

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

CRIMINAL APPEAL NO. 269 OF 2004

The State of Maharashtra
Through Police Station Officer
Police Station Bhagyanagar, Nanded. .. Appellant
(Original Complainant)

Versus

1. Tilakraj s/o. Vithalrao Duthade,
Age 32 years, Occu. Service,
R/o. Vishnu Complex, Nanded.
2. Balwant S/o. Tukaram Birhade,
Age 61 years, Occu. Pensioner,
R/o. Parasnagar, Nanded. .. Respondents
(Original Accused)

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Mr. R. B. Bagul, APP for Appellant.
Mr. Joydeep Chattarjee, Advocate for respondents No. 1 and 2 (Absent)

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**WITH
CRIMINAL REVISION APPLICATION NO. 229 OF 2004**

Prakash S/o. Madhavrao Vasmate,
Age Major, Occu. Service,
R/o. Bhagyanagar, Nanded. .. Petitioner
(Complainant)

Versus

1. State of Maharashtra,
Through Police Station Officer,
Bhagyanagar, Nanded.
2. Tilakraj s/o. Vithalrao Duthade,
Age 32 years, Occu. Service,
R/o. Vishnu Complex, Nanded.
3. Balwant s/o. Tukaram Birhade,
Age 61 years, Occu. Pensioner,
R/o. Parasnagar, Nanded. .. Respondents
(Accused)

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Mr. S. V. Kurundkar, Advocate for revision-applicant.
Mr. R. B. Bagul, APP for respondent No.1-State.
Mr. Joydeep Chatterjee for respondents No. 2 and 3 (Absent).

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CORAM : K.K. SONAWANE, J.

DATED : 20th JANUARY, 2018.

JUDGMENT :-

1. Taking recourse of remedy under Section 378 of Criminal Procedure Code (for short "Cr.P.C."), the prosecution / State of Maharashtra preferred the present appeal agitating the validity and propriety of the impugned judgment and order of acquittal of both the respondents for the offence punishable under sections 452, 324, 323, 504 and 506 read with section 34 of the Indian Penal Code (for short "IPC") in Regular Criminal Case No. 525 of 2003 dated 17-01-2004 passed by the 2nd Joint Judicial Magistrate, First Class, Nanded.

2. The first informant-original complainant Shri. Prakash Vasmate also filed Criminal Revision Application No. 229 of 2004 and put in controversy the legality and correctness of the impugned findings of learned trial Court, acquitting both the respondents-original accused for the charges pitted against them. The proceedings of appeal and revision are emanated from one and the same judgment and order of acquittal of respondents-accused, therefore, both the proceedings are being dealt with simultaneously for its adjudication on merit by this common judgment.

3. It has been alleged on behalf of prosecution that the first informant-complainant Shri. Prakash Vasmate, on 24-03-2003 approached to the Bhagyanagar Police Station, Nanded and filed a report that he was in Government Service as a Executive Engineer in Irrigation Department, Nanded. On the day of incident i.e. 24-03-2003, he was not keeping good health, and therefore, he was at home. His friends namely Kailas Rathi and Chakradhar Hanmantrao Shinde at about 11.15 a.m. came to his house to see him. When they were chit-

chatting in the house, that time both the respondent-accused barged into drawing room of the complainant. They started hurling abuses filthily. The accused reprimanded the complainant for his frequent transfer in the office. The accused cast allegations that the complainant used to instigate their office superior against him. During the altercation, the accused No.1 Tilakraj Duthade dealt a fist blow and inflicted bleeding injuries near the left eye of the complainant. The accused No. 2 Balwant Birhade gave threat to kill the complainant by firing from pistol. Thereafter, both the accused went away by their mother vehicle car No. MXV-52. The injured Shri. Prakash Vasmate rushed to the police station and filed the report.

4. Pursuant to First Information Report (FIR), the police of Bhagyanagar Police Station, Nanded registered the crime No. 72 of 2003 under Sections 452, 324, 323, 504 and 506 read with Section 34 of IPC and set the penal law in motion. The Investigation Officer visited to scene of occurrence and drawn spot panchnama. He recorded statement of witnesses acquainted with the facts of the case. The injured complainant was referred to hospital for medical treatment. The Investigating Officer collected documents of medical certificate, etc. After completion of investigation, the chargesheet came to be filed against the accused before the court of Judicial Magistrate, First Class, Nanded.

5. After compliance of procedural formalities, learned trial Court framed the charges against both the accused. They pleaded not guilty and claimed for trial. In order to bring home guilt of the accused, prosecution examined in all six witnesses in this case.

Learned Magistrate recorded statement of accused prescribed under section 313 of Cr.P.C. After due consideration of entire oral and circumstantial evidence on record, the learned Magistrate arrived at the conclusion that both the accused could not be held guilty for the charges pitted against them. Therefore, learned Magistrate passed the impugned judgment and order of acquittal, the validity of which is agitated in the present appeal.

6. The learned prosecutor vehemently submitted that the impugned judgment and order of acquittal of respondent-accused is erroneous, illegal and not within the purview of law. The learned trial Court did not appreciate the entire evidence on record in its proper perspective. The first informant - P.W.No.1 Prakash Vasmate – the injured has categorically narrated the incident of abusing filthily, assaulting by fist blows resulting into bleeding injuries etc. in explicit manner. His evidence was corroborated by P.W.No.3 Chakradhar Shinde and P.W.No.4 Vijay Bhaganagare. The medical certificate produced on record by P.W.No.5 Dr. Yogesh Mohanrao Kokadwar strengthen the version of complainant. But the learned trial Court did not appreciate all these circumstances in proper manner and drawn erroneous conclusion of acquittal for failure of prosecution to prove the charges against accused beyond all reasonable doubt. According to learned prosecutor, the impugned judgment and order of acquittal is bad in law, and therefore, deserves to be set aside and quashed.

7. The learned counsel for revision petitioner-original complainant also stepped into the shoe of learned APP and argued that the findings of acquittal of accused by the learned trial Court are

imperfect, erroneous and not in proper perspective of the evidence adduced on record. He requested to up-set the findings of acquittal of the respondent-accused and they be convicted for the charges pitted against them.

8. It is settled principle of law that in the appeal against acquittal, the High Court is empowered to review, re-appreciate or re-appraise the evidence of prosecution to arrive at its own conclusion. But, the acquittal of accused should not be disturbed unless the findings of trial court are perverse. If the view taken by the learned trial court is possible and plausible view and no infirmity noticed in the findings, no interference warranted in it. It is also imperative to take into consideration the well settled principle of presumption of innocence of the accused, while re-assessment of evidence of prosecution.

9. Keeping in mind the aforesaid principle of law, the evidence of prosecution witnesses came to be analysed. The intense scrutiny of the entire oral and circumstantial evidence adduced on record reveals that the view taken by the learned trial Court for acquittal of respondent-accused is plausible and possible view and no perversity seen in the findings of trial Court. Therefore, circumstances on record do not permit to cause any interference in it.

10. Admittedly, in order to bring home guilt of the accused, prosecution examined first informant-complainant P.W.No.1 Prakash Vasmate in this case. He was the Government Employee and assigned responsibility as an executive engineer in Irrigation Department, Nanded. The respondent-accused No.1 Tilakraj Duthade was also one of the Government Personnel being an Executive Engineer attached to

the Mechanical Division of Irrigation Department, Nanded. The P.W.No.1 Prakash Vasmate, in his examination-in-chief deposed that, on the day of incident i.e. 24-03-2003 he was not keeping good health. Therefore, he was at home located in Shahunagar area, Nanded. At about 11.15 a.m. his friends Kailas Rath and Bhaganagare as well as Chakradhar Shinde came to see him. While they were chit-chatting in the room at first floor of the house of complainant, both the accused arrived there, they hurled the abuses filthily to the complainant saying "*Madarchod*". The accused also alleged that the complainant is misleading his superior officer and get the accused transferred in the office frequently. The accused No.1, thereafter, gave fist blow on the face near left eye of the complainant and caused bleeding injuries. The accused No.2, father-in-law of the accused No.1, threatened to kill by firing with his pistol. But, the friends of first informant-complainant, Shri. Bhangangare, Rath and other intervened in the fight. Thereafter, both the accused went away. The first informant P.W.No.1 Prakash Vasmate was cross-examined on behalf of respondent-accused. In the cross-examination, P.W.No.1 Prakash Vasmate conceded about filing of criminal complaint against him vide Crime No. 23 of 2003 under Section 509 of the IPC for the allegations of his attempt to insult the modesty of wife of accused No.1. It has brought on record that the complainant was not keeping good health on 24-03-2003, but he did not avail medical leave, however, he forwarded his casual leave application at about 1.30 p.m. to his office after occurrence of alleged incident. In the application, he has mentioned the cause about his ill-health, but he did not make any reference of occurrence of alleged

incident in his casual leave application forwarded to the office. There is no official document on record that the complainant ventilated his grievance against accused No. 1 to his superior for any departmental proceeding. In contrast, the complainant Shri. Vasmate was arraigned for accusation of misbehaviour with wife of accused No.1.

11. It has also brought on record that the complainant has not seen the accused arrived in vehicle car bearing No. MXV-52 belonging to the office of Irrigation Department and assigned to the accused No.1 Shri. Tilakraj Duthade, being an Executive Engineer. However, in FIR (Exhibit-15), the complainant categorically mentioned that both the accused arrived at the spot in vehicle Car No. MXV-52. Moreover, the complainant shown inability to state as to whether the weapon pistole was in the custody of accused No.2 Balwant Birhade at the time of alleged incident. In such circumstances, it would difficult to understand as to how the accused No.2 Shri. Balwant Birhade gave threat of life to the complainant at the point of weapon pistol. These discrepancies created clouds of doubt about the veracity of evidence of first informant-complainant P.W.No.1 Prakash Vasmate.

12. The alleged incident of assault occurred at about 11.00 to 11.30 a.m. But, the FIR came to be lodged at about 3.00 p.m. There was delay of 4/5 hours to lodge the FIR to the police. The delay in FIR created doubt about its genuineness. In the evidence, there was attempt to explain the cause of delay on record. The complainant deposed that he was diabetic patient and after the alleged incident, he felt somewhat giddiness. Therefore, he had taken rest for some time, and thereafter, in the noon hours he filed FIR. However, these

circumstances are absent from the FIR (Exhibit-15) which came to be lodged after about 4/5 hours of the alleged incident. Taking into consideration the official status of the complainant being an Executive Engineer of the Irrigation Department, it would be a reasonable expectation that he should take prompt action against the wrong doers. It is also strange to appreciate that due to the alleged incident he could not file FIR promptly at the earliest. But, he made it convenient to forward his leave application to the office at about 1.30 p.m. These all circumstances created doubt about the credibility of evidence of P.W.No.1 Shri. Prakash Vasmate.

13. The prosecution examined P.W.No.3 Chakradhar Shinde and P.W.No.4 Vijay Bhaganagare to corroborate the testimony of first informant-complainant P.W.No.1 Prakash Vasmate. But, the evidence of these witnesses appears cryptic and slender in nature. They did not describe the incident of assault in detail nor they explain overact of each of the accused in the fight. There are material discrepancies in the evidence of these witnesses. The P.W.No.3 Chakradhar Shinde and P.W.No.4 Vijay Bhaganagare were the office colleague of complainant, and obviously, their evidence is required to be viewed as version of interested and partisans witness in this case. They did not give detail account of overact of each of the accused in this case. The P.W.No.3 Chakradhar Shinde and P.W.No.4 Vijay Bhaganagare stated that they intervened in the fight and separated the accused and the complainant at the time of incident. But, the P.W.No.1 first informant-complainant maintained silence that these witnesses intervened in the fight. The P.W.No.3 Chakradhar Shinde deposed that at the time of alleged

incident P.W.No.4 Vijay Bhaganagare told accused No.1 Tilakraj Duthade and his father-in-law accused No.2 Balwant Birkhade not to quarrel and go away from the spot of incident. Accordingly, both accused No. 1 and 2 came down stair and went away by their vehicle No. MXV-52. However, P.W.No.4 Vijay Bhaganagare had not stated all these facts in his evidence before the learned trial court. He simply stated that he attempted to pacify the accused, and thereafter, both accused went away. In the cross-examination of P.W.No.4 Vijay Bhaganagare, it has brought on record that all these witnesses i.e. Kailas Rathi, Chakradhar Shinde and P.W.No.4 Vijay all were accompanied with the first informant-complainant Prakash Vasmate at the police station while lodging the complaint. There were some neighbourers in the police station with the complainant. After FIR, the complainant Prakash was referred to the hospital for medical treatment in presence of P.W.No.4 Vijay Bhaganagare.

14. It would be reiterated that as discussed above, the P.W.No.3 Chakradhar Shinde, P.W.No.4 Vijay Bhaganagare were office colleague of the complainant. In view of circumstances on record relating to office politics, these witnesses appear to be interested witnesses in this case. The neighbourers accompanied with the complainant at the police station for lodging FIR did not come forward to corroborate the testimony of P.W.No.1 Shri. Prakash Vasmate. The medical certificate produced on record could not prop-up the weak edifice of the prosecution case. The occurrence of alleged incident of assault by the respondent-accused to complainant itself seems to be doubtful. The medical certificate produced on record shows simple

incised wound by sharp weapon to the first informant-complainant. It is to be noted that the prosecution witnesses did not state about any sharp weapon in the custody of accused at the time of alleged incident. The medical expert P.W.No.4 Dr. Kokadwar drawn inference that the injuries to the complainant might have been caused due to finger ring of the accused. But, the prosecution witnesses did not unfurl these circumstances in explicit manner to prove the nexus of accused with the alleged injury caused to the first informant-complainant P.W.No.1 Prakash Vasmate.

15. At this juncture, it is also essential to take into consideration the circumstance of animosity in between the complainant and accused. In the cross-examination, it has brought on record that since last 2-3 years, there were strain relation in between both the complainant and the accused. It has not denied that day before the alleged incident, the wife of accused No.1 filed the FIR for the offence punishable under section 509 of the IPC against the complainant. The crime No. 23 of 2003 came to be registered for his vulgar attempt to commit outrage of modesty of the wife of accused No.1 Tilakraj Duthade. The scrutiny of evidence of prosecution reflects the possibility of filing present FIR only to give counter blow to the criminal complaint filed by the wife of accused No.1. In short, all these criminal actions are the fall-out of strain relations in between complainant and accused. Therefore, independent corroboration is essential for consideration to bring home guilt of the accused. Unfortunately, there is no independent evidence available on record to fortify the allegations against accused.

16. There is also no satisfactory explanation for belated FIR by sophisticated, educated and highly ranked officer of the Irrigation Department. The circumstances of delay in FIR found detrimental to the prosecution case. Therefore, there is no propriety to draw any sort of adverse inference against the accused at the instance of prosecution. The learned trial Court correctly appreciated the evidence on record in its proper prospective. The inference and conclusion drawn by the learned trial Court does appear just, proper and reasonable. The prosecution has failed to prove the charges pitted against the accused beyond all reasonable doubt. Therefore, it would unjust and improper to cause any interference in the findings expressed by trial court for acquittal of the accused in this case. The appeal as well as revision petition being devoid of merit deserve to be dismissed.

17. In sequel, appeal stands dismissed. No order as to costs. In view of dismissal of appeal, nothing survive for consideration in criminal revision filed on behalf of complainant i.e. first informant- Shri. Prakash Vasmate. Therefore, revision petition also stands dismissed.

18. Accordingly, the appeal and criminal revision application stand disposed of in above terms.

Sd./-

[K. K. SONAWANE]
JUDGE

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