

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.193 OF 2004

The State of Maharashtra
Through Police Station, Degloor = **Appellant**
(Ori. Complainant)

VERSUS

1. Tanaji s/o. Pandhari Palekar
2. Pandhari s/o. Vithoba Palekar

(Appeal abated against R.Nos. 1 & 2
as per Hon'ble Court order dated
20.01.2018.

3. Muktabai w/o Pandhari Palekar
Age: 50 years, Occu.:Household,
R/o. Manoor (BK), Tq. Degloor
= **Respondents**
(Ori.Accused)

...
Shri. S.P. Sonpawale, APP for the Appellant-
State;

Shri. S.S. Shinde, Advocate for the Resp.Nos.1 to
3;

...
WITH

CRIMINAL REVISION APPLICATION NO.121 OF 2004

Shivaji s/o. Gangaram Palekar,
Age:31 years, Occu.:Labour
R/o.Manoor (Bk)
Tq. Degloor, Dist. Nanded ... **Petitioner**
(Ori. Complainant)

VERSUS

1. The State of Maharashtra

2. Tanaji s/o. Pandhari Palekar,
Age: 28 years, Occu.:Agri.,
3. Pandhari s/o. Vithoba Palekar,
Age: 57 years, Occu.:Agri.,
4. Muktabai w/o. Pandhari Palekar,
Age:50 years, Occu.Household

R.No.2 to 4 R/o. Manoor (Bk)
Tq. Degloor, Dist. Nanded

...Respondents

(2 to 4 Org. Accused
1 to 3)

...

Mrs. S.G. Chincholkar, Advocate for Petitioner;

Shri. S.P. Sonpawale, APP for Respondent No.1-
State;

Shri. S.S. Shinde, Advocate for Respondent Nos.2
to 4.

CORAM : P.R.BORA, J.

DATE : 1st March,2018.

ORAL JUDGMENT:

1) The State has preferred the present appeal against the judgment and order passed by JMFC at Degloor on 16th December, 2003 in Regular Criminal Case No.161/2001.

2) Original complainant - Shivaji Gamgaram

Palekear has also preferred the criminal revision application, challenging the judgment and order of acquittal of the accused passed by learned JMFC, Degloor.

3) Since the criminal appeal filed by the State and the revision filed by the original complainant - informant, both challenge the judgment and order of acquittal of the accused persons, common arguments were advanced by learned APP and Mrs. Chincholkar, and I deem it appropriate to decide the appeal well as the revision by a common reasoning.

4) The present respondents were prosecuted in the aforesaid criminal case for the offences punishable under Sections 325, 324, 504 read with 34 of IPC.

5) It is informed that during pendency of the present appeal, original accused Nos.s 1 and 2 have expired and the appeal thus stood abated against them. Thus, the matter is being prosecuted only against original accused No.3 - Muktabai Pandhari Palekar.

6) Learned APP submitted that it was the specific allegation against accused No.3 - Muktabai that she, in furtherance of common intention with the other two accused, was involved in causing injuries to informant/complainant - Shivaji Gangaram Palekar. The learned APP further submitted that the aforesaid aspect has not been properly considered by the learned Magistrate, which has resulted in unmeritorious acquittal of the surviving accused.

7) The learned APP pointed out the averments in the FIR to urge that there is specific allegation in the FIR also that Muktabai did bring chilly powder and handed it over to her husband, who in turn thrown the same in the eyes of complainant Shivaji Palekar. The learned APP also sought to contend that this evidence was corroborated by the other prosecution witnesses. However, having gone through the entire evidence and more particularly the medical evidence on record, I did not find any such evidence, on the basis of which it can be said that the role of

the accused Muktabai was proved by the prosecution by bringing on record sufficient evidence there for. In this regard, I deem it appropriate to reproduce the observations made by the learned Magistrate in Para No.16 of the judgment, which read thus, -

"16. It is also pertinent to note that though the informant alleged that the accused Pandhari threw chilly powder in the eyes of the informant, the injury certificate does not disclose any injury to the eye with chilly powder. It also creates doubt about the alleged incident. There is no medical evidence on record regarding the injuries to the eyes with chilly powder. It is fatal for the prosecution case in establishing the guilt of accused."

8) Further, nothing has been brought to my notice as to how the finding recorded by the learned Magistrate is erroneous or contrary to the evidence on record. After having gone

through the entire material on record, It does not appear to me that the learned Magistrate has committed any error in acquitting the surviving accused of the charges levelled against her. The appeal as well as the revision being devoid of any merits deserve to be dismissed and are accordingly dismissed.

(P . R . BORA)
JUDGE

bdv/