

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

CRIMINAL APPEAL NO.32 OF 2003

The State of Maharashtra,
Through Police Station, Loha,
District Nanded.

...APPELLANT
(Ori. Complainant)

VERSUS

1. Shankar s/o Vishwanath Dhonde,
Age 30 years.
2. Nagnath s/o Vishwanath Dhonde,
Age 25 years.
3. Santu s/o Haugi Dhonde,
Age 35 years.
4. Shivling s/o Haugi Dhonde,
Age 35 years,
5. Rajaram s/o Gunaji Dhonde,
Age 40 years.
6. Manna s/o Mohd.Gaus,
Age 35 years,

All Occupation Agril., r/o Shevdi,
(Bajirao) Tq. Loha, Dist. Nanded.

...RESPONDENT.
(Ori.Accused)

...
Shri K.D.Mundhe, learned A.P.P., for appellant State.

Mr. S.L.Bhapkar, Advocate, for respondent nos. 1 to 5.
Respondent no.6 served.

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CORAM: P.R. BORA, J.

DATE : March 6th, 2018.

ORAL JUDGMENT:

1. Heard learned A.P.P. Shri Mundhe appearing for appellant State and Shri Bhapkar, learned Counsel appearing for the respondents.

2. The State has preferred the present appeal against the judgment passed by the Joint District Judge & Additional Sessions Judge, Nanded, on 7th October, 2002 in Criminal Appeal No.3/1996.

3. The respondents were prosecuted in Regular Criminal Case No.84/1991 for the offenses punishable under Sections 147, 148, 323 and 324 read with Section 149 of IPC. The learned Judicial Magistrate, First Class, at Kandhar, vide judgment passed on 12th January, 1996, convicted accused nos. 1, 2 and 4 to 7 for the offenses under Section 148 of IPC and sentenced them to suffer rigorous imprisonment for one month and to pay fine of Rs.100/- each; in default, to suffer simple imprisonment for fifteen days. The said accused were also punished for the offense punishable under Section 324

read with Section 149 of IPC and were sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.200/- each; in default, to suffer simple imprisonment for one month.

4. The original accused filed Criminal Appeal No.3/1996 before the Sessions Court at Nanded and the learned Sessions Judge vide the impugned judgment and order allowed the appeal and set aside the order of conviction passed against the accused and acquitted the accused of the charges levelled against them. Aggrieved thereby, the State has preferred the present appeal.

5. Shri Mundhe, learned A.P.P., appearing for appellant State, submitted that though a clear account of the alleged incident was given by PW 1 Nagnath, PW 2 Pandu and PW 5 Babu, which was also supported by the medical evidence, the learned Sessions Court has, on some un-tenable grounds, has declined to believe the said evidence. Learned A.P.P. submitted that the omissions and contradictions which are highlighted by the learned Sessions Court in its judgment, in no case, can be said to be material contradictions. Learned A.P.P. submitted that, in so far as the core incident is concerned, the

evidence of the prosecution witnesses was quite consistent with each other. The FIR was promptly lodged in the matter and, in such circumstances, the the learned Judicial Magistrate First Class has rightly convicted the accused for the offenses charged against them. Learned A.P.P. further submitted that the inference drawn by the learned Sessions Judge that no such injuries were caused to the victim so that it was required that they should remain at the spot for a quite long period. Learned A.P.P. further submitted that the further inferences drawn by the learned Sessions Judge are weighed by the fact that the recovery was not duly proved by the prosecution. Learned A.P.P. submitted that even the learned Magistrate has also not relied upon the evidence of recovery, however, having regard to the ocular version given by the witnesses, out of which at least three were the victims of the alleged incident, the conviction was recorded. Learned A.P.P., therefore, prayed for setting aside the order passed by the Sessions Court and to restore the order passed by the learned Magistrate.

6. Shri S.L.Bhapkar, learned Counsel appearing for the respondents, supported the judgment passed by the learned Sessions Court. Learned Counsel submitted that a well reasoned judgment has been delivered by the Sessions Court

pointing out the infirmities in the prosecution evidence and no interference is required in the judgment and order passed by the learned Sessions Judge.

7. I have carefully considered the submissions advanced by the learned A.P.P. for the appellant State and the learned Counsel appearing for the respondents. I have also perused the judgments delivered by the trial Court and the learned Sessions Court which are impugned in the present appeal. It has to be stated that the alleged incident had happened in the year 1991. The incident was stated to have happened in the night hours. It was the case of the prosecution that the victims, after finishing their work, had been to the river for drinking water and at that time, based on some previous incident, they were assaulted by the accused persons and were injured in the said incident. Learned A.P.P. has also taken me through the evidence of PW 1 Nagnath, PW 2 Pandu and PW 5 Babu. Learned Sessions Judge has declined to rely upon the said evidence by making specific observations and pointing out certain contradictions and omissions and has ultimately reached to the conclusion that on such inconsistent evidence, the conviction could not have been based.

8. After having considered the evidence on record, it does not appear to me that any error has been committed by the learned Sessions Judge in making such observations. In the impugned judgment, from paragraphs no.11 to 18, the learned Sessions Judge has again re-assessed the evidence of the prosecution witnesses. On going through the discussion made by the learned Sessions Judge, it does not appear to me that the conclusion arrived at by the learned Sessions Judge is, in any way, incorrect. Having regard to the fact that none of the prosecution witnesses was felt believable, and there were material contradictions in the facts, as were stated by the witnesses, no conviction could have been recorded in such matter.

9. After having considered the entire material on record, I do not see any merit in the appeal so filed. Hence, the following order:

ORDER

1. Criminal Appeal (No.32 of 2003) is dismissed.

(P.R.BORA)
JUDGE

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