

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.916 OF 2002

State of Maharashtra.	]	... Appellant /
		Orig. Complainant
Versus		
1. Rajendra Kashinath Ghadigaonkar.	]	
Age – 23, Occupation - Service.	]	
2. Kiran Kashinath Ghadigaonkar.	]	
Age – 21, Occupation - Service.	]	
3. Sachin Vinayak Bane.	]	
Age – 20, Occupation - Service.	]	
All residing at Ramdas Nagar,	]	
Shreyas Co-op. Hsg. Society,	]	
Navghar (E), Tal. Vasai, Dist. Thane.	]	... Respondents /
		Orig.Accd.Nos.1 to 3

Ms. S. S. Kaushik, APP for State - Appellant.

Mr. Omkar Nagvekar h/f Mr. M. K. Kocharekar for Respondents.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 27 SEPTEMBER, 2018

JUDGMENT :-

1. By the present Appeal, the State of Maharashtra has challenged the Judgment and Order dated 30/06/2001 passed by the learned II Joint Civil Judge, J.D. and J.M.F.C., Vasai, in Regular

Criminal Case No.340 of 1998 on his file. By the impugned Judgment and Order, the Respondents herein were acquitted from the charges of commission of offences punishable under Sections 325, 504 and 506 read with 34 of the Indian Penal Code.

2. It is the case of the prosecution that as a fallout of the incident dated 09/02/1998, the Respondents came to the house of the first informant and picked up a quarrel with him. During the quarrel, he was manhandled and assaulted. The Respondent No.3 Sachin pulled his hand forcefully and the other Respondents assaulted him on his nose and other parts of the body. The first informant suffered nose injury and dislocation of shoulder. During the incident, his wife also suffered injuries. The first informant then went to Manikpur Police Station and then he was referred to Primary Health Centre at Navghar. From there, he was referred to Bhagwati Hospital at Mumbai, where he was treated for dislocation of his shoulder. He was admitted in Bhagwati Hospital till 7.00 p.m. of 13/02/1998. In the meantime, the first informant's wife lodged her NC with Manikpur Police Station.

3. It is the prosecution case that the first informant made complaints to various authorities regarding the incident but the FIR was lodged on 04/07/1998 vide C.R.No.256 of 1998 at Manikpur Police Station. The investigation was conducted after that. The spot panchanama was carried out on 04/07/1998. The medical papers of the first informant were collected and at the conclusion of the investigation charge-sheet was filed. The case was tried before the learned JMFC at Vasai vide Regular Criminal Case No.340 of 1998.

4. During trial, the prosecution examined 7 witnesses. The Respondents did not examine any witness on their behalf. Their evidence was of total denial. At the conclusion of the trial, the learned trial judge was pleased to acquit all the Respondents from the charges framed against them which were under Sections 325, 504 and 506 read with 34 of the IPC.

5. PW 1 Ganpati Asai was the first informant and had himself suffered the injuries allegedly at the hands of all the three Respondents. He has deposed that in the year 1998, he was residing in Shreyas Reserve Bank Employees Housing Society at Navghar,

Vasai (East). On 09/02/1998, the Respondents were talking loudly causing annoyance to the wife of the first informant and other residents. On 12/02/1998 at about 7.15 p.m. when the first informant was coming to his house from his office, he met one Rokade. PW 1 has deposed that the said Rokade was under some false impression that PW 1 had said something against him. PW 1 came home and asked his wife regarding the misunderstanding entertained by the said Rokade. At th at time, PW 1's wife told PW 1 and Rokade that this misunderstanding has arisen because of all the three Respondents. At that time, the Respondent No.3 Sachin's mother came there and quarreled with them. Thereafter, the Respondent No.1 came there and started beating PW 1's wife with kick and fist blows. Thereafter, the Respondent Nos.2 and 3 came there. When PW 1 tried to intervene, the Respondent No.3 forcefully pulled is hand. The Respondent No.2 gave a fist blow on PW 1's nose causing a bleeding injury. In the incident, PW 1's wife suffered injuries. Because of this assault, PW 1's shoulder was dislocated. PW 1 has further deposed that thereafter, he went to Manikpur Police Station from where he was sent to Primary Health Centre and from there he was directed to Bhagwati Hospital. He was admitted in the

hospital. In the hospital, his injury on the nose was stitched and his dislocated shoulder was set properly. On 14/02/1998, the police registered a chapter case. PW 1 has further deposed that he went to the police on 4 to 5 occasions but the police did not register his complaint. It is his case that the police demanded his medical certificate. PW 1 gave them casepapers but they wanted medical certificate. PW 1 has further deposed that Bhagwati Hospital issued 2 certificates dated 30/06/1998 and 02/07/1998. After that PW 1 had gone to Nagpur for some personal work. After he came back, he lodged his FIR on 04/07/1998. He has deposed that on 21/04/1998, he had sent a letter to the Superintendent of Police, Thane. The said letter is produced on record at Exh.22. According to him, because of all this, there was delay in lodging the FIR.

6. In the cross-examination, PW 1 has deposed that he was not in a position to state as to how many people had gathered when the incident had taken place. He has admitted that he started attending his work from 18/03/1998. He has admitted that from 12/02/1998 to 18/03/1998 also he was not bedridden. According to him, the incident had taken place in the passage in front of his flat but

he was unable to explain as to why it was mentioned in the NC that the incident had taken place adjacent to the house of the Respondents. It was mentioned in the NC that he had dislocated his shoulder because of fall on the ground. PW 1's FIR is produced on record at Exh.21.

7. PW 2 Vidya Asai is the wife of the first informant. After narrating the incident dated 09/02/1998 and the earlier part of the incident dated 12/02/1998, she has described the actual incident. She has deposed that when the conversation was going on between PW 1, herself and the afore-mentioned Rokade, at that time, the Respondent No.1 rushed there and gave a fist blow on her shoulder. The Respondent No.3 pulled PW 1's right hand forcefully. The said Respondents assaulted PW 1 on his back. In the incident, PW 2 herself was assaulted by the Respondents with fist blows on her back. She has further deposed that thereafter they went to the police station and lodged an NC complaint against the Respondents. PW 2 herself took treatment at the Government Hospital. Her statement was recorded by the police on 04/08/1998. The NC complaint lodged by her is produced on record at Exh.27. In the said NC complaint, it is

mentioned that the Respondents manhandled PW 1 and at that time, the PW 1 fell on the ground and suffered injuries to his nose and hand. The extract of the said NC complaint is produced on record at Exh.27. The said extract also shows that a chapter case was proposed under Section 107 of the Cr.P.C.

8. In her cross-examination, she has admitted that she had not told the police in her police statement that the Respondent No.3 had pulled hand of the PW 1. She has further admitted that after the incident, the PW 1 was going to Bhagwati Hospital for taking treatment and had visited the said hospital on 2 or 3 occasions. She has deposed that the police station was at 20 minutes walking distance from her house.

9. PW 3 Dr. Sarala Gaikwad was attached to Navghar P.H.C. at the relevant time. She has deposed that on 12/02/1998 at about 10.00 p.m., she had examined the PW 1 and had found injuries on the nose and hands. She had also found 2 injuries which showed tenderness on the left arm and right hand of PW 2. In her cross-examination, she admitted that the injuries were possible due to a fall.

10. PW 4 Dr. G. Venkateshwar was attached to Bhagwati Hospital. He has deposed that the PW 1 was admitted to Bhagwati Hospital at about 9.30 p.m. on 12/02/1998. He had suffered the following two injuries :

- (i) lacerated wound on base of dorsum of nose,
- (ii) dislocation of right shoulder.

He has admitted that dislocation of shoulder is possible when the rotator cuff has a weak ligament around it and it is possible if a person falls on his hand. He has produced the medical papers on record which are produced at Exh.35 colly. The medical papers show that the PW 1 was admitted to Bhagwati Hospital at 12.45 a.m. on 13/02/1998 and was discharged at 7.00 p.m. on 13/02/1998.

11. PW 5 Jaywant Mohite was a pancha in whose presence the spot panchanama was conducted. The spot panchanama is produced on record at Exh.41. It was conducted on 04/07/1998.

12. PW 6 Harshad Aragekar was a Medical Officer attached to Bhagwati Hospital. He had examined the PW 1. He has deposed that if hand is pulled by force, such injury is possible. He had issued the

certificate. The certificate is produced on record at Exh.37. In the cross-examination, he has admitted that the injury of dislocation of shoulder and the injury on the nose mentioned in the certificate were possible if the person had fallen while walking on the road.

13. PW 7 PHC Arvind Gadage had investigated the said offence. He has deposed about the NC complaint lodged by the PW 2 which is produced on record at Exh.27. This witness had registered the offence against the Respondents on 04/7/1998. He had supervised the spot panchanama. He had recorded the statements of the witnesses who were residing around the place of the incident.

14. I have heard Ms. S. S. Kaushik, learned APP for State - Appellant and Mr. Omkar Nagvekar, learned Counsel for the Respondents.

15. Ms. S. S. Kaushik, the learned APP submitted that the prosecution has sufficiently proved the case against the Respondents. The medical evidence supports the versions of PW 1 and PW 2 and therefore, there was no reason to discard their evidence.

16. On the other hand, Mr. Omkar Nagvekar, the learned Counsel for the Respondents, submitted that there is inordinate and unexplained delay in lodging the FIR. The medical evidence shows that the injuries were possible by a fall on the ground and it may not be necessarily attributed to any assault.

17. From the evidence, it appears that there is no dispute that the PW 1 and the PW 2 had suffered some injuries on 12/02/1998. Both of them had taken treatment for the same. The question is where the Respondent Nos.1 to 3 are responsible for causing such injuries. In this context, the NC complaint lodged by the PW 2 assumes importance. It is quite clear that the relations between the PW 1 and PW 2 on one hand and the Respondents on the other, were not good. A non-cognizable case was registered on 12/02/1998 at the instance of the PW 2. It was registered vide NC No.224 of 1998. It is mentioned in the said complaint that the Respondents came there and manhandled PW 1. In the incident, the PW 1 fell on the ground and suffered injuries to his nose and hand. This version is materially different from the version described in the FIR where specifically allegations are made against the Respondents. According to the PW 1

and PW 2, the Respondent No.3 had pulled the PW 1's hand forcefully causing dislocation of shoulder and the other Respondents assaulted the PW 1 on his nose causing bleeding injury. Both these versions are not consistent.

18. The most crucial aspect in this case is delay in lodging the FIR. The incident had taken place on 12/02/1998 and the FIR is lodged on 04/07/1998. PW 1 has tried to explain this delay by stating that the hospital was not issuing the medical certificate. This explanation is hardly acceptable. The evidence shows that the PW 1 was discharged from Bhagwati Hospital in the evening of 13/02/1998 itself and since then he was in a position to move around. In the next month, he had joined his service also. In that case, there was absolutely no reason for him not to lodge the FIR.

19. The PW 1 has further explained that he had gone to Nagpur and was not in Mumbai during this period and therefore, the FIR could not be lodged. Even this explanation is not acceptable. The Investigating Officer has not deposed that the PW 1 had visited the police station on many occasions for registration of the FIR. The

evidence shows that in the month of April, PW 1 had written one letter to the Superintendent of Police, Thane. Even thereafter, no further steps were taken by PW 1.

20. Even PW 2 has not attributed the injuries directly to the assault by the Respondents. There is no protest by her at any time if there was any mistake in the NC complaint registered by her wherein it was mentioned that the PW 1 had suffered the injuries because of his fall on the ground.

21. The incident allegedly has taken place in the housing society in front of others but no other independent witness is examined. One Mr. Rokade who was repeatedly referred to by the PW 1 and the PW 2, is also not examined and no explanation is offered for his non-examination.

22. Thus, looking at the evidence led by the prosecution, it is not safe to rely on the evidence of PW 1 and PW 2 to hold that the Respondents had committed this offence. The prosecution has not proved its case beyond reasonable doubt. The evidence led by the

prosecution itself creates doubt about the true occurrence of the incident. From the evidence, it is quite clear that the relations between the PW 1 and the PW 2 on one hand and the Respondents on the other, were not good and that could be a possible reason for implicating them in this offence.

23. The learned trial Judge has properly discussed these aspects and has taken into account all the relevant features of the case. It cannot be said that the approach or the reasoning of the learned trial Judge is perverse. The view taken by the learned trial Judge is a possible view and therefore, I am not inclined to interfere with the impugned Judgment.

24. With the result, the Appeal fails and is dismissed accordingly.

(SARANG V. KOTWAL, J.)