW2) sustained injuries in the alleged incident.

16. The incident in question is alleged to have taken place in the court premises of Wadwani on 22nd September, 2010 at 1.30 p.m., which is just near the police station. However, the FIR (Exh-58) has been lodged at 5.00 p.m. No explanation has been given for the delay in lodging the report. This fact also creates strong doubt about the case of the prosecution.

17. In view of the above circumstances, the learned Magistrate cannot be said to have committed any mistake in appreciating the facts and evidence on record and acquitting the respondents. I do not find any justifiable reason to grant leave to file appeal against the judgment of acquittal. In the result, the Criminal Application is rejected and disposed of.

[SANGITRAO S. PATIL]
JUDGE