

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.153 OF 2004

The State of Maharashtra
Through Police Station
Wadhawana

...APPELLANT
(Ori. Complainant)

VERSUS

1. Gyanoba Bapurao Bande,
2. Balaji Gyanoba Bande,
Age: 35 years, Occu.:Agri.,
R/o. Chimachi-wadi,
Tq. Udgir, Dist. Latur,
3. Sow. Padminbai w/o. Gyanoba
Bande

**(Appeal stood abated against
Respondent Nos.1 & 3 as per
Court's order dt 12/04/2016.)**

...RESPONDENTS
(Ori.Accused)

Mr.KD Mundhe, APP for Appellant;

Mr.Prakashsing B.Patil, Adv.for Respondent No.2;

Appeal stood abated as against Resp.Nos. 1 & 3

CORAM : P.R.BORA, J.

DATE : 20th February, 2018.

ORAL JUDGMENT:

- 1) The State has preferred the present

appeal against judgment and order passed by Judicial Magistrate First Class, Udgir in RCC No. 367/1998 decided on 11th September, 2003, whereby it has acquitted all the three accused in the aforesaid criminal case.

2) During pendency of the present appeal, original accused Nos.1 and 3 have expired and the appeal stood abated against them. Thus, the appeal has been prosecuted further only against original Accused No.2.

3) Respondent No.2 has been prosecuted in the aforesaid case for the offence punishable under Section 324 read with 34 of Indian Penal Code. As is revealing from the material on record, prosecution was initiated on a complaint of one Shri Vitthal Pandharinath Madde. It was the grievance of the complainant that cattle belonging to the accused persons had entered into his field and caused damage to the crop standing in the said field. On such complaint being

lodged, offence was registered and the investigation was set in motion.

. In order to prove the guilt of the accused, total seven witnesses were examined by the prosecution. However, from the material on record, it is quite evident that the material witnesses were PW 1 – Vitthal Pandharinath Madde and PW 2 – Dnyanoba Vitthal Madde.

4) The learned trial court in paragraph 7 of the impugned judgment has analyzed evidence of the said witnesses. I deem it appropriate to reproduce the observations made by the learned Trial Judge in the aforesaid para, which read thus, -

"7. That, both the material witnesses are stating that due to assault by accused by means of stone they were sustained bleeding injuries, but it is important to take note that neither any blood stained clothes or stones by which

accused has assaulted to complainant are seized by the concerned Investigation Officer. Moreover, I would like to note here that occurrence took place due to the exchange of words between the wife of complainant and accused no.3 at about 4 p.m. As well as accused have also assaulted to wife of complainant, but neither she has referred for the medical examination, nor any medico legal injury certificate of her is filled on record. As well as due to non adducing her oral evidence before the Court, the statement of P.W. 1 and P.W. 2 are appearing to be non-reliable. She is the most material witness, because due to act of her, occurrence took place, but she has not brought into the witness box from the prosecution side. As well as it is necessary that a weapon used to assault must be dangerous weapon, but prosecution failed to prove that by which stones accused have assaulted to complainant and others and how those stones become dangerous weapons. As well as it is

admitted fact that accused have filed another criminal case against complainant, his wife and father, due to which it is clear that there is enmity between complainant and accused. So, in such above discussed circumstances, I am not of the view that evidence adduced by P.W.1 and P.W.2 is most reliable evidence."

5) In light of the observations made, I have perused the evidence of PW 1 and PW 2 as well as the medical evidence on record. Though it was sought to be canvassed by learned APP that the learned Magistrate has failed in appreciating the evidence of the aforesaid two witnesses and has also not properly appreciated the medical evidence on record, I am unable to agree with the submission so made.

6) As has been observed by the learned Magistrate, though it was the contention of the so-called eye-witnesses, who were also the victims of the alleged incident, that the accused

had made assaults on them with stone and they had sustained bleeding injuries, neither the blood-stained clothes were seized during the course of the investigation nor any such stone or stones were recovered either from the spot of occurrence or at the instance of the accused persons. The learned Magistrate has further observed that the occurrence had taken place because of exchange of words between wife of the complainant and original accused No.3. It was the contention of the complainant that the accused have assaulted to his wife also. However, record shows that wife of the complainant has not been examined as the witness. The material on record also does not show that she was referred for her medical examination when there was allegation that the injuries were also caused to her.

7) After having discussed the aforesaid evidence, the learned Magistrate has recorded a finding that the witnesses, who are examined in the mater and who posed themselves to be the

victims of the assaults, are not believable. After having gone through the evidence on record, it does not appear to me that any patent error has been committed by the learned Magistrate in arriving at the said finding. When the witnesses, whose evidence is emphasized for holding the accused guilty, are not believed by the trial court and no error is noticed in the view taken by the trial court. I need not enter into the other aspect of the matter. Prosecution has failed in bringing on record sufficient evidence to prove the complicity of the accused. In the circumstances, it does not appear to me that any case is made out by the State for causing interference in the order of acquittal recorded by the learned Magistrate. The appeal being devoid of any substance deserves to be dismissed and is accordingly dismissed.

(P.R.BORA)
JUDGE

bdv/