

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

CRIMINAL REVISION APPLICATION NO.52 OF 2005

Balasaheb Nivrutti Jagtap, Age 28 years, through his Legal Heir Ganesh Balasaheb Jagtap, Adult, R/o.Godoli, Shahunagar, Satara.	Applicant
versus	
The State of Maharashtra	Respondent

Mr.Dilip Bodke and Mr.Umesh B. Yadav for applicant.

Ms.V.S.Mhaispurkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

Date of reserving the Judgment : 23rd February 2018

Date of pronouncing the Judgment : 20th March 2018

JUDGMENT :

1. This revision application is contested by the son of original accused late Balasaheb Nivrutti Jagtap, who died pending Criminal Appeal No.72 of 2000, which was preferred challenging the judgment of conviction.

2. The accused was prosecuted for offence punishable under Sections 323, 332 and 353 of Indian Penal Code ('IPC'). Learned Chief Judicial Magistrate, Satara convicted the accused for the aforesaid offences. The accused was sentenced to suffer rigorous imprisonment for three months for each of the offences by judgment

and order dated 12th December 2000. The appeal preferred against the said judgment and order convicting the accused, was dismissed by Sessions Court by judgment and order dated 29th November 2004.

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

(i) The complainant was working as a Conductor in Maharashtra State Road Transport Department (`S.T.Department'). The accused was serving in Maharashtra State Electricity Board. On 21st November 1998, the complainant was on duty on the bus plying from Satara. After completing two trips, the bus was parked at Satara ST stand. The accused was also on the said stand at the relevant time. He used to travel every day from Satara to Lonand;

(ii) The accused approached the complainant and asked him whether he had given complaint against him. He caught hold of the neck of the complainant and assaulted him with fist on his face. Due to the said assault, the complainant sustained bleeding injuries on his face;

(iii) The driver of bus came to the spot and took the accused and the complainant to police station. The investigation was conducted vide CR No.429 of 1998 registered with Satara City Police Station for offence under Section 323, 332 and 353 of IPC;

(iv) On completing the investigation, the charge sheet was filed and the case was numbered as Regular Criminal Case No.328 of 1998.

The charge was framed against the accused. The prosecution examined five witnesses. The Trial Court convicted the accused for the aforesaid offences and the appeal preferred by the accused was also dismissed by the Sessions Court.

4. The prosecution examined PW-1 Aadikrao Pawar being the complainant, PW-2 Ashok Shikhare is Panch witness for recovery of clothes, PW-3 Ganpat Sable-the driver of ST Bus, PW-4 Smt.Ujwala Mule-the Medical Officer, and PW-5 Shankar Shinde-Investigating Officer.

5. Learned advocate for the applicant-original accused Shri Bodke with Mr.Yadav advanced following submissions :

(a) Although the alleged incident had occurred at the crowded place, the prosecution has not examined any eye witness of the alleged incident;

(b) PW-3 i.e. the bus driver examined by the prosecution as a witness to the incident, does not speak about the alleged blows given by the accused to the complainant. He has deposed that before he returned to the bus, the entire incident was over;

(c) The complainant was indulging in nefarious activities against which the accused had filed complaint and therefore a false case has been registered against the accused out of vendetta;

(d) The medical evidence is contrary to the oral testimony of the complainant. The case of the complainant was that single blow

was given to him by the accused but there were two injuries on the person of the complainant;

(e) The medical officer has stated that the injuries sustained by the complainant are also possible by any other reason stated by the said witnesses in his evidence;

(f) The medical evidence shows that the injuries caused to the complainant were possible due to fall in the bus;

(g) Both the Courts have failed to take into consideration the fact that the prosecution has failed to establish its case beyond all reasonable doubts and erroneously convicted the accused;

(h) The version of the complainant creates doubt which cannot be relied upon to convict the accused. The prosecution has not established the charge under Section 323 of IPC. The evidence on record also does not establish the charge u/s 332 and 353 of IPC.

6. Learned APP submitted that the accused was convicted by the Trial Court on the basis of evidence and the conviction has been confirmed by the Appellate Court. There is no reason to differ with the concurrent finding of two Courts. It is further submitted that the complainant is the injured person and the eye witness to the incident of assault. The accused has not been able to demolish his evidence. The version of complainant is supported by other witnesses more particularly PW-3 who is the driver of the vehicle in question. It is submitted that there is recovery of cloths containing blood stains of the complainant. It is also submitted that medical evidence supports

the prosecution case. The complainant was discharging his duty and the accused has restrained and prevented the complainant from discharging duty.

7. The prosecution is relying upon the evidence of five witnesses. The complainant is the injured person. The complainant who was examined as PW-1 has stated that the accused assaulted him. He sustained injury for which he was given medical treatment. In the cross examination he has deposed that presently he is not serving in S.T Department as he has been dismissed from service. He was charged for misappropriation of tickets in several cases and the departmental inquiry was conducted against him. He further deposed that he had sent a written complaint against the accused and that several complaints were received against him by the members of committee. He also deposed that he was on duty from 6.30 a.m. to 2.40 p.m.. The Controller was on duty at the relevant time. He also stated that about fifty workers, drivers of ST were present near the spot. PW-2 Ashok Shikhre is the Panch witness for recovery of cloths of the victim. PW-3 Ganpat Sable is the driver of the ST bus. He stated that on the date of alleged incident, the accused had caught hold of the complainant. He intervened in the quarrel. PW-4 Smt.Ujwal Muley is the medical officer who examined the injured. She has referred to two abrasions on the person of the complainant. The injuries were simple in nature. She stated that the probable cause of the injury is hard and blunt object and issued certificate dated 24th November 1998. In the cross-examination she deposed that there must be swelling or tenderness in case of fist blow. The fist is not a rough object, though hard and blunt. She also stated that in case person hits the door while getting down from the

bus, such type of injury is possible and that the patient was treated as an outdoor patient. She also deposed that she has not mentioned about the presence or absence of tenderness. She further deposed that there was no complaint of pain and hence it was not so mentioned in the certificate. PW-5 is the investigating officer. He conducted the investigation. He drew the spot panchanama. He recorded the statements of witnesses and forwarded the charge sheet against the accused. He did not make any inquiry as to whether the complainant was the Chairman of Committee for eradication of corruption.

8. On analysing the aforesaid evidence it appears that there was animosity between the complainant and the accused. It is also apparent that the complainant has also made a complaint against the accused. In the cross-examination the complainant had admitted that several complaints were forwarded against him and that he is no more in the employment. The complainant has referred to the alleged assault by the accused by giving a single blow. The medical evidence refers to two abrasions. The medical evidence refers to the abrasions on mendipillar region and forehead medial to the left eye. The oral testimony of the complainant appears to be contrary to the medical evidence. It is also pertinent that the medical officer examined by the prosecution has stated that the probable cause of the injuries which were simple in nature, is by hard and blunt object. The complainant had alleged that he was assaulted by fist blows. The reference is of a single blow. The medical officer also deposed that police yadi number is not mentioned in the certificate. In case of injury number one, there must be swelling or tenderness in the event of fist blow and that fist is not a rough object though hard and

blunt. She further deposed that the injury is possible in case the person hits the door while getting down from the bus. The medical officer has not referred to the tenderness in the medical papers. She has categorically stated that swelling and/or tenderness is seen in case of fist blows. In the light of the animosity between the complainant and the accused, the contradiction in the evidence of the complainant and the medical evidence, a doubt is created with regards to the veracity of the evidence of complainant. The Trial Court ought not to have convicted the accused for the offence under Section 323 of IPC.

9. PW-3 who is the driver of the vehicle, is not an eye witness to the actual incident of alleged assault. Although he referred to the quarrel between the complainant and the accused and the fact that the accused had caught hold of the complainant, he did not see the accused giving blows to the complainant. There is no other independent eye witness to the incident. The alleged assault had occurred at the bus stand, however, the investigating machinery has not examined any other witnesses in support of its case. The accused is also convicted for offences u/s 332 and 353 of IPC. According to prosecution the accused had obstructed the public servant while discharge the duty. Section 332 of IPC refers to voluntarily causing hurt to deter public servant from his duty and Section 353 of IPC relates to the offence of assaulting or using criminal force to deter a public servant from discharge of duty. Applying the evidence on record it cannot be said that the prosecution has been able to establish its case for the said charge against the accused. The alleged incident in question is not connected with the discharge of duty by the complainant. The cause of incident is also not on account of

duty performed by the complainant. The motive attributed to the accused for committing alleged crime is that the accused had questioned the complainant about lodging of some complaint against him by the complainant. Both of them were members of one Committee meant for eradication of corruption. There is no evidence to indicate that the alleged act was committed to deter a public servant to discharge his duty, which is a requirement to constitute the said offences. Learned APP submitted that the complainant was on duty as a Conductor on the day of incident and due to the assault the further trip of the bus was cancelled. It was therefore submitted that the act of the accused would fall within the purview of Sections 332 and 353 of IPC. Sections 332 and 353 of IPC reads as follows :

“Section 332 - Voluntarily causing hurt to deter public servant from his duty.-

Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 353 - Assault or criminal force to deter public servant from discharge of his duty.-

Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment

of either description for a term which may extend to two years, or with fine, or with both.”

For the reasons stated hereinabove it cannot be said that the complainant was assaulted and being a public servant or with intent to prevent or deter him from discharging his duty as a public servant or in consequence of anything done or attempted to be done by that person in lawful discharge of his duty as such public servant. It is also not proved that the assault or criminal force was used against the complainant being a public servant while execution of his duty or with intent to prevent or deter him from discharging his duty as such public servant or in consequence of anything done or attempted to be done by such person in lawful discharge of his duty as such public servant. The prosecution has thereby failed to establish the charge u/s 332 and 353 of IPC.

10. Learned counsel for applicant-accused places reliance on the decision of Hon'ble Supreme Court of India in the case of **D.Chattaiiah Vs. State of Andhra Pradesh**¹. The factual matrix of the said decision indicate that the accused was charged with the offence u/s 332 of IPC. The Supreme Court has analyzed one of the ingredients of Section 332 relating to intent to prevent or deter a public servant from discharging his public duties as such public servant. The prosecution case was relating to assault on the public servant, which was not connected with discharge of duty. The Supreme Court, therefore, observed that the incident was not an outcome of anything connected with the performance of the complainant's duty as public servant. There was no allegations suggesting that he was assaulted with intent to prevent or deter him

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from doing his official duty. All that was alleged by the complainant was that while he was attending his work, the accused approached the complainant and questioned him as to why he had abused them. On complainant's denial of the accusations, he was assaulted. In the present case also it is seen that the complainant was questioned with regards to some complaint lodged by him against the accused. The motive for assault has no link with the discharge of duty by the complainant. It is manifest that the assault on the PW-1 had no real nexus or causal connection or consequential relation with the performance of his duty as a public servant. There was no evidence from which it could be reasonably inferred that the intent of the accused was to prevent or deter him from discharge of his duty as such public servant. As such the charge under Sections 332 and 353 of IPC cannot sustain and the conviction for the said offences is also required to be set aside.

11. For the reasons stated hereinabove, the revision application deserves to be allowed by setting aside the conviction. Hence, I pass following order :

ORDER

- (a) Criminal Revision Application No.52 of 2005 is allowed;
- (b) The impugned judgment and order dated 12th December 2006 passed by Chief Judicial Magistrate, Satara in Regular Criminal Case No.328 of 1998 convicting the original accused Balasaheb Nivrutti Jagtap for the offences under Sections 323, 332 and 353 of IPC and sentencing him to imprisonment, as well as judgment and order dated 29th November 2004 passed by the Sessions Judge, Satara in

Criminal Appeal No.72 of 2000, is set aside and the accused is acquitted of the said offences. Fine amount, if any, deposited by the accused be returned to the legal heir of accused;

(c) Criminal Revision Application No.52 of 2005 is disposed off.

(PRAKASH D. NAIK, J.)

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