

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD.

CRIMINAL APPEAL NO. 244 OF 2017

The State of Maharashtra,
THROUGH : Balaji Pandurang Gaikwad,
age 33 years, Occu. Police Naik,
B.No.1186, City Police Station,
Osmanabad, Dist. Osmanabad.

... APPELLANT.
(Ori. Complainant)

VERSUS

1. Mangesh Bharatrao Mule,
age 21 years, Occu. Education,
r/o Tambari Vibhag, Osmanabad,
Dist. Osmanabad.
2. Nitin Netaji Sathe,
age 25 years, occu. Education
r/o Bhoyare,
Ta. Mohol, Dist. Solapur.

... RESPONDENTS.
(Ori. Accused Nos.1 & 2)

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APP for Appellant / State : Mr.K.S. Patil.
Advocate for Respondents : Mr.Wakure Sanjay A. for R. No.1, Mr.
Ghute Patil Kishor J. for R.No.

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CORAM : V.L. ACHLIYA, J.

Dated: JULY 31, 2017.

ORAL ORDER:

1. Heard learned APP for the appellant – State and
Counsel representing the respondents. Perused the

record & proceedings.

2. Before adverting to appreciate the submissions advanced by the learned Counsel for parties, it is necessary to consider the few facts leading to prosecution of respondents – accused. On 12.2.2014, Police Constable Balaji Gaikwad (P.W.2) lodged complaint with City Police Station, Osmanabad alleging therein that at about 12.30 p.m., he went to District Court premises to arrest one of the accused involved in an offence punishable under Section 498A of IPC. While he was returning from the Court premises and removing his motorcycle kept parked in front of Shakti Hotel, he asked the accused to take aside his motorcycle so as to enable him to take out his motorcycle but he abused him. When he disclosed his identity as a police person, the accused persons caught collar of his shirt and assaulted him over his chest, stomach, face and ear. On the basis of the complaint lodged by P.W.2 the offences punishable under Sections

333, 353, 504 r/w 34 of IPC came to be registered against accused at 22.15 Hours. Both of them were arrested at 23.30 Hrs. On completion of investigation, charge-sheet was prepared and filed in the Court of J.M.F.C., Osmanabad.

4. In order to prove its case, prosecution has examined ten witnesses which include, Balaji (P.W.2) the complainant, Dr. Minakshi Lamture (P.W.1) the Medical Officer, who examined Balaji (P.W.2). Besides said two witnesses, prosecution has examined Advocate Madan Dilip Pawar (P.W.3) and Mainoddin Madar Tamboli (P.W.4), the panch witnesses, who have not supported the case of the prosecution. Prosecution has examined police Naiak Vitthal Rama Pethe (P.W.5), Police Head Constable, Kadaji Sangave (P.W.6), Police Head Constable Rajendra Khanapure (P.W.7) as witnesses to the incident. The independent witnesses examined by the prosecution i.e. Vishal Gurav (P.W.8) and Haribhau Shinde (P.W.9) have not supported the

case of the prosecution. Prosecution has lastly examined ASI Namdeo Jadhav (P.W.10), who recorded the complaint and investigated the matter.

5. On the basis of the statement of accused recorded u/s 313 of Cr.P.C., defence of the accused appears to be of total denial and false implication, at the instance of complainant. On due consideration of the evidence adduced by the prosecution, the trial Court has acquitted the accused mainly for the reason that there was unexplained delay of about 6 to 7 hours in lodging FIR and absence of independent evidence to prove the guilt of the accused.

6. On due consideration of the submissions advanced, I am of the view that the judgment and order passed by the trial Court is fully in consonance with the evidence on record. In my view, there is absolutely no perversity in the reasons and findings recorded by the trial Court. Admittedly, the incident had occurred

at about 1 p.m. and that too, outside the District Court premises and in front of one hotel. From the evidence on record, it is apparent that the complainant was not wearing uniform at the time of incident. So also, there is no evidence to show that at the time of incident, he was assigned duty to serve as a public servant. Neither extract of station diary nor any evidence adduced to prove that at the relevant time of incident, the complainant was assigned public duty and with a view to deter him from discharging public duty the accused had assaulted the complainant and thereby committed the offence punishable u/s 353 of IPC. The injuries as sustained by the complainant cannot be termed as grievous injuries so as to hold the accused guilty of the offence punishable under Section 333 of IPC. Thus, on the face of the allegations made against the accused and evidence adduced, no offence punishable u/s 333 and 353 of IPC is proved against the accused.

7. It is pertinent to note that the incident had

occurred on account of some petty quarrel with accused. It is a case of prosecution that when P.W.2 asked accused No.1 to take his motorcycle aside to enable him to take out his motorcycle, the accused had assaulted him. Thus, the incident has no nexus with duty of complainant as a public servant. As per the fact deposed by the complainant, the incident has occurred at 1 p.m. and that too, at a crowded place. The evidence of Dr. Minakshi (P.W.1) reflects that complainant was examined in the hospital at 4.30 p.m. Although the complainant has deposed that he straightway went to civil hospital, but the evidence on record, proves the fact otherwise. Dr. Minakshi (P.W.1) has deposed that she examined the complainant on the basis of requisition letter received from the concerned police station. The other witnesses examined by the prosecution also stated that initially the complainant visited the police station and later on referred to hospital. In this background, though the delay appears to be of 8 to 9 hours, but assumes significance in view

of the nature of the complaint and the status of complainant as a police constable. In the light of the facts and circumstances of the case, on account of unexplained delay, of 8 to 9 hours and inconsistencies brought on record through the testimony of prosecution witnesses, the possibility cannot be ruled out that the complaint might have been lodged after due deliberation and a false story may have been cooked with a view to frame the accused.

8. In the light of the facts and circumstances of the case and evidence adduced by prosecution, the trial Court has formed the view that it is not desirable to convict the accused on the basis of evidence of such interested witnesses. I am, therefore, of the view that the judgment and order passed by the trial Court is fully in consonance with the evidence on record and calls for no interference in exercise of appellate jurisdiction. The appeal is devoid of merit and substance therein. I am, therefore, not not inclined to

admit the appeal.

9. Accordingly, the appeal is dismissed. Record & proceedings be sent back to the trial Court.

(V.L. ACHLIYA, J.)

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