

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CRIMINAL APPELLATE JURISDICTION*****CRIMINAL APPEAL NO.1485 OF 2003**

The State of Maharashtra.] ... Appellant

Versus

Narsingh Vitthal Jadhav.]
Age – 47 years, Occu. - Agriculture,]
R/o Jadhavwadi, Tal. Satara, District – Satara.] ... Respondent

Mr. S. R. Shinde, APP for State - Appellant.
None for Respondent.

CORAM :- SARANG V. KOTWAL, J.
DATE :- 21 JULY, 2017

JUDGMENT :-

1. Heard Mr. S. R. Shinde, learned APP for State. None present for the respondent.

2. This is an appeal filed by the State of Maharashtra against the judgment and order dated 08/09/2003 passed by the learned 5th Judicial Magistrate First Class, Satara, whereby the learned Judge has acquitted the respondent from the charges framed under Sections 325, 504 and 506 of the IPC. With the help of the learned APP, I have gone through the entire evidence as well as the judgment passed by the trial Court.

3. According to the prosecution case, the incident in question had occurred at about 8.30 a.m. on 14/08/2001 in front of '*Bhairavnath Mandir*', Jadhavwadi, District – Satara. As per the prosecution case, the first informant Vishwas Jadhav had questioned the respondent no.1 in the Annual General Meeting of '*Bhairavnath Pani Puravtha Sanstha, Village – Jadhavwadi*', held on 03/08/2001. According to the first informant Vishwas Jadhav, the respondent – accused had taken exception to such questioning and was angry with him since then. On 14/08/2001 at about 8.30 a.m. when the first informant Vishwas Jadhav had gone to the '*Bhairavnath Mandir*', the respondent – accused came there. When the first informant came out of the Mandir, the respondent – the accused asked him as to why he raised the question about expenditure in the annual meeting on 03/08/2001. Thereafter, the respondent – accused abused the first informant and gave fist and kick blows. According to the prosecution, the accused gave a dash to the first informant and pushed him on the floor because of which the first informant suffered an injury to his wrist. Accordingly, the first informant approached the Satara Taluka Police Station. Initially, a non-cognizable case was registered on 14/08/2001 on the allegation of commission of offences punishable under Sections 323, 504 and 506 of the IPC. The first informant went to the Civil Hospital and took treatment and it was found that he had suffered fracture to the wrist of his right hand. After receipt of such medical report, on 17/09/2001, the offence was registered vide C.R.No.148 of 2001 at Satara Taluka Police Station under Sections 325, 504 and 506 of the IPC. The investigation was carried out by PW

4 Head Constable Balasaheb Sarade. After completion of investigation, charge-sheet was filed in the Court of learned Judicial Magistrate First Class, Satara.

4. On 16/08/2002, the learned 5th Judicial Magistrate First Class, Satara, framed charges against the accused under Sections 325, 504 and 506 of the IPC. The accused pleaded not guilty to the said charges.

5. In support of its case, the prosecution examined 5 witnesses. PW 1 Vishwas Jadhav is the first informant who had suffered injuries. PW 2 Sarjerao Jadhav is PW 1 Vishwas Jadhav's brother and claimed to be an eye witness. PW 3 Tukaram Jadhav also claimed to be an eye witness to the incident. PW 4 Police Head Constable Balasaheb Sarade is the Investigating Officer and PW 5 Dr. Rajesh Shinde is the Medical Officer who had examined PW 1 and had issued medical certificate. During recording of the evidence, suggestions were given to the witnesses that it was the PW 1 who had pelted stones at the accused and in the process, the PW 1 himself fell down on the ground and suffered the injuries to his hand and the accused was not responsible for the same. It was also suggested that the PW 1 himself was a defaulter of the '*Sanstha*' and an amount of about Rs.26,000/- was due to be recovered from him and since the accused was insisting on such payment, the PW 1 held grudge against the accused and therefore had implicated him in this false case.

6. The learned trial Judge recorded the statement of the accused under Section 313 of the Cr.P.C. wherein the accused denied the prosecution case. After hearing the arguments, the learned trial Judge recorded his findings in the judgment and order dated 08/09/2003 and was pleased to acquit the accused from all the charges.

7. With the assistance of the learned APP, I have gone through the entire evidence as well as the judgment of the learned trial Judge and I find that the view taken by the learned trial Judge is a possible view and does not call for any interference.

8. The main witness for the prosecution is obviously PW 1 Vishwas Jadhav who has suffered injuries. The said witness has deposed that there was a meeting on 03/08/2001 where there was exchange of words between the accused and himself in respect of the conduct of the affairs of the 'Sanstha'. According to him, therefore, the accused was holding grudge against him. However, his deposition also reveals that there was some outstanding amount due and payable by him which the 'Sanstha' was intending to recover. Thus, admittedly, there was an enmity on both sides and therefore, the evidence of PW 1 Vishwas Jadhav has to be scrutinized carefully from that angle. As far as the main incident is concerned, he has deposed that on 14/08/2001 at about 8.30 a.m. outside the temple of Lord Bhairavnath, the accused came and abused him. The accused also gave him fist and kick blows and gave a dash because of which he fell

on the floor. He has further deposed that Sarjerao Jadhav and Dhondiram Pawar who were present on the scene, separated the accused and the first informant. Thereafter he went to the police and then to the Civil Hospital.

9. The prosecution has tried to corroborate his evidence by examining PW 2 Sarjerao Jadhav and PW 3 Tukaram Jadhav. PW 2 Sarjerao Jadhav is the younger brother of PW 1. He has stated that at around 8.30 a.m. when he came out of Bhairavnath Temple, he saw the incident where the accused and the PW 1 were exchanging words and thereafter the accused gave a dash to the complainant and made him fall on the floor. He has further deposed that thereafter he himself, along with PW 1's son Rupesh, took the PW 1 to the hospital. In the cross-examination, he has mentioned that the police had never approached him and he had not given any statement to the police. Similarly, he has also admitted that there were two parties in their village and the accused was belonging to the opposite party and there was a political rivalry between them. Curiously, in his cross-examination, he has stated that when he came out of the Mandir, he saw the PW 1 sitting nearby on a platform. He has also stated that all the persons had dispersed and the accused was also not present. This throws doubt on the evidence of PW 2 and it is highly doubtful as to whether he was actually present on the spot of incident at all to witness the alleged incident.

10. As far as the evidence of PW 3 Tukaram Jadhav is concerned, his presence on the spot is not mentioned either by the PW 1 or by the PW 2. He appears to be a witness brought in by the prosecution just to bolster their case. He has also admitted that the police had not recorded his statement. Both these witnesses i.e. PW 2 and PW 3 do not depose about fist and kick blows having been inflicted by the accused on PW 1.

11. The medical evidence in this case consists of the evidence of PW 5 Dr. Rajesh Shinde and the medical certificate issued by him. The medical certificate dated 08/09/2001 indicates that there was a fracture on the right wrist of the complainant PW 1 and there was an abrasion on the right knee. However, his deposition read with the spot panchanama indicates that the surface on the spot of incident was hard and therefore a fall on the surface could cause such injury. It is admitted by the said Medical Officer that in older age, osteoporosis develop which causes fracture of bones easily.

12. PW 4 Police Head Constable Balasaheb Sarade has deposed about the investigation carried out by him and he has stated that the offence vide C.R.No.148 of 2001 was registered at Satara Taluka Police Station on 17/09/2001. Here, it is important to note that the incident had taken place on 14/08/2001. The medical certificate was issued on 08/09/2001. Thus, it appears that the FIR was lodged after about one month from the date of the incident and thereafter the investigation was carried out. Spot panchanama was

carried out after registration of the FIR.

13. I have gone through the reasoning given by the learned trial Judge while acquitting the accused. The learned trial Judge, after scanning the evidence, has held that there was a reason for the PW 1 to implicate the accused falsely. The learned Judge, by cogent reasoning, has observed as to how the PW 2 and PW 3 could not be believed. The learned Judge has further observed that one Dhondiram Pawar who was named by the PW 1 in his compliant, was not examined. After giving his reasoning, the learned Judge was pleased to give benefit of doubt to the accused and was pleased to acquit him.

14. The principles in respect of the considerations at the time of deciding the appeal against acquittal are enunciated in many cases. In the case of ***Mahavir Singh Vs. State of Madhya Pradesh***¹, the Hon'ble Supreme Court, in paragraph nos.12 and 13, has held thus :

“12. In the criminal jurisprudence, an accused is presumed to be innocent till he is convicted by a competent court after a full-fledged trial, and once the trial court by cogent reasoning acquits the accused, then the reaffirmation of his innocence places more burden on the appellate court while dealing with the appeal. No doubt, it is settled law that there are no fetters on the power of the appellate court to review, reappraise and reconsider the evidence both on facts and law upon which the order of acquittal is passed. But the court has to be very cautious in interfering with an appeal unless there are compelling and substantial

1 (2016) 10 Supreme Court Cases 220

grounds to interfere with the order of acquittal. The appellate court while passing an order has to give clear reasoning for such a conclusion.

13. It is no doubt true that there cannot be any straitjacket formula as to under what circumstances the appellate court can interfere with the order of acquittal, but the same depends on the facts and circumstances of each case.....”

15. Keeping these principles in mind, in my opinion, this is not a case which calls for interference in the judgment and order of acquittal, passed by the learned trial Judge, in view of the reasoning given by him in his judgment. The view taken by the learned trial Judge is a reasonable and a possible view and therefore, I am not inclined to interference with the same. In the result, the appeal is dismissed.

(SARANG V. KOTWAL, J.)