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

CRIMINAL APPEAL NO. 1506 OF 2003

The State of Maharashtra	...Appellant
VS	
Ananda Dnyanu Patil & Ors.	...Respondents

.....
Mr K.V.Saste, APP for the Appellant.
Mr A.L.Bhise i/b Shri H.S.Venegavkar for the Respondents.
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**CORAM : SARANG V.KOTWAL, J.
MARCH 01, 2018.**

ORAL JUDGMENT :

This is an appeal preferred by the State of Maharashtra challenging the Judgment and Order dated 11th September, 2003 passed by the Judicial Magistrate, First Class, Kagal, in Regular Criminal Case No.20 of 2000. By the said impugned Judgment and Order, the learned Trial Judge has acquitted all Respondent Nos.1 to 4 from the charges of commission of the offences punishable under Sections 324, 323, 504 r/w 34 of Indian Penal Code ("IPC").

2 I have heard Mr Saste, learned APP for the Appellant and Mr Bhise, learned advocate h/f Mr Venegavkar and with their assistance I have read the entire evidence as well as the impugned Judgment.

3 The prosecution case pertains to the incident dated 14.2.2000. As per the prosecution case, there was a dispute between the family of the first informant - P.W.2 Rajaram on one hand and the family of accused No.1 Ananda Patil on the other. Rajaram and Ananda are the real brothers and they had dispute over their share in the agricultural land bearing Gat.No.1519 situated at village Belvale, Tal. Kagal. According to the prosecution case, on that day at about 10.00 a.m. when P.W.2 Rajaram along with his wife P.W.1 Mangal went to their part of the field for cutting jawar crop, at that time Respondent Nos.1 and 2 i.e. Ananda and Shrimanti Patil were working in their part of land attending to their groundnut crop. At that time Respondent Nos.3 and 4 came there. Respondent No.3- Accused No.3 Babu Shinde is the son-in-law of Respondent Nos.1 and 2 and Respondent No.4 - accused No.4 Vandana is their daughter. It is further

alleged that Respondent No.4 started abusing P.W. Nos.1 and 2. Thereafter Respondent No.1 pushed P.W.2 Rajaram and Respondent No.3 assaulted P.W.2 Rajaram with an axe on his right ankle. It is further alleged that Respondent No.2 Shrimanti assaulted P.W.2 Rajaram with '*Khurpe*' (weeding hook) on his head and on the left hand of P.W.1 Mangal. P.W.2 Rajaram suffered bleeding injuries and thereafter the accused went away from the spot. P.W.1 and 2 went to Kagal Police Station and therefrom they were sent to Rural Hospital, Kagal for treatment. After receiving the medical treatment, P.W.1 Mangal and P.W.2 Rajaram went to Kagal Police Station at 5.30 p.m. and thereafter P.W.2 Rajaram lodged his complaint Exh.38 at about 6.30 p.m. After registration of the FIR, police conducted investigation. All the Respondents were arrested on 15.2.2000 at about 1.30 p.m. At the time of their arrest the weapons i.e. axe and '*Khurpe*' were seized which were in their possession. The police then recorded the statements of the witnesses, carried out panchanamas and after completion of the investigation filed the charge-sheet.

4 During the trial, the prosecution examined P.W.1 Mangal as the injured eye witness, P.W.2 Rajaram Patil as the first informant, the Medical Officer P.W.3 Dr. Krishna Ghevare had treated both the injured, P.W.4 Bhimrao Havaladar and P.W.5 Vitthal Patil were the panchas present at the time of spot panchanama, however they did not support the prosecution case and turned hostile. P.W.6 Ananda Makwane was the another panch who had also turned hostile. He was the panch present when the weapons were seized and when the first informant produced his blood stained clothes. P.W.7, A.S.I. Mohan Jadhav was the Investigating Officer. The evidence does not show that the weapons or the blood stained clothes of the first informant were sent to the Chemical Analyzer for analysis. After recording and appreciating the evidence and after hearing the parties, the learned Trial Court was pleased to acquit all the Respondents.

5 From the impugned Judgment, it appears that the learned Judge had taken into account the evidence of both eye witnesses P.W.1 Mangal and P.W.2 Rajaram in comparison with each other's evidence. The learned Trial Judge observed that the FIR mentions that there was a quarrel between the Respondent No.1 and the P.W.2 which was separated by the people present nearby. The learned Judge observed that the prosecution has failed to examine any of such persons who had separated the quarrel, and therefore, there was no independent corroboration to the evidence P.W.1 and P.W.2. The learned Judge further took into account the evidence of panchas for the spot panchanama as well as panchanama of seizure of weapons and clothes. They did not support the prosecution case. The learned Judge further observed that the prosecution evidence was not satisfactory to prove the case against the accused beyond reasonable doubt and hence was pleased to acquit the accused. Learned Judge also relied on the admission given by the Medical Officer that the injury to the ankle of P.W.2 Rajaram was possible if he had fallen in the

field where the sugarcane crop was cut and if he had fallen on the remaining hard portions of the sugarcane crop.

6 In this background, if the evidence of P.W.1 and 2 is tested, it is found that the occurrence of the incident is not proved beyond reasonable doubt. As is well known, the previous enmity is a double edged weapon which can be used to commit the offences as well as it can be used for false implication. Therefore, in such circumstances unless the Court is absolutely satisfied about the prosecution case, it is not safe to rely on such evidence. In the present case, admittedly there was dispute about part of the common field which both the families wanted to cultivate. In this background it was necessary that the prosecution evidence of P.W.1 and 2 absolutely corroborated each other. However, as is rightly observed by the learned Trial Judge, in this connection the prosecution evidence falls short of the requirement of proving their case beyond reasonable doubt. According to P.W.2, the first informant; the incident occurred at about 10.00 a.m. and it started with Respondent Nos.3

and 4 abusing P.W.1. When P.W.2 intervened, Respondent Nos.1 and 2 came there and pushed him. At that time Respondent No.3 had allegedly given axe blow on his right ankle and Respondent No.2 had given blow on his head with '*Khurpe*' and she had also given a blow on P.W.1's left knee. If we test this evidence with F.I.R., it is found that he had not attributed the role of assault on his head to any particular accused. He has merely stated in his F.I.R. that he had suffered injuries on his head. I.O., P.W.7 in his cross-examination has admitted that the first informant had not stated before him that Respondent No.2 gave blow on his head with '*Khurpe*' and that Respondent No.2 had assaulted his wife on her left elbow. Therefore, the role of Respondent No.2 is doubtful, similarly the use of weapon is also doubtful. In any case, no particular role of assault is given to the Respondent Nos.1 and 4.

7 As far as the evidence of P.W.1 is concerned she has stated that at the time of incident Respondent No.1 pushed her husband, Respondent No.3 assaulted her

husband on his right ankle with an axe and Respondent No.2 assaulted her husband with '*Khurpe*' on his head and she also assaulted P.W.1 herself on her left hand. As mentioned earlier, P.W.2's evidence in that behalf is not exactly matching with P.W.1's evidence particularly when his FIR is taken into consideration. The prosecution did not examine any of the independent persons who had separated the two groups in an earlier quarrel.

8 The other material witness in this connection is P.W.3 Dr Krishna Ghevare who has mentioned the injuries suffered by the victims. He has stated that P.W.2 had suffered three injuries as follows-

- (i) CLW over right parital region 3 x 0.5 x 0.5 bleeding injury+.
- (ii) CLW over behind right lateral malluolus 3 x 0.5 x 0.5 bleeding+
- (iii) Minor abrasion over right knee.

9 According to him injury Nos.1 and 3 are caused by hard and blunt object and injury No.2 by sharp object. He found one abrasion over left arm of P.W.1 Mangal.

10 Though he has stated that P.W.2 Rajaram suffered injury on the ankle with sharp weapon he described the injury as CLW. Thereafter he has not explained as to how CLW was caused by a sharp weapon. Furthermore, in his cross-examination he has categorically admitted that injury No.2 is possible if a person fell down on the cut portion of the sugarcane crop. This admission makes the defence more probable that the victim could have suffered injuries because he had fallen down in such a field. It may be noted that the spot panchas had not supported the prosecution case.

11 Thus taking entire view of the matter, in my opinion it cannot be said that the view taken by the learned Trial Judge was unreasonable or was not a possible view. The impugned judgment certainly cannot be termed as perverse, and therefore, it will not be appropriate to interfere with the

finding of acquittal recorded by the Trial Court. In the result the appeal must fail and it is accordingly dismissed.

(SARANG V.KOTWAL, J.)