

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

Criminal Revision Application No.307 of 2004

* Sindhubai w/o Manik Shinde,
Age 47 years,
Occupation: Household,
R/o Bhose, Taluka Pathardi,
District Ahmednagar. **.. Petitioner.**

Versus

- 1) Devidas s/o Madhukar Temkar,
Age 24 years,
Occupation: Agriculture.
- 2) Madhukar s/o Satwaji Temkar,
Age 57 years,
Occupation: Agriculture.
- 3) Dilip s/o Satwaji Temkar,
Age 52 years,
Occupation: Agriculture.
- 4) Rekha w/o Sainath Temkar,
Age 24 years,
Occupation: Household.

All R/o Bhose, Taluka Pathardi,
District Ahmednagar.

- 5) The State of Maharashtra. **.. Respondents.**

Shri. Jeevan R. Patil, Advocate, holding for Shri. G.B. Rajale, Advocate, for petitioner.

Shri D.J. Patil, Advocate, holding for Shri. N.B. Suryawanshi, Advocate, for respondent Nos.1 to 4.

Shri. B.A. Shinde, Additional Public Prosecutor, for respondent No.5.

CORAM: T.V. NALAWADE, J.

DATE : 11 JANUARY 2017

ORAL JUDGMENT:

1) The proceeding is filed to challenge the judgment and order of acquittal given in favour of the present respondents by learned Judicial Magistrate, First Class, Pathardi, District Ahmednagar. The respondents are acquitted of the offences punishable under sections 325, 323, 504, 506 read with 34 of the Indian Penal Code in a police case. Both the sides are heard.

2) Present petitioner lives in a house constructed in the field. Adjacent to the field of the petitioner there is field of the respondents. Beyond the field of the respondents there is the field of brother-in-law of the petitioner namely Karbhari. It is the case of the petitioner that she goes to the field of Karbhari to fetch drinking water as there is bore well in the said field.

3) The incident in question took place on 5-7-2002. According to the petitioner, at about 11.00 a.m.

when she was proceeding towards the field of Karbhari to start the motor installed on the bore well and when she was there on common bandh situated between the land of the petitioner and the land of the respondents, respondent Devidas intercepted her and said that she should not enter their field. Quarrel started. It is the case of the petitioner that during quarrel other respondents who were working there and who are relatives of Devidas came there and started assaulting her with fist blow and kicks. It is the case that during the incident Devidas gave blow of bicycle chain on her back. It is her case that her brother-in-law Karbhari and wife of brother-in-law namely Rakhamabai came there to rescue her but they were also assaulted by the respondents-accused. She gave report to police on the same day and the crime came to be registered at 14.45 hours for the aforesaid offences. The complainant was referred to Government Hospital for medical examination and she was examined there. The doctor noticed that there was chip fracture of C-7 vertebra and there was tenderness at that place over back. Two simple injuries were also found. X-ray was taken and MLC was issued by Dr. Sandip who was working as Medical Officer in Civil

Hospital Ahmednagar. Statements of aforesaid two relatives of the petitioner came to be recorded and after completion of the investigation charge sheet came to be filed for aforesaid offences.

4) Charge was framed for the aforesaid offences and plea was recorded. All the accused pleaded not guilty and they took the defence of total denial. The prosecution examined in all six witnesses. The trial Court has held that all the prosecution witnesses which include eye witnesses and the doctor are interested witnesses. The doctor is close relative of the present petitioner. The trial Court has held that in view of the admission given by the doctor that the injury of chip fracture of vertebra cannot be caused by chain of bicycle witnesses cannot be believed and there is clear possibility that there is exaggeration and false implication.

5) Learned counsel for the petitioner, original complainant, submitted that when there is corroboration of medical evidence to the evidence of the present petitioner and when there was no reason for the present

petitioner to falsely implicate the accused persons, the trial Court ought to have given conviction on the basis of the aforesaid evidence.

6) This Court has carefully gone through the oral evidence and also the document like spot panchnama and MLC. There is evidence of petitioner Sindhubai (PW 1), Rakhamabai (PW 3) as a direct evidence. The spot panchnama is proved in the evidence of Shivaji Ware (PW 2) and this evidence shows that the incident took place in the field of the respondents as the spot was inside the field and was situated at a distance of 7 feet from common bandh. Though one bicycle chain is shown to be recovered from the field of the accused persons, that spot is situated near the well of the accused persons. The spot is situated in the vicinity of the said well. These circumstances create probability that the complainant had gone towards well of the accused persons. No bleeding injury was sustained by the complainant and so there was no visual mark as such about the incident on the spot.

7) The evidence of Sindhubai (PW 1) and Rakhamabai (PW 3) show that the evidence as against other accused is very vague and vague allegations are that they all gave beating to the complainant by fist blows and kicks. There is only specific allegation as against accused Devidas that he gave blow of bicycle chain on the back of the complainant. Evidence of Rakhamabai does not show that she was assaulted when she went ahead along with her husband to separate the quarrel. The complainant has however given evidence that Rakhamabai and her husband Karbhari were also assaulted in the incident. There is no medical evidence in that regard and there is no such version in support of this contention of the complainant.

8) The complainant (PW 1) has admitted in her evidence that the medical officer is cousin father-in-law of her daughter Vaishali. She has also admitted that her nephew is Upa-Sarpanch of the village and wife of Shivaji Ware is Sarpanch of their village. She admitted that she had also contested election to the village panchayat in the year 1994 and at that time she was elected as Sarpanch

also. She has admitted that there are political groups of Shivaji Ware and one Temkar and the accused belong to the group of Temkar. The aforesaid circumstances create probability that there was reason for the complainant of false implication. Further, there was no reason to enter the field of the accused persons and go near the well of the accused persons if there was political rivalry. Considering the number of injuries which were found on the person of the complainant which were like contusion over right side of the back and contusion over neck it cannot be believed that all the accused had assaulted her. Further, there is clear admission of the doctor that the main injury, fracture injury cannot be caused by blow of bicycle chain. It is possible that there was some incident but the male persons were not involved but exaggeration is done and male persons are also impleaded falsely.

9) In view of the admission given that the medical officer is close relative of the complainant, the medical evidence also needs close scrutiny. Dr. Sandip is not the Radiologist. X-ray plate is not produced on the record on the basis of which it could have been ascertained that

there was fracture injury. This circumstance also cannot be ignored in view of the aforesaid circumstances.

10) Learned counsel for the respondents-accused placed reliance on the observations made by this Court in the case reported as **1987 Cri.L.J. 89 (Kusta Basu Kandnekar v. State of Goa)**. This Court has referred the Apex Court cases and it is laid down that when two views are possible, in revision this Court is not expected to interfere in the decision given by criminal Court. There cannot be dispute over this proposition. In view of this position of law and the facts and circumstances of the present matter this Court holds that it is not possible to interfere in the decision given by the Judicial Magistrate. In the result, the revision application stands dismissed. Rule discharged.

Sd/-
(T.V. NALAWADE, J.)

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