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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 532 OF 1995

State of Maharashtra] .. Appellant

Vs.

1. Jayant Shiram Rane]
Age about 34 years,]

2. Gajanan Balkrishna Rane]
Age about 60 years,]

3. Prabhakar Bhagwan Rane]
Age about 28 years,]

All resident of Ozaram]
Tirthanwadi, Tal. Kankavali] .. Respondents

Mrs. M. M. Deshmukh, APP for the Appellant-State.

Mr. S. A. Joshi, appointed Advocate for original Accused Nos.2 & 3.

**CORAM : INDRAJIT MAHANTY AND
V. K. JADHAV, JJ.**

Judgment reserved on : **6th DECEMBER, 2018.**

Judgment pronounced on : **21st DECEMBER, 2018.**

JUDGMENT (Per V. K. Jadhav, J.)

1. The State has preferred this Appeal against the Judgment and order of acquittal dated 23.01.1995 passed by II Additional Sessions Judge, Sindhudurg at Sawantwadi in Sessions Case No. 61 of 1994. The learned II Additional Sessions Judge, Sawantwadi has found the Respondent-accused

Nos.1 to 3 not guilty for the offence punishable under Sections 341, 326, 307 read with 34 of the Indian Penal Code and accordingly acquitted them.

2. The brief facts of the prosecution case are as follows:

The complainant and the accused are the resident of Tirthwadi. There is dispute about the landed property between the Complainant and the accused as well as complainant and 7-8 other persons from the village. Thus, the relations between them were strained. On 12.01.1994, when Complainant Chandrakant Rane was returning in the bullock cart, he was obstructed by the accused along with others and the accused had assaulted him. Thus, Complainant Chandrakant Rane had lodged complaint of that incident in Kankavali Police Station and in connection with the said complaint, the accused came to be arrested. Thus, the arrest of the accused further not only strained the relations but that has added fuel in their strained relations. On 24.02.1994 at about 7.30 a.m. when the Complainant left the house as usual on bicycle for village Talera for supplying the milk and when he came near the nursery of village Ozram, on tar road all the accused suddenly came there, obstructed his way, abused him in filthy language. Furthermore by giving reference to the earlier complaint, pulled down from the bicycle. Thereafter accused No.1 holding the sickle assaulted him, inflicted the blow on his head. Even thereafter accused No.1 had given the blows on the head of the complainant with the help of the sickle. Accused Nos.2 and 3 pressed the

complainant with the sticks, so that the complainant should not rescue himself. The complainant had raised hue and cry. Even the Complainant had tried to run away from the spot, but accused Nos.2 and 3 assaulted him by inflicting the blows of sticks on his knee. Thereafter all the accused left the scene of offence. The Complainant could not move because of the injuries. After hearing his hue and cry, his wife, daughter Santoshi and son Rajendra rushed to the spot. The Complainant disclosed the entire incident to them and the Complainant was taken to the Rural Hospital, Kankavali.

3. On the basis of the complaint lodged by PW Chandrakant Rane, Crime came to be registered in the concerned Police Station for the offence punishable under Sections 307, 341, 326 read with 34 of the IPC. The Investigating Officer has arrested the accused, conducted the spot panchnama, recorded the statements of the witnesses etc. After completion of investigation, the Investigating Officer has submitted charge-sheet against the accused.

4. The learned Judge of the trial Court has framed the charge against the accused. All the accused pleaded not guilty and claimed to be tried. The prosecution has examined in all 10 witnesses to substantiate the charges levelled against the accused. As per the defence of the accused, the Complainant and his brothers are Gundas in the village. They have created terror atmosphere in the village. They have enmity with the entire

village. There is landed dispute in between the Complainant and the villagers as well as dispute on account of one Vitthal Temple. There is also civil dispute between the Complainant and the accused persons. Even the villagers have boycotted the Complainant and his family members. Therefore, the Complainant has lodged the complaint against the villagers protesting boycott. It is the defence of the accused that because of the said enmity, some unknown persons assaulted the Complainant when he was proceeding for supply of milk on his bicycle. The Complainant in consultation with his brothers manipulated the case and falsely involved the accused persons in this crime. Accused-Respondent Nos.2 and 3 have no concern with the incident. They are well reputed persons in the society. The learned II Additional Sessions Judge had acquitted the accused persons for the offence punishable under Sections 341, 326 and 307 read with 34 of the IPC. Hence, this Appeal.

5. The learned APP submits that the incident which took place on 12.01.1994 was the root cause of later incident. Though the Respondent-original Accused No.1 was not the accused in the incident dated 12.01.1994, the accused persons in the said incident are closely associated with him. PW 3-Complainant Chandrakant Rane has narrated the incident with all the minute details. He had sustained near about 11 injuries on his person including the incise wound, chop wound, contused lacerated wound. The evidence of PW Chandrakant Rane is reliable, consistent and

trustworthy. His evidence is well corroborated by medical evidence. The complainant had sustained the serious injuries and even the tips of the fingers were chopped off. After the incident, PW Chandrakant Rane has disclosed and narrated the entire incident including the names of the assailants and role played by them to his own daughter Santoshi and other persons. The prosecution has also established the motive on the part of the accused persons for the commission of crime. The evidence of PW 3-Chandrakant Rane inspires the confidence. The Judgment and order of acquittal suffers from perverse findings. Thus, the Judgment and order of acquittal is liable to be quashed and set aside and the Respondents-accused are liable to be furnished for the offence punishable under Sections 341, 326, 307 read with 34 of the IPC.

6. None present for the Respondent-original accused No.1. Learned Counsel for the Respondents-original accused Nos.2 and 3 supported the impugned Judgment and order of acquittal. The learned Counsel submits that there is no iota of evidence so as to connect the accused with the crime. Furthermore the medical evidence does not corroborate the ocular evidence so far as the role as alleged against the Respondent-original accused Nos.2 and 3 are concerned. The prosecution has suppressed the original complaint and thus the possibility of after-thought implication cannot be ruled out. There is no substance in the Appeal and the Appeal is, thus, liable to be dismissed.

7. We are not inclined to interfere in the Judgment and order of acquittal mainly on three reasons and also on various other reasons. Admittedly, the relations between the Complainant and the accused were strained to such an extent that there is almost an enmity between them. PW Chandrakant Rane is the only witness to the alleged incident and therefore the careful scrutiny of his evidence is necessary. PW Chandrakant Rane has stated in his cross-examination that after the incident he was taken to Kankavali Police Station by the brothers. There his complaint was obtained. Before that complaint, nobody from his house had been to the police station to lodge the complaint nor anybody contacted the police. He had lodged the complaint against the accused in the police station at Kankavali. His brothers Janardhan and Raghoba were with him when he had lodged the complaint. PW 9 IO, PSI, Vasant Yadav in para 5 of his cross-examination has deposed that on 24.02.1994 Chandrakant Rane had lodged the complaint and it was reduced into writing as per his narration in the hospital. In para 2 of the cross-examination, he had stated that on the day of incident, he had been to Ozram for the investigation in connection with the certain offences and the FIR was lodged in the police station. One Dhuri, Constable had obtained the FIR in the police station. On perusal of complaint Exhibit 27, it appears that the same was recorded by constable Buckle No. 444 of Police Station, Kankavali in Rural Hospital, Kankavali. Even there is an endorsement of

the concerned Medical Officer at Exhibit 27. However, PW Chandrakant Rane has also deposed that before he was taken to the hospital, he was taken to Kankavali Police Station by his brothers and he has lodged the complaint against the accused in the police station at Kankavali. His brothers also were with him when he had lodged the complaint. It, thus, appears that the prosecution has suppressed the said complaint. It is also the defence of the Respondent-accused that the initial complaint came to be lodged in the police station against the unknown assailants. The Complainant and his brothers were Gundas in nature and the entire village boycotted them and their families and as such the possibility of assault on the Complainant by some of the unknown assailants on the day of incident cannot be ruled out. It is further the defence of the accused that the prosecution has suppressed the said complaint lodged against the unknown assailants and at the instance of the Complainant, the accused persons came to be implicated in the crime falsely. We find much substance in the defence. The prosecution has not explained as to why the earlier complaint came to be suppressed. The complaint Exhibit 27 hit by the provisions of Section 161 of the Code of Criminal Procedure and as such the same cannot be read in the evidence. Consequently, there is no corroboration to the oral evidence of the Complainant before the Court.

8. Secondly, we do not find PW Santoshi who happen to be a daughter of the Complainant as reliable witness. Her evidence do not inspire any

confidence. She has changed the spot of incident. Though, in the spot panchnama, her name is mentioned as a person who has shown the spot to the panch witnesses and police, PW Santoshi has deposed that at the time of panchanama of scene of offence, she was in the house. She has not shown the spot of incident to panchas and police. According to PW 6 Santoshi, her father has narrated the incident to her immediately after the incident. She has deposed giving the details of the incident contrary to the evidence of PW Chandrakant Rane.

9. Thirdly, the medical evidence does not support the prosecution case. Before we discuss the medical evidence, it would be necessary to mention here that PW 5 Dr.Chand Shikalgar attached to Primary Health Centre, Kasarde, where PW Chandrakant Rane was taken initially for primary treatment, has failed to record the injuries and also history. He has not issued any certificate, nor taken the entries about the injuries on the person of PW Chandrakant Rane. PW Chandrakant Rane has deposed that accused No.1 was holding the sickle and when accused No.1 tried to assault him with the sickle on head, he had raised his hand and tried to save himself. He had therefore sustained the injuries on left hand and forefingers were chopped off. He had received six blows of sickle on his head. He had received injuries on his palm and his fingers came to be chopped off only when he resisted and tried to save a blow of sickle aimed on his head. It appears from his evidence that he had sustained injuries on

his palm and fingers by one blow of sickle aimed on his head when he tried to save himself by raising his left hand. In the backdrop of this evidence, the admissions given by PW 4 Dr. Dipak Deshpande are important. In para 3 of the cross-examination, PW 4-Dr. Deshpande has stated that in extended position all the fingers distal phalanges of the fingers cannot be chopped at one and the same time. He has further explained that if the hand is kept in extended position, then for removing the distal phalanges, multiple blows will have to be given. He has also explained that if the hand with extended fingers position is kept above the head, then by one blow of the phalanges cannot be cut. According to him, by one blow the distal phalanges of three fingers and thumb cannot be chopped. If the hand in extended position is kept on the head, then injury No.1 is not possible. Further the sickle when it is shown to PW Dr. Deshpande, he has admitted that the sickle is having curve at the top and the blade of the sickle near curve pointed portion in sharp. We know that the ocular evidence prevail upon the medical evidence. However, in the light of the expert opinion in respect of injury No.1, we are of the confirm opinion and we also agree with the observations made by the learned Judge of the trial Court that PW Chandrakant Rane is not stating true facts before the Court.

10. In addition to the above infirmities, we agree with the observations made by the learned Judge of the trial Court that there is confusion about the actual spot of incident. There is considerable distance between "Sati

Akkacha Mal” and the brooklet. It is not clear as to how PW Chandrakant Rane had gone to said Sati Akkacha Mal. According to his own evidence, he was not in a position to move. Though, it has been specifically alleged and deposed by PW Chandrakant Rant about the role played by accused Nos.2 and 3, however, medical report does not support the same. There are certain omissions in the complaint Exhibit 27, the Complainant has not stated in his complaint Exhibit 27 that accused No.2 pulled him from his bicycle. Though, PW Chandrakant Rane has deposed about the injuries caused on his leg with the help of sticks by accused Nos.2 and 3, no injuries found on the legs nor any wheel marks. Furthermore, that PW Chandrkant Rane has deposed about the injuries sustained by him on his left palm and chop injuries on his fingers, he has not stated in the complaint Exhibit 27. He has given some different versions about the injuries sustained by him on the palm and fingers in Exhibit 27 and the different story in his oral evidence before the Court.

11. So far as the discovery of sickle at the hands of accused No.1 is concerned, the learned Judge of the trial Court has rightly discarded the recovery of the sickle at the instance of accused on the ground of belated recovery and also on the ground that the panch witness is highly interested witness. Furthermore, the learned Judge has also expressed doubts about the recovery of blood stained clothes on the person of accused No.1. We are fully agreed with the observations made by the learned Judge of the

trial Court that even after 2 hours of the incident, Respondent-accused No.1 was not likely to keep the blood stained clothes on his person. There is no positive evidence as to when the blood of the complainant was collected. Thus, merely on the basis of human blood on the clothes of the accused and the same is of blood group 'A', no conclusion can be drawn.

12. It is well settled that the interference against the order of acquittal is permissible only when there are convincing and substantial reasons for doing so. In the instant case, the evidence of the prosecution witnesses is full with inconsistencies, infirmities and no implicit reliance can be placed on the testimony of the Complainant and his witnesses. We find no perversity in the findings of the lower Court. Order of acquittal is not perverse or unreasonable. Accordingly, we proceed to pass the following order:

ORDER

The Criminal Appeal is hereby dismissed.

[V. K. JADHAV, J.]

[INDRAJIT MAHANTY, J.]