

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

CRIMINAL REVISION APPLICATION NO.258 OF 2000

Navnath s/o Ramrao Phad,
Age 24 years, Occ. Agriculture,
R/o Dharmapuri, Tq. Parali Vaijinath
District Beed.

... PETITIONER

VERSUS

1. The State of Maharashtra,
(Copy to be served on P.P.
High Court, Bench at Aurangabad)
2. Padmakar alias Bandu s/o Angad
Phad, Age 26 years, R/o Dharmapuri,
Tq. Parali Vaijinath, Dist. Beed.
3. Babu s/o Vithal Phad,
Age 30 years, Occu. and
R/o as above.
4. Balaji s/o Mokinda Phad,
Age 26 years, Occu. Driver,
R/o as above.
5. Sheshrao s/o Vithal Phad,
Age 56 years, Occu. Agriculture,
R/o as above.
6. Angad s/o Vithal Phad,
Age 46 years, Occu. and
R/o as above.
7. Shivaji s/o Mokinda Phad,
Age 28 years, Occu. and
R/o as above.
8. Sukhadeo s/o Vithal Phad,
Age 61 years, Occu. and
R/o as above.

... RESPONDENTS

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Shri S.P. Chapalgaonkar, Advocate for appellant

Shri S.D. Ghayal, A.P.P. for respondent No.1/State
Shri B.S. Kudale, advocate for respondents N.2 to 5

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CORAM: T.V. NALAWADE AND
 SUNIL K. KOTWAL, JJ.

DATED : 11th July, 2017.

JUDGMENT (PER SUNIL K. KOTWAL, J.) :

1. This revision is directed against the judgment and order of acquittal of the accused No.1 to 7 of the offences punishable under Sections 147, 148 of the Indian Penal Code and under Section 324, 325, 307 and 338 read with Section 149 of the Indian Penal Code, passed by 4th Additional Sessions Judge, Ambajogai in Sessions Case No.78/1994, dated 31/1/2000. Respondents No.2 to 7 are original accused No.1 to 7 respectively. Petitioner is son of original informant late Shri Ramrao Ambaji Phad.

2. Facts leading to institution of this revision are that, accused No.1 to 7 were prosecuted for the offences punishable under Sections 148, 148 of the Indian Penal Code and under Sections 324, 325, 307 and 338 read with Section 149 of the Indian Penal Code. Prosecution case in brief is that, informant Ramrao Abaji Phad (P.W.2) was resident of village Dharmapuri and he had three sons namely Ravindra, Patloba and Navnath (P.W.3). In the month of December 1993, fair of Goddess

Tuljabhavani was arranged at village Dharmapuri and at the eve of this fair on 29/12/1993, competition of wrestling was arranged and the wrestling ground was prepared in the field property of Babu Dashrath Phad. Informant Ramrao (P.W.2), Sarpanch Narhari (P.W.1), Navnath Phad (P.W.3) were also present in the said wrestling ground, along with about 2500 villagers, to watch that competition. Vyankati (P.W.5) was one of the panch along with Angad Vithal Phad and other panchas. Even the accused persons were present in that wrestling competition. Accused No.1 Padmakar Angad Phad was one of the wrestler, whose wrestling was started with Tukaram Munde (P.W.4), resident of Badwani. That wrestling could not be completed within reasonable time without any result. Therefore, Vyankati Phad (P.W.5) went near the wrestler to separate them as the competition was to be declared as without any result. That time, accused No.1 Padmakar raised objection. Even Angad Phad took part in that arguments and slapped Vyankati Phad across his face. Thereafter Ramrao Phad (P.W.2), Maroti Dnyandeo Phad, Prabhakar Dahiphale, Devidas Ramhake, Vaijnath Aba Phad, Laxman and Navnath Ramrao Phad (P.W.3) rushed on the spot to pacify the quarrel. That time, Angad Phad pelted stone and injured Ramrao Phad (P.W.2). Accused No.7 Sukhadeo, Sheshrao, Padmakar Phad (accused No.1) and other accused started pelting stones towards the informant and his family

members. Vyankati Phad was injured by Mukinda Dhondiba. Navnath (P.W.3) sustained injuries due to blow of sharp article inflicted by accused No.6 Shivaji. Accused No.2 also assaulted by "*Wakdi Tikura*" to Ramrao Phad. Sarpanch Narhari Phad, one Sidram Deokate and other villagers witnessed this occurrence. Accused assaulted the informant and other persons on account of previous enmity in between the parties. Therefore, Ramrao Abaji Phad (P.W.2) lodged F.I.R. Exh.43 to Police Station, Parli on the date of incident at about 17.20 Hrs. Injured were referred for medical examination. Dr. Bhalchandra (P.W.6), Medical Officer, Rural Hospital, Parli examined the injured Ramrao Phad, Navnath Phad, Vyankati Phad and issued injury certificates (Exh.63 to 65). P.S.I. Sayyed Misbuwalla (P.W.8) conducted investigation of this crime and prepared spot panchanama Exh.70 of the scene of offence and seized 15 stones from the spot including two blood stained stones. After completion of the investigation, charge sheet was submitted against the accused in the Court of Judicial Magistrate, First Class, Parli Vaijnath.

3. Offence punishable under Section 307 of the Indian Penal Code being exclusively triable by Court of Sessions, this case was committed to Sessions Court, Ambajogai.

4. The then 2nd Additional Sessions Judge framed

charge (Exh.23) against accused No.1 to 7 for offences punishable under Sections 147, 148 of the Indian Penal Code and under Sections 324, 325, 307, 338 read with Section 149 of the Indian Penal Code. Accused pleaded not guilty and claimed trial.

5. Prosecution examined total 9 witnesses. Defence of the accused was of total denial. According to accused, on the date and time of incident, the complainant and his friends also assaulted the accused persons and other witnesses by pelting stones and thereby caused even death of Mukinda Phad. Other party is prosecuted for the same. This case is filed only as counterblast.

6. After considering the evidence placed on record, learned trial Court pleased to acquit accused No.1 to 7 of the offences punishable under Sections 147, 148 of the Indian Penal Code and under Sections 324, 325, 307, 338 read with Section 149 of the Indian Penal Code. Therefore, this Revision Petition arises. Informant Ramrao Phad died before filing of the revision petition and, therefore, it was filed by his son.

7. Learned Advocate for the petitioner submitted that, though five eye witnesses were examined including three injured witnesses, their testimony which was also corroborated by

Medical Officer (P.W.6), was disbelieved by learned trial Court without assigning proper reasons.

8. In reply, learned Advocate for the respondents/accused submitted that, the testimonies of so called eye witnesses are totally inconsistent with their statements before the Police. He pointed out that, Medical Officer (P.W.6) did not mention nature of the injuries in injury certificates (Exhibits 63 to 65). Learned defence counsel submitted that, when the mob assembled on the wrestling ground to see the wrestling competition, it cannot be held that there was assembly of persons for unlawful purpose and in furtherance of common object of that assembly simple or grievous hurt was caused to anybody.

9. At the outset, we must observe that, inimical terms in between parties is an admitted fact. Even it is not disputed that cross criminal cases were filed against both the parties. Therefore, we have to scrutinize the evidence of these all inimical witnesses with close scrutiny and carefully.

10. Though accused persons are charged under Sections 147, 148 and under other Sections of Indian Penal Code, read with Section 149 of the Indian Penal Code, it cannot be ignored

that, including accused and prosecution witnesses, nearabout 2500 villagers gathered on the spot to watch the wrestling competition. Thus, the object of both the parties and other villagers was to watch the wrestling competition. Therefore, by no stretch of imagination it can be said that unlawful assembly was found to fulfill some unlawful object. So also, in above circumstances, the object of the so called assembly cannot be to cause hurt or grievous hurt to anybody. In other words, it cannot be said that, common object of their assembly was to cause hurt or grievous hurt to any person. Therefore, the charge under Sections 147, 148 of the Indian Penal Code fails. So also, all the accused persons cannot be roped with the aid of Section 149 of the Indian Penal Code.

11. Another important aspect is that, though charge is framed under Section 325 of the Indian Penal Code, i.e. for causing grievous hurt. From the evidence of Dr. Bhalchandra (P.W.6), it emerges that, two contusions were sustained by Ramrao Phad and one contused lacerated wound on upper eye lid and two abrasions were sustained by Navnath Phad. Medical Officer nowhere says that, these injuries were grievous in nature. From the testimony of Dr. Bhalchandra (P.W.6), it emerges that, Vyankati Vaijnath Phad (P.W.5) sustained one contused lacerated wound below right eye and two contusions on left wrist and on

right deltoid. The Medical Officer (P.W.6) opined that, the contused lacerated wound below eye may be endangerous to life. However, from his cross-examination, it emerges that, he has not mentioned on which upper eye lid the injury to Navnath was found and he has not mentioned the nature of injury sustained by Vyankati Phad (P.W.5). All injury certificates (Exh.63 to 65) show that the medical officer did not take pains to note down the nature of injuries sustained by the injured persons. Thus, by no stretch of imagination it can be held that on the basis of evidence of medical officer (P.W.6), prosecution can establish that Vyankati Phad sustained the grievous hurt or any prosecution witness sustained grievous hurt. Thus, charge under Section 325 of the Indian Penal Code fails.

12. Now turning to the oral evidence of all prosecution witnesses, it must be noted that, the prosecution has examined five eye witnesses. If the oral evidence of these witnesses is scrutinized along with evidence of investigating officer Sayed (P.W.8) and A.S.I. Gaisamudre (P.W.9), who received F.I.R. (Exh.43), it becomes crystal clear that the oral testimony of each eye witnesses regarding the actual occurrence of incident is totally inconsistent with their respective statements before the police. Therefore, though each witness tried to place on record that accused No.1 to 7 caused injuries to particular prosecution

witnesses by pelting stones, their evidence cannot be treated as trustworthy, which is totally in variance with their statements before the police. Even the testimony of informant Ramrao (P.W.2) is not in consonance with recitals of the F.I.R. (Exh.43). Therefore, admittedly when both parties are on inimical terms, on the basis of inconsistent testimony of these inimical witnesses, prosecution cannot establish guilt of the accused beyond reasonable doubt. Apart from these inimical witnesses, even evidence of Sarpanch Narhari (P.W.1) and Tukaram Munde (P.W.4) who was the wrestler against accused No.1, is in conflict with their respective statements before the police on material particulars. Therefore, the evidence placed on record by prosecution in the form of testimony of five eye witnesses cannot be relied upon to base the conviction of the accused.

13. On the other hand, even in the examination-in-chief of Narhari (P.W.1) it has been brought on record that, at the time of occurrence, there was chaos and, therefore, police reached on the spot and there was "lathi charge" by the police. Other witnesses have also brought on record that there was chaos in public and when pelting of the stones was started, within few minutes police reached on the spot and caning was started to disperse the rioting persons. Therefore, possibility cannot be ruled out that the injured persons might have

sustained injuries due to blows of sticks inflicted by police personnel at the time of caning. Even Dr. Bhalchandra (P.W.6) has admitted in his cross-examination that the injuries sustained by the witnesses are possible due to hard and blunt object like stick. Thus, prosecution itself has brought on record the second probability that the prosecution witnesses might have sustained injuries during the caning by police while dispersing the rioting mob. When such two probabilities arise, benefit of doubt goes in favour of the accused persons.

14. Accordingly, we have come to the conclusion that, after careful scrutiny of the evidence of prosecution witnesses, the learned trial Court has rightly acquitted the accused persons. By no stretch of imagination it can be said that the view taken by the trial Court is impossible in the facts and situation of this case. It follows that, this revision fails and deserves to be dismissed. Accordingly, we pass the following order :

ORDER

- (i) Criminal Revision Application No.258/2000 is dismissed.
- (ii) Under Section 437-A of the Criminal Procedure Code, respondents No.2 to 8 shall execute before the trial Court bail bonds with sureties for the amount of Rs.5000/- (Rupees five thousand) each to appear

before the Supreme Court as and when notices are issued to them in respect of any proceedings filed against this judgment, and the said bail bonds shall remain in force for a period of six months from today.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

fmp/