

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO.670 OF 1995

2 The case of the prosecution in brief will have  
to be set out. One Shri Nishikant Baburao Kamble is  
the complainant. The said Nishikant and the  
respondent Nos.1 to 3 (accused Nos.1 to 3) were  
residing on the same land at Kolhapur. In August  
1993, the said Nishikant had beaten the respondent  
No.3 Manik and therefore, the respondent No.3 and

the respondent Nos.1 and 2 had a grudge against the said Nishikant. The incident is of 11<sup>th</sup> September 1993 at about 9.00 p.m. The complainant hired an auto rickshaw of one Sanjay at Ambedkar auto rickshaw stand. By the auto rickshaw, he went to a gambling den at Vikram Nagar locality in Kolhapur. He asked the auto rickshaw driver to wait. After returning from gambling den, he sat in the same auto rickshaw and instructed the driver to take him to his house. When the auto rickshaw came near the railway gate, one fiat car came from the back side, overtook the auto rickshaw and came in front of the auto rickshaw. That is the reason why the auto rickshaw driver had to stop the auto rickshaw. The respondents along with two to three persons got down from the said fiat car. The case of the prosecution is that the respondent No.1 Tanaji was carrying a sword, the respondent No.2 Shivaji was carrying a knife in his hand and others were carrying sticks as well as hockey sticks in their hands. Noticing the said persons, the complainant Nishikant started running. The respondent No.1 gave a blow on his head by the sword. He also attacked the complainant on his hand by the use of the sword. The respondent no.2 assaulted the complainant by a knife in his hand and others assaulted him by using the sticks and hockey sticks. According to the case of the prosecution, the complainant received injuries on his head, over his left ear, on the left wrist, on the right hand and on the back. As the incident took place on a public road, the complainant saw the assailants as there was a street light.

3 As the police were informed about the incident, a police van arrived at the scene. The complainant was taken to the C.P.R hospital, Kolhapur where he was admitted for treatment. His statement was recorded in the hospital on the basis of which the FIR was registered. According to the case of the prosecution, weapons were discovered at the instance of the respondent No.1.

4 As many as 18 prosecution witnesses were examined. The complainant Nishikant was examined as P.W.No.1. P.W.No.2 Sanjay, auto rickshaw driver who was allegedly injured and was an eye witness was also examined. P.W.No.3 Dilip is the brother of the complainant. Dr.Uday Patil was examined as P.W.No.4 who is the Medical Officer who examined the injured. P.W.No.5 was one Rajendra Patil who claims to be an eye witness who informed the incident to the police. P.W.No.6 Pandurang Mane is also an alleged eye witness. P.W.No.7 Sunil Patil is the person who was running the gambling den at Vikram Nagar. P.W.Nos.8, 9, 10, 11 and 13 are various panch witnesses. P.W.No.12 Dilip Desai is the brother of the owner of auto rickshaw. P.W.NO.14 is Krishna Patil, PSO attached to Rajarampuri Police Station. P.W.No.15 Hindurao is Police Head Constable who carried certain articles from Medical Officer to the police station. P.W.No.16 Vishnu Pisal is examined by the prosecution who carried the samples to the office of Chemical Analyser. P.W.NO.17 is one Raju Muthane, API who carried the complainant from the

spot of incident to the CPR hospital. P.W.No.18 Mohanrao Mane is the Investigating Officer.

5 Apart from oral evidence, the prosecution relied upon medical certificates of the complainant Nishikant and the auto rickshaw driver at Exhibits 21 and 22 respectively and the spot panchnama at Exhibit-27 and various other panchnamas. We may note here that amongst the witnesses examined by the prosecution, P.W.No.5 Rajendra Patil and the P.W.No.6 Pandurang Mane have not supported the case of the prosecution.

6 The learned APP has taken us through the evidence of the prosecution witnesses. She submitted that the evidence of the complainant and other injured persons is consistent with the prosecution case and there was no reason to discard their evidence. She submitted that the learned Sessions Judge got unnecessarily influenced by the minor discrepancies in the evidence of the witnesses regarding the registration number of the fiat car, colour of the fiat car etc. She submitted that there was a previous enmity between the complainant and at least the accused No.1. She submitted that there was no reason to discard the evidence of the complainant Nishikant. He urged that once the evidence of the complainant-Nishikant and other injured persons is accepted, only conclusion which could have been drawn was that the guilt of the respondents was established beyond a reasonable doubt. The learned counsel for the respondents

supported the impugned Judgment and urged that no interference is called for in this appeal against acquittal.

7 We have carefully considered the submissions. We have perused the oral and documentary evidence. In his testimony, P.W.No.1 complainant-Nishikant deposed that before the incident, there was a scuffle between him and the respondent No.3 Manik. He stated that he had stabbed the respondent No.3-Manik by using a knife. As stated earlier, the incident subject matter of this Appeal is of 11<sup>th</sup> September 1993. In the examination-in-chief, the complainant-Nishikant stated that the order of externment dated 26<sup>th</sup> May 1993 was served upon him on 3<sup>rd</sup> August 1993. He stated that the period of externment was of two years. He stated that he was externed from the boundaries of Kolhapur and Sangli district and was told to reside at Mumbai in the house of his sister. Though he claims that he got the order of externment cancelled and therefore, he was at Kolhapur on the date of incident, he did not produce the said order of cancellation of the order of externment. The witness accepted that there were criminal cases filed against him. About the incident, in paragraph 1, he deposed thus :

"1....My game was over at 9.00 p.m. Then I started for my house in the rickshaw of Sanjay Kamble. I was sitting in the backside of rickshaw and Sanjay Kambale was driving said rickshaw. I was going in the said

rickshaw though Temalia railway gate, to my house. When I was near the said railway gate, one fiat car bearing No.7954 of stone colour, came from backside and the said fiat car restrained our rickshaw by taking the car in front of rickshaw. Then all the accused persons got down from the said car. Tanaji was having sword in his hand. Shivaji was having knife in his hand. Manik was having hockey stick in his hand. Other accused were having sticks in their hands. To save myself I got down from the rickshaw and started running towards backside. I ran up to railway gate. All the accused followed me. Accused Tanaji gave stroke of sword on my hand. he also gave strokes of sword on my both hands. He also gave stroke of sword on my back. Accused Shivaji gave blow of knife on my back. Raju and Umesh beat me by means of sticks. Manik beat me by means of hockey stick. Then the accused persons ran away. The said incident took place at 9 p.m. On the corner of the said gate there was light on the street..."

8 He identified the weapons used in the alleged attack on him. He stated that in connection with the assault on Manik, he was arrested and produced before the Court. He was cross examined on the identity of the fiat car. He stated that though he saw the number of the said fiat car, he was unable to tell whether the number was in Marathi or

English. He stated that though he cannot read, he knows the figures. He stated that he did not tell the police while giving statement that two or three other persons apart from the respondents were accompanying the respondents. He was shown a portion marked "A" from his statement by the police, he stated that the said portion was not correct.

9 The medical certificate of the said witness is at Exhibit-21 which shows that he suffered from 7 C.L.Ws which were allegedly caused by a hard and blunt object.

10 P.W.No.2 Sanjay deposed as to how his auto rickshaw was hired by the complainant-Nishikant. He described the incident which took place while he was coming back from the gambling den towards the house of the complainant. He stated that the complainant got down from the auto rickshaw after it was stopped by a fiat car. He stated that the persons who came by the car broke the glasses of the auto rickshaw and he suffered injury because of a broken glass. He stated that the respondent No.1 was having a sword in his hand. The respondent No.2 was having a knife and the respondent No.3 was having a hockey stick in his hand. P.W.No.2 admitted in his cross examination that there are many cases against the P.W.No.1 Nishikant and that he was externed. In the cross examination, initially P.W.No.2 stated that on the date of incident his statement was recorded by the police in C.P.R Hospital. Further he stated that his several statements were recorded by the police

on the date of incident and on the next day. In the further cross examination, he stated that when his first statement was recorded by the police, he stated that more than 2 to 3 persons got down from the car. He further stated that he asked the police not to compel him to give statement as he was frightened. He stated that the statement recorded on the date of the incident was not read over to him on the same day. He stated that the said statement was read over to him on the next day. In the further cross examination, he admitted that there were some other persons who may have seen the incident from different places. He accepted that he sustained injuries because of a broken glass. He stated that when he started from the said spot towards the house of Nishikant, there is a police chowkey and Rajarampuri Police Station at a distance of one and half furlong. He stated that he did not go to the police as he was apprehensive that the police would not leave him.

11 At this stage, we must refer to the evidence of P.W.No.18 Mohan Mane who was the Investigating Officer. He claimed to have recorded statements of the P.W.No.2 Sanjay. He was cross examined on the said statements. He stated that the P.W.No.2 Sanjay in his first statement did not state before him the number of the fiat car. He denied that the statement recorded of P.W.No.2 Sanjay was read over to him on the next day. He admitted that on 11<sup>th</sup> September 1993, P.W.No.2 Sanjay did not visit the police station till 10.00 p.m. In his evidence,



portions marked as A, B and C from the statements of Sanjay were proved.

12 The learned Sessions Judge has held that though the P.W.No.1 Nishikant claimed that the order of externment was cancelled, he has not produced a copy of the said order. Moreover, P.W.No.1 Nishikant admitted that he had assaulted the respondent No.3 prior to the alleged incident. It is brought on record that there are large number of criminal complaints against P.W.No.1 Nishikant. As far as evidence of P.W.No.1 is concerned, considering his antecedents, it is very unsafe to rely upon his testimony without sufficient corroboration. As far as P.W.No.2 is concerned, admittedly in his first statement, he did not disclose the colour and registration number of the car. According to his version, his more than one statement was recorded by the police. His version is that one statement was recorded which was read over to him on the next day. In paragraph 2 of the cross examination, he accepted that he knew the P.W.No.1 Nishikant for last 10 years and the said Nishikant was his customer for last 10 years.

13 Two eye witnesses have not supported the prosecution. P.W.No.4 is a Medical Officer who has issued the injury certificate. The version of P.W.No.1 Nishikant is that accused gave a blow of knife in his back. The P.W.No.4 accepted that injury Nos.1 to 12 on the person of P.W.No.1 could have been caused by a sword. In fact, there is no

incise wound on the person of the P.W.No.1. That is the reason why the learned Sessions Judge has disbelieved the prosecution case of assault by a sword. Moreover, the report of the Chemical Analyser at Exh.82 showed that there were no blood stains detected on the sword. The learned Sessions Judge had rightly found it difficult to believe the testimony of P.W.No.1 and P.W.No.2.

14 After having perused the evidence, we concur with the view taken that the testimony of the two eye witnesses is not reliable.

15 According to us, the view taken by the learned Sessions Judge that the guilt of the accused was not proved beyond reasonable doubt is certainly a view which could have been taken on the basis of the evidence available on record. Therefore, it is not possible to interfere in this appeal against acquittal and accordingly, we pass the following order:

. Appeal is dismissed.

(S.S.JADHAV ,J.)

(A.S.OKA,J.)