

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.436 OF 2004

The State of Maharashtra,
Through the Taluka Police Station,
Shrirampur

...APPELLANT

VERSUS

- 1) Vijay Bhimraj Wani,
Age-28 years, Occu:Agri.,
 - 2) Changdeo Sadashiv Wani,
Age-67 years, Occu:Agri.,
 - 3) Sanjay Bhimraj Wani,
Age-31 years, Occu:Agri.,
- All R/o- Jalgaon, Tq-Rahata,
Dist-Ahmednagar.

...RESPONDENTS

...
Mr. V.D. Namde, A.P.P. for Appellant.
Mr. R.L. Kute Advocate h/f. Mr. V.R. Dhorde
Advocate for Respondent.

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CORAM: S.S. SHINDE, J.

DATE : 11TH MAY 2017

ORAL JUDGMENT :

1. Heard learned A.P.P. appearing for the State and learned counsel appearing for Respondents - accused.

2. This Appeal is arising out of the final Judgment and Order passed by the Sessions Court, Shrirampur in Sessions Case No.42 of 2002 delivered on 26th March, 2004.

3. The brief facts of the prosecution case are as under:-

A) One Bhima Karbhari Pandit lodged the First Information Report on 31st July, 2002, with allegations that he is residing/ staying with his family in Gut No.285 of village Jalgaon Chaudhari, Tq-Rahata, Dist-Ahmednagar. Accused persons asked him to lay a water channel through his land

Gut No.285. The informant PW-2 requested them to lay a water channel during Summer session. However the accused persons did not lay a water channel in that season and therefore he sown the crop of Kadwal.

B) On the day of incident i.e. on 31st July, 2002 at about 8.30 a.m. the informant came home and found that all accused persons arrived at his residence along with one Murlidhar Pandit. They asked the informant for permitting them to lay the water channel through his field. The informant (PW-2) requested them that water channel may be laid from any of the boundaries of the field without damaging the crop of Kadwal. Accused No.2 - Changdeo Sadashiv Wani got angry and threatened the informant that in any case the water channel should be laid from the field where the crop of Kadwal was standing. It is the further case of the prosecution that accused No.1 - Vijay Bhimraj Wani drove the tractor and ran over the same through

the crop of Kadwal. The informant rushed in front of the tractor and requested the accused persons not to drive it in the crop of Kadwal. However accused No.1 did not listen the informant and on the instigation of other co-accused, attempted to run over the tractor on the person of the informant. The informant tried to save himself, however, front right wheel of the tractor was run over by accused No.1 on left leg of the informant. The informant raised alarm whereupon his wife rushed to the spot. After arrival of wife of the informant on the scene of occurrence, all the accused slapped his wife. One Murlidhar Pandit rescued the wife of the informant. Thereafter the accused persons went away from the spot. Relatives of the informant moved him to the hospital of Dr. Murade, wherein he was treated and the doctor found a fracture to his leg. From the hospital the informant informed the incident to the police and the same was treated as First Information Report.

4. Concerned Police Station caused the investigation and after investigation, charge-sheet came to be filed and the accused were tried for the offence punishable under Section 307, 447, 323 read with 34 of the Indian Penal Code. After full-fledged trial, the trial Court acquitted the Respondents - accused. Hence this Appeal by the State.

5. Learned A.P.P. appearing for the State invites my attention to the deposition of the informant (PW-2) and submits that the informant himself is injured witness and he has categorically stated the manner in which the incident has taken place. Not only informant (PW-2) was injured but his wife was also beaten by the accused persons and therefore the trial Court should have convicted the accused. He also invites my attention to the evidence of other witnesses who have witnessed the incident and submits that the Appeal deserves to be allowed.

6. On the other hand learned counsel appearing for the Respondents - accused, submits that there was total non application of mind by the prosecution. All the witnesses have stated that the incident had taken place in Gut No.289/2 though the alleged incident had taken place, as per the version of PW-2, in Gut No.285. It is submitted that the medical officer who examined the informant i.e. PW-2, has, in his cross-examination, clearly ruled out the possibility of the injuries sustained by the informant PW-2 due to run over the tyre of tractor over his leg. It is submitted that in absence of corroboration to the version of the informant, the benefit of doubt is rightly extended by the trial Court in favour of the Respondents - accused. It is submitted that evidence of other witnesses do not support the prosecution case. On the contrary they have given different version regarding the spot of incident and the manner in which the alleged incident had

taken place. Therefore, he submits that the Appeal may be dismissed thereby confirming the order of acquittal passed by the trial Court.

7. I have given anxious consideration to the submissions of the learned A.P.P. appearing for the State and learned counsel appearing for the Respondents- accused. With their able assistance, I have perused the grounds taken in the Appeal, the findings recorded by the trial Court and also the entire evidence, so as to find out whether the findings recorded by the trial Court are in consonance with the evidence brought on record by the prosecution or otherwise. Upon careful perusal of the evidence of PW-2 i.e. informant, he has stated that the injuries sustained to his leg are due to act of accused No.1 of running over the tyre of the tractor on his leg. In this respect to lend the support to his statement, it would be apt to refer the evidence of PW-1 Dr. Bhagwat Gangadhar Murade. PW-1 Dr. Bhgwat Gangadhar Murade

in his evidence before the Court, stated about the fracture to the leg of the informant and to that effect he expressed his opinion and issued certificate. However, during his cross-examination, PW-1 Medical Officer has specifically admitted that the injury mentioned in his report is not possible if the tyre of the tractor runs over a leg. The entire statement of PW-1 in his cross-examination is reproduced herein below:-

" It is true that there is no mention of history of injury in exh.21. It is true that there is no mention about the cause of injury in my report. It is true that injury mentioned in my report is not possible if the tyre of a tractor runs over a leg. It is correct that if a person travelling on a motor cycle and suddenly fell such injury is possible. It is not true that the bone was not broken as mentioned in my report. I cannot tell whether the police came to enquire about the patient in my hospital. The injury is

possible if the person is hit by any vehicle."

8. Apart from the fact that version of PW-2 does not get support from the medical evidence, the evidence of other witnesses suffers from contradictions and makes it unworthy to accept the same. It is rightly concluded by the trial Court that though the alleged incident has taken place in Gut No.285 as stated by the informant (PW-2), the entire investigation and also the statement of the witnesses shows that they have referred to Gut No.289/2 as the spot of incident, instead of Gut No.285. Upon re-appreciation of the entire evidence, I am of the opinion that the findings recorded by the trial Court are in consonance with the evidence on record and there is no perversity as such. The view taken by the trial Court is plausible and therefore once such view is taken, even if it is assumed for a moment that, an another view is possible on the strength of

evidence brought on record by the prosecution, the same is no ground to interfere in the order of acquittal.

9. For the reasons afore-stated the Appeal is devoid of merits. The Criminal Appeal stands dismissed.

[S.S. SHINDE, J.]

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