

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.98 OF 2002

The State of Maharashtra
(Through Hatkanangle Police Station) .. Appellant.
v/s.

1 Sou. Akkatai Subhash Patil,
Age 38 years
Occupation: Housewife and
Social Work

2 Shri Shrikant Subhash Patil,
Age 22 years,
Occupation: Service,
Both residents of A/o.Nave-Pargaon,
Taluka: Hatkanangle, Dist. Kolhapur

.. Respondent.
(Org. Accused Nos.1 and 2)

Ms. Ashwini Takalkar, APP for the State/Appellant.
Mr. Ramesh L. Majgaonkar, Advocate for Respondent Nos.1 and 2.

CORAM : SANDEEP K. SHINDE, J.
RESERVED ON : 14th March, 2018.
PRONOUNCED ON : 9th April, 2018

JUDGMENT:

The State has preferred this Appeal under Section 378(1) of the Code of Criminal Procedure, 1973 against the judgment and order of acquittal dated 17.10.2001 passed by the 4th Ad-Hoc Assistant Sessions Judge, Kolhapur in Sessions Case No.28 of 2001.

2 Heard Ms. Takalkar the learned APP for the State and Mr. Majgaonkar the learned counsel for the Respondents-Accused, who are eventually mother and son respectively (Hereinafter referred to as 'Accused').

3 Prosecution case in brief is as under:

Mr. Avinash Gopal Chandane who was working in Panchayat Samiti, District: Hatkanangale, Kolhapur reported to police that on 31.7.2000, accused in furtherance of their common intention used criminal force and assaulted him with an intent to deter and further prevent him to discharge his duties as public servant. He reported that accused no.1 was then ex-speaker of Panchayat Samiti abused him in presence of the Block Development Officer for the reason that he did not accede to her demand of 'commission' relatable to construction project of Panchayat Samiti's building. He further reported that the accused in furtherance of their common intention being felt insulted for not acceding to their demand of commission, damaged the furniture of the office. On such a report, Crime No.70 of 2000 was registered on 1.4.2000. This was followed by the panchanama and statements of witnesses.

4 It appears, that on 2.8.2000, offence under Section 3(1)(X) under the Atrocities Act came to be added upon recording additional statement of the Complainant Mr. Chandane. That after completing

investigation, charge-sheet was submitted in the Court of J.M.F.C., Ichalkaranji. The said Court committed the case to the Court of Sessions as the offence under the Atrocities Act was exclusively triable by the Court of Sessions. Charge was framed against the Accused under Sections 353, 452, 504, 506, 427 read with Section 34 of the IPC and under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and under Section 3 of the Prevention of Damage to the Public Property Act, 1984.

5 The Prosecution in support of the charge had examined witnesses, who were then working in the office of the Panchayat Samiti. Besides, placed on record panchanama and other documentary evidence like extract of muster roll, Dead stock register of furniture maintained in the office of Panchayat Samiti and Panchama.

6 The learned Trial Judge after appreciating the evidence acquitted both the accused of all the offences vide judgment and order dated 17.10.2001 and hence, this Appeal.

7 Ms. Takalkar, the learned APP in support of the Appeal has taken me through the evidence of prosecution witnesses and particularly, the evidence of the complainant, P.W.1-Avinash Gopal Chandane and P.W.7-Uttam Maruti Khambalkar (Block Development Officer). She would submit that the evidence of P.W.1 is amply and substantially corroborated

by Mr. Uttam Khambalkar (BDO). She would further rely upon the evidence of P.W.6-Mr. Sanjay Baloram Pol and P.W.5-Mr. Mandar Tukaram Chautale, who were working in the same office where the incident had taken place. It is her contention that the evidence of these four eye witnesses is consistent, cogent and reliable. She would further submit that the searching cross-examination of these witnesses in no manner has damaged their evidence. She would further submit that the learned Trial Judge has not recorded cogent and convincing reasons to disbelieve the evidence of these witnesses. She would, therefore, submit that, the prosecution has proved incident of assault and of using criminal force to the Complainant, with an intention to deter and/or prevent him from discharging his duties as public servant. She would, thus, urge that the order of acquittal may be set aside and the accused may be convicted.

8 Ms. Takalkar, the learned APP, would also contend that the prosecution has proved panchanama by examining pancha witnesses and has established the fact that the property in the office was damaged by the accused. She would further submit that defence of the accused that their implication in the crime was politically motivated has not been probalised; and as such the learned Trial Court erred in acquitting accused.

9 On the other hand, Mr. Majgaonkar, the learned counsel appearing for the accused, has vehemently argued that the accused have been implicated falsely in this case by the Complainant in-as-much as complainant's relatives belong to rival group of the political party with whom accused were earlier associated. He would submit that the accused no.1 was earlier affiliated to group of one, Mr. Jayant Awale, the then MLA from Taluka: Hatkanangale. He would submit that in the year 1997, accused no.1 was elected as a member of Panchayat Samiti on the support of Mr. Jayant Awale. He would submit that thereafter Accused No.1 left the group of Jayant Awale and joined the group of Mr. Awade a political rival of Jayant Awale. He would also submit that Awade group supported the accused no.1 and as such, she was elected as Speaker of Panchayat Samiti. It is submitted by the defence counsel that Jayant Awale is a close relative of the Complainant and this case was set up by the complainant at the instance of Jayant Awale.

10 Mr. Majgaonkar the defence counsel has taken me through the cross-examination of P.W.1. I have gone through the cross-examination of P.W.1 wherefrom it appears that this witness was entrusted with the work of construction of second floor of the office, which had started somewhere in February, 2000. Budget for construction work was around Rs.6,52,000/- and this witness was given responsibility of the said

construction work. It further appears from the cross-examination of this witness that there were disputes and differences between the accused no.1 and this witness and as such, the complaint was lodged by the accused no.1 against the Complainant with Zilla Parishad. It appears that the complaint was relating to construction work. This witness has admitted that after such complaint, work of supervising construction was taken away from him. This witness has further admitted that Mr. Awale is his maternal uncle.

11 That after going through the evidence of this witness, fact is established that there were serious disputes and differences between the accused no.1 and the complainant on various counts. It may also be stated that accused no.1 was elected as a member of Panchayat Samiti and thereafter as Speaker somewhere in 1997 or 1998. It also appears from evidence that the construction of the second floor of the office had commenced in February, 2000. Though it is not clear from the evidence as to when the complaint was lodged against the complainant relating to construction work and as to when the said work was removed from him; however, in evidence P.W.1-Complainant has admitted two facts one; that a complaint was lodged against him relating to construction work and thereafter said work of supervising the construction work was taken away from his charge. On the backdrop of these facts, further scrutiny of

evidence of P.W.1 is required to ascertain worthiness of his evidence.

12 Mr. Majgaonkar, the learned counsel appearing for the Accused, has again taken me through the evidence of P.W.1 and submitted that not only evidence of P.W.1 is not reliable but is improbable in-as-much as when the construction work of the building commenced in February, 2000, it would be inconceivable to accept that the accused nos.1 and 2 would demand commission from the complainant relating to the construction project in July, 2000. Mr. Mazgaonkar would, therefore, submit that story painted by the P.W.1 that on 31.7.2000, he was called in the chamber of Khambhalkar the then Block Development Officer and in his presence, Accused No.1 demanded 5% commission from the complainant relating to newly constructed office of the Panchayat Samiti, Hatkanangale has no rationale. He would also submit that prosecution laid no foundation as to why the accused would demand commission from P.W.1.

13 Mr. Majgaonkar would also submit that though motive is immaterial when there are eye witnesses and the prosecution need not prove such motive but in the case in hand, the prosecution ought to have proved the motive and having failed to prove the same, order of acquittal recorded by the Trial Court requires no interference.

14 I have gone through the evidence of P.W.1 as well as the evidence of Block Development Officer-P.W.7. It is their case that on 31.7.2000, accused nos.1 and 2 had been to the office of P.W.7. They summoned the complainant to the chamber of P.W.7. It is their evidence that accused no.1 demanded commission from P.W.1 for having obtained budgetary sanction for construction of new office. It is their evidence that Mr. Chandane refused to accede to the request and thereafter quarrel ensued between them. It is the evidence of P.W.1-Chandane that he left the office of the BDO and went to his office. It may be stated that the both the offices are in the same compound. It is the evidence of P.W.1, P.W.4 and P.W.5 that soon thereafter the accused no.1 came to the chamber of the P.W.1 and used criminal force to him with an intent to deter him from discharging duties as public servant. It is their evidence that accused in furtherance of their common intention, obstructed the complainant by giving push and damaged the office furniture. Evidence of P.W.4 and P.W.5 supports the evidence of P.W.1 on this point.

15 The moot question that falls for consideration is whether the prosecution has established the motive. No doubt though motive is not *sine qua non* for the conviction of the accused, effect of not proving the motive raises suspicion in mind. In the present case, in my view,

prosecution ought to have proved the motive in the given set of facts and circumstances herein did warrant prosecution to prove it. It is well settled principle of law that when the genesis and manner of the incident is doubtful, accused cannot be convicted.

16 In the case in hand, the defence has established a fact that there were disputes and differences between the accused no.1 and the complainant. Defence has probabilised its defence to hold that possibility of false implication in the case has not been completely ruled out by the prosecution. It has come in the evidence of PW.1 that the then sitting MLA was his maternal uncle with whose support accused no.1 was elected as a member of Panchayat Samiti. Evidence of PW.1 further probabilises case of defence that they have been falsely implicated at the instance of the then MLA in-as-much as accused no.1 gained support of Mr. Awade a person from the opposite group to become speaker of Samiti, The complainant in his cross-examination admitted that the complaint was filed against him relating to construction work of the office. He would further admit that after the said complaint, his work of supervising construction was withdrawn from him. It has not been explained by the prosecution as to why the accused would demand commission from the complainant in July, 2000 though the construction work had started in February, 2000. The prosecution could not satisfactorily explain as to why

the accused would demand commission from the complainant when he was not in charge of the work as the same was withdrawn from him and that too, at the instance of accused no.1.

17 It may also be stated that the prosecution has not explained as to why the accused no.1 would demand commission from the complainant in the presence of BDO ? Judicial notice can be taken of a fact that the secrecy is always maintained as and when illegal gratification is demanded. It is difficult to conceive that the elected representative would openly ask for commission from the complainant when she herself had lodged complaint against him in Zilla Parishad. Moreover, the work of construction started in February, 2000 and therefore, there was no reason that the accused would demand commission from the complainant in July, 2000. Thus, genesis of the prosecution's case creates a serious doubt and, therefore, under these circumstances, prosecution ought to have established the motive.

18 In the case in hand, the prosecution has failed to establish the motive. Besides, it may also be stated that though the alleged incident took place on 31.7.2000 at 3.30 p.m., it was reported at 22.35 p.m. though the police station was in the same compound where the office of the complainant was located. Prosecution has not explained as to why the incident was reported after 7 hours. I am conscious of the fact that the

delay in lodging complaint by seven hours was certainly not fatal to the prosecution case but looking at the facts and circumstances and particularly that police station is in the same compound, in my view, such a delay would be relevant circumstance, while appreciating entire evidence of the prosecution. It may also be stated complaint under Atrocity Act was lodged belatedly. All these circumstances create and make prosecution case distrustful.

19 Thus, after going through the entire evidence of the prosecution, in my view, prosecution has failed to prove the case beyond reasonable doubt. However, when the genesis of the complaint itself creates or cast a shadow of doubt, conviction cannot be sustained and the benefit of doubt is required to be extended to the accused. The trial Court has, therefore, committed no error in acquitting the accused. That even otherwise the view taken by the learned trial Judge while acquitting the accused cannot be said to be perverse , improbable or impossible. It is well settled that Courts sitting in Appeals even if after appreciating the evidence arrives at different conclusion, same is not required to be substituted especially when the interference and conclusions drawn by the Courts at the first instance was not perverse but possible.

20 That as such, the appeal fails and is dismissed accordingly.

(SANDEEP K. SHINDE,J.)