

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 194 OF 2004

The State of Maharashtra,
Through Police Station, Pachora,
Taluka Pachora, Dist. Jalgaon

..Appellant

Versus

1. Chandrakant Dinkar Somwanshi,
Age 19 years
2. Suresh Fakira Koli,
Age 29 years
3. Pradip Narsing Somwanshi,
Age 32 years
4. Rajendra Vasant Rao Somwanshi,
Age 25 years
5. Arun Krishnarao Somwanshi
Age 25 years
6. Soniram Vitthal Patil
Age 48 years
7. Vishwanath Vyankat Somwanshi
Age 42 years

No.1, 3 to 7 R/o Balad,
Taluka Pachora,
No.2 R/o Balad Khurd,
Taluka Bhadgaon, Dist. Jalgaon

..Respondents

Mr C.S. Kulkarni, A.P.P. for appellant
Mr R.N. Dhorde, Senior Counsel i/b Mr V.R. Dhorde, Advocate for
respondents no.1 to 7

- WITH -

CRIMINAL REVISION APPLICATION NO.365 OF 2003

Ravindra s/o Ramkisan Zanwar,
Age 48 years, Occu. Agricultural,
R/o Balad, Taluka Pachora,
District Jalgaon

..Petitioner

Versus

1. The State of Maharashtra,
Through P.S.I., Police Station,
Pachora, District Jalgaon

2. Chandrakant s/o Dinkar Somwanshi,
Age 28 years
3. Suresh s/o Fakira Koli,
Age 38 years
4. Pradip s/o Narsing Somwanshi,
Age 41 years
5. Rajendra s/o Vasantryao Somwanshi,
Age 34 years
6. Arun s/o Krishnarao Somwanshi
Age 34 years
7. Soniram s/o Vitthal Patil
Age 57 years
8. Vishwanath Vyankat Somwanshi
Age 51 years

No.2, 4 to 8 R/o Balad,
Taluka Pachora,
No.3 R/o Balad Khurd,
Taluka Bhadgaon, Dist. Jalgaon

..Respondents

Mr Mahesh S. Deshmukh, Advocate for petitioner
Mr C.S. Kulkarni, A.G.P. for respondent no.1
Mr R.N. Dhorde, Senior Counsel i/b Mr V.R.Dhorde, Advocate for
respondents no.2 to 8

**CORAM : S.S. SHINDE AND
A.M. DHAVAL, JJ**

DATE : 6th January 2018

ORAL JUDGMENT (Per A.M. Dhavale, J.)

1. In Regular Criminal Case No.172/1994, all the respondents as accused persons were prosecuted before Judicial Magistrate, First Class, Pachora for offences punishable under Sections 147, 148, 324, 326, 506 read with Section 149 of Indian Penal Code for causing grievous injury to Motilal and Ravindra for Offences punishable under Sections 324 and 506 of Indian Penal Code.

2. By judgment dated 16.7.2003, all the accused were acquitted of the offences charged. Hence, the aggrieved State has preferred Criminal Appeal No.194 of 2004 against acquittal, whereas the informant Ravindra Zanwar has preferred Criminal Revision Application No.365 of 2003.

3. The facts relevant for deciding these matters may be stated as follows.

On 4.10.1994 at 3.10 p.m., P.W.1 Ravindra Zanwar lodged F.I.R. Exh.89 at Pachora Police Station. As per his F.I.R., he was working as Sarpanch at Balad from 1989. On the earlier day 3.10.1994, he had attended office of Block Development Officer for a meeting of Sarpanch and Gramsevak. After completing his private work, he along with Motilal was returning by Bajaj M-80 bike bearing registration No.MH-19-B-6815 to Balad. At about 9.30 to 9.45 p.m., he came near the railway gate, which was closed. That time, accused no.3 Pradeep Narsing and accused no.5 Arun also halted near the closed railway gate and on opening the gate, they overtook them. When they came about 1 Km. ahead of village Lohatar, he slowed down the bike, as the road was not good. That time, in the light of bike he saw accused no.1 Chandrakant and accused no.2 Suresh, accused no.3 Pradeep, accused no.5 Arun, accused no.6 Soniram, accused no.7 Vishwanath and accused no.4 Rajendra were also standing by the side of the road. Chandrakant came there and gave him a slap on right cheek. He raised shouts and his bike fell down. Then, accused no.2 Suresh came ahead and inflicted a blow of sharp weapon on his skull and the remaining accused assaulted him with fist and kick blows and sticks.

Along with him, Motilal was also assaulted. They were instigating each other that they should be killed. When P.W.1 Ravindra was trying to escape from them, somebody gave a stick blow on his shoulder. He escaped and entered the crop. Chandrakant was Deputy Sarpanch and he had brought no confidence motion against him, but it was unsuccessful and P.W.1 Ravindra was appointed as an Administrator. Hence, they were assaulted. On the basis of such F.I.R., crime was registered at C.R.No.134/1994 and the same was investigated into. The spot panchnama was drawn, medical treatment was given to the injured and their medical certificates were collected. Statements of material witnesses were recorded and after completion of investigation, charge-sheet was submitted in the Court of Judicial Magistrate, First Class, Pachora.

4. The learned Magistrate framed charge against all the accused for offences punishable under Sections 147, 148 read with Sec.149, 326, 324 and 506 of Indian Penal Code. The accused pleaded not guilty. The prosecution examined six witnesses. The learned Judicial Magistrate, First Class disbelieved the prosecution case and acquitted the accused. Hence, this appeal and Criminal Revision Application.

5. Learned A.P.P. Mr C.S. Kulkarni argued that accused no.1 has political enmity with P.W.1 Ravindra Zanwar as they belong to different parties. The evidence of P.W.1 Ravindra is cogent and consistent with the F.I.R. It is supported by medical evidence and evidence of P.W.2 Motilal. The learned trial Judge should have believed the evidence and should have convicted the accused.

6. Per contra, learned Senior Counsel Mr Dhorde supported the judgment of the trial Court. He argued that the incident took place at 10.00 p.m. when there was no source of light. As per evidence of Dr.Ramkrishna Teli, P.W.1 Ravindra was having only two injuries and P.W.2 Motilal was also having only two injuries. Therefore, the involvement of the seven accused indicates that there was false implication. There is no consistency in the evidence. Learned trial Judge has rightly appreciated the evidence and the view taken by him is reasonable and probable view. Hence, the same should not be interfered with.

7. The points for our consideration with our findings are as follows:

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| (I) Whether accused nos.1 to 7 formed unlawful assembly with a common object to assault P.W.1 Ravindra and P.W.2 Motilal ? | ..Not proved |
| (II) Whether accused nos.1 to 7 in prosecution of common object voluntarily caused grievous hurt to P.W.1 Ravindra and simple hurt by deadly weapon to P.W.2 Motilal ? | ..Not proved |
| (III) Whether the accused nos.1 to 7 in prosecution of common object of assembly criminally intimidated to P.W.1 Ravindra? | ..Not proved |
| (IV) What order and sentence ? | ..Criminal Appeal and Criminal Revision Application are dismissed. |

- REASONS -

8. P.W.1 Ravindra has deposed that he was Sarpanch and on 3.10.1994, after attending the meeting at B.D.O. Office, he was returning to Balad at late night. P.W.3 Motilal was along with him and they were coming on his own bike Bajaj M-80 bearing No.MH-19-B-6815. They left Pachora at 9.30 p.m. and stopped near the railway gate. That time, accused no.3 Pradeep and accused no.5 Arun also came there on Rajdoot bike and stopped near them. After some time, the gate opened and they overtook them. He stated that when they came at some distance from Lohatar, all the accused came in front of their bike. Accused no.1 Chandrakant gave him a slap on right cheek. He fell down from the bike. Then Suresh (A-2) gave blow of some sharp weapon on his skull and thereafter all the accused assaulted him and Motilal by means of fist and kick blows and sticks. That time, Chandrakant (A-1) and Suresh (A-2) were instigating the other accused to kill them. He further stated that one of the accused had given a blow of some object on his right shoulder with full force, but he and Motilal fled away and saved their lives. He had sustained injury on cheek, right ear and nose. It was on account of political enmity and his appointment as Administrator in spite of resistance of Chandrakant (A-1), who was Deputy Sarpanch. On the same night, he had gone to the village Lohatar and thereafter by jeep to Pachora at the police station. Then, he was referred to Medical Hospital, Pachora and thereafter to Civil Hospital, Jalgaon. His F.I.R. was recorded. It is at Exh.89. P.W.2 Motilal has supported him on material aspects. He

had been to Pachora for his personal work of payments. Then, Sarpanch P.W.1 Ravindra met him at Pachora and they were coming by M-80 bike at 9.00 p.m. He narrated the waiting of P.W.3 Prakash and P.W.5 Arun near the railway gate and subsequent attack by accused nos.1 to 7 on them. He stated that near the railway gate, accused Prakash and Arun were looking at them with inimical eyes and he requested Ravindra to allow him to get down, but Ravindra did not allow him. He thereafter deposed about obstruction to them by the accused. He stated that accused no.1 Chandrakant first gave slap to Ravindra on right cheek and thereafter accused Suresh assaulted him with sharp weapon on head and thereafter Suresh had given kicks to him. Then, other accused had stretched his legs and took him to some distance and by pressing his neck, pelted stones on his back. Accused no.1 Chandrakant accosted him why he accompanied P.W.1 Ravindra. He then begged for mercy. Then, he was left and Ravindra was assaulted by the accused. When they were lying down, the accused left the spot and thereafter he went to Ravindra, saw his injuries. His clothes were stained with blood. Then, accused no.1 Chandrakant again came on his bullet and due to fear, he and Ravindra concealed themselves in jute crop. Thereafter, they went to Lohatar at the house of D.A. Mahajan, who carried them to Pachora and then to Civil Hospital, Jalgaon. He stated that he had sustained injury on his back and shoulder. He has deposed about the medical treatment received by him.

9. P.W.3 Motiram is a spot panch. He has proved panchnama Exh.93. He had seen some blood stains on stones on the spot. P.W.4

Prakash who had held P.W.1 Ravindra and P.W.2 Motilal has turned hostile and not supported the prosecution. He denied that blood stained clothes of P.W.1 Ravindra were seized in his presence.

10. P.W.5 Dr. Teli was Medical Officer at Pachora. He had examined P.W.1 Ravindra and found two injuries on his person as follows :

1) Contusion with swelling with tenderness on back, right side upper column. There were painful movements and the pain was reiterated to be right shoulder joint.

2) Clean incised wound about incised 2 ½ cm x cotter region on right occipital region. It was bone deep. There was oozing of blood as well as blood was also oozing from right ear.

11. The patient was referred to Jalgaon for radiology examination. The certificate is at Exh.100. He then examined P.W.2 Motilal and found following injuries on his person.

“ Scratch with abrasion with swelling with tenderness on left side. There were painful movements. Swelling with tenderness at upper quad and back left side.”

His certificate is at Exh.101.

12. P.W.6 Yadav is Investigating Officer. He has proved spot panchnama Exh.93, seizure of blood stained clothes of Motilal Exh.120 and shirt Article 'D'. Seizure of blood stained clothes of Ravindra Exh.121 - Articles A.B.C. He had also sent blood samples of the

injured to Chemical Analyst and the reports of Chemical Analyst are at Exh.106, 107, 123 and 124. He has seized the bullet bike of accused Chandrakant Exh.126 and proved material omissions of P.W.4 Prakash Exh.125.

13. After carefully going through the evidence on record, we find that there is no reason to disbelieve P.W.1 Ravindra and P.W.2 Motilal with regard to assault on them at the relevant time, however, we find that their evidence regarding the assailants is not trustworthy and reliable.

14. In the first place, they have disclosed the names of seven accused persons, whereas the total number of injuries on both of them are only four. It is difficult to conceive that three accused persons, who came there would only wait and stand. If each accused would have inflicted single injury, still there would have been more injuries. The evidence that all the accused persons assaulted them with kick blows and sticks cannot be accepted.

15. Besides, the incident took place at 10.00 p.m. outside the village. There was no source of light. The contention that all the accused were seen in the light of M-80 bike is difficult to believe, particularly P.W.1 Ravindra and P.W.2 Motilal could not tell the nature of sharp weapons used for assaulting P.W.1 Ravindra on his skull.

16. The evidence of P.W.1 Ravindra and P.W.2 Motilal is contradictory on some material points. According to P.W.1 Ravindra, while the incident was going on, he and Motilal escaped from the clutches of the accused and concealed themselves in crop. Whereas,

according to P.W.2 Motilal, both of them were on the ground and the accused left the spot and when after some time accused no.1 Chandrakant returned on his bullet, they concealed themselves.

17. P.W.1 Ravindra has deposed about assault by all the accused by fist blows, legs and sticks on himself and Motilal. Whereas, P.W.2 Motilal is not deposing about assault by any of the accused by sticks. On the contrary, he deposed that his neck was pressed upside down and he was assaulted on back by pelting stones. His evidence that the accused accosted him why he accompanied P.W.1 Ravindra and on his request he was let off is not deposed by P.W.1 Ravindra. His cross-examination reveals that he denied any attack by sticks.

18. It is pertinent to note that there is no recovery of weapons nor any recovery of blood stained clothes of the accused. In the light of these facts, the learned trial Judge has disbelieved P.W.1 Ravindra and P.W.2 Motilal. There is serious lacuna regarding the source of light on the spot and reasonable doubt is created about the involvement of the accused persons. It is certain that there would have been many more injuries to both the injured in case seven accused persons would have assaulted them simultaneously for some time. Considering the facts, we find that the view taken by the learned trial Judge is reasonable and probable view and the same cannot be interfered with. Hence, we answer all the points against the prosecution and pass the following order:

- ORDER -

The Criminal Appeal is dismissed. Criminal Revision Application also stands dismissed.

(A.M. DHAVALA, J.)

(S.S. SHINDE, J.)

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