

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.549 OF 2017

1. Deelip Bhimrao Patil,
Age – 49 Yrs., Occu.-Agriculture,
2. Ashok Bhimrao Patil,
Age: 55 Yrs., Occu: Agriculture,
- 3 Prithviraj alias Gourav Ashok Patil,
Age : 19 Yrs., Occup.: Education,
All R/at: Halbhag Walwa, Tal:Walwa,
Dist: Sangli. ... **Appellants**

V/s.

The State of Maharashtra
Through Police Station, Ashta Police Station,
Tal : Walwa, Dist : Sangli. ... **Respondent**

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Mr.Kalpesh U. Patil, Advocate for the Appellants.

Mr. V. V. Gangurde, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 16th JANUARY 2018.

ORAL JUDGMENT :

1 This appeal is taken up for final hearing by dispensing the paper book as per Order dated 12/07/2017 passed by co-ordinate Bench of this Court (Coram : Revati Mohite Dere J.).

2 Admit. Heard by consent of parties.

3 By this appeal, the appellants/accused are challenging the Judgment and Order dated 26th April 2017 passed by the learned Additional Sessions Judge, Islampur in Session Case No.35 of 2016 thereby convicting the appellants/accused for offence punishable under Section 323 read with Section 34 of the Indian Penal Code and sentenced them to pay fine of Rs.1,000/- each and in default to suffer simple imprisonment for one month by each of them.

4 According to the prosecution case, result of Grampanchayat Election of the village was declared at about 12.30 p.m. on 27/11/2012. Appellant/accused Deelip Patil and two other member of Hutatma Panel were defeated. However, rest of the members of Hutatma Panel were elected. Therefore, activists of Hutatma Panel had taken out a procession in the village. When that procession came to Patil Lane at about 3.00 p.m. of 27/11/2012, the appellants/accused abused complainant Shivaji Patil and his family members over the result of election. All appellants/accused assaulted complainant Shivaji Patil, his son Vitthal Patil and wife Vijaya Patil causing injuries to them. On the basis of report lodged by complainant P.W.No.1 Shivaji Patil, a non-cognizable case came to be registered and on getting permission from the concerned Judicial Magistrate First Class, it

was investigated and accordingly, the appellants/accused came to be charge-sheeted by Ashta Police Station, District Sangli for offences punishable under Sections 323, 324, 504, 506 read with Section 34 of the Indian Penal Code.

5 In order to bring home the guilt to the appellants/accused persons, the prosecution has examined in all seven witnesses. The appellants/accused entered in defence by examining Police Station Officer Suresh Ananda Kamble as Defence Witness No.1. After hearing the parties, the learned trial Court by the impugned Judgment and Order was pleased to convict the appellants/accused for the offence punishable under Section 323 read with Section 34 of the Indian Penal Code and they were sentenced as indicated in the opening paragraph of this Judgment.

6 Heard the learned Advocate appearing for appellants/accused. He drew my attention to the evidence of First Informant P.W.No.1 Shivaji Patil as well as that of injured witnesses P.W.No.2 Vitthal Patil and P.W.No.6 Vijaya Patil and argued that it is case of the prosecution that the procession was passing through the main road of the village, but evidence of these prosecution witnesses shows that their house is not situated on main road of the village. The learned Advocate further argued that evidence of P.W.No.2 Vitthal Patil shows that about 30

persons were present in the procession, however, except examining interested witnesses, the prosecution has not examined any other independent witnesses to prove the alleged offences. The learned Advocate for the appellants/accused drew my attention to paragraph 5 of cross-examination of P.W.No.1 Shivaji Patil in order to demonstrate that the report of non-cognizable case at Exhibit 23 is suffering from several omissions and argued that the defence has got those omissions proved through Defence Witness No.1 Suresh Kamble, ASI. As evidence of the prosecution is infested with several omissions as well as improvements made by the prosecution witnesses, the same needs to be discarded and the appellants/accused deserve acquittal. The learned Advocate for the appellants/accused criticized the medical evidence coming on record through evidence of P.W.No.5 Dr.Dhananjay Patil by submitting that this evidence indicates that there is possibility of suffering injuries by a fall and, therefore, those injuries cannot be attributed to the appellants/accused. It is further argued that it is an admitted position that all accused persons were present in the procession that has come in the area of the house of the prosecuting party. It is further argued that prosecution has not proved the spot of the incident.

7 The learned Additional Public Prosecutor supported the impugned Judgment and Order of conviction by relying on evidence adduced by the prosecution witnesses.

8 I have carefully considered the rival submissions and also perused the Record and Proceedings including evidence adduced by the prosecution.

9 As the appellants/accused are convicted of offence punishable under Section 323 read with Section 34 of the Indian Penal Code for causing hurt to the members of the prosecuting party voluntarily, it is necessary to reproduce the provisions of Section 321 of the Indian Penal Code, which defines the term 'voluntarily causing hurt'. It reads thus :

“321. Voluntarily causing hurt.—Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said “voluntarily to cause hurt”.”

Section 319 of the Indian Penal Code provides definition of term 'hurt' and makes it clear that causing of bodily pain, disease or infirmity to any person amounts to hurt.

10 P.W.No.1 Shivaji Patil had lodged a report to the Police Station, which was considered as report of non-cognizable case. It is at Exhibit 23 on its proof by P.W.No.1 Shivaji Patil. This report of non-cognizable case is to the effect that on 27/11/2012 at

about 3.00 p.m. appellants/accused Deelip Patil, Ashok Patil and Prithviraj @ Gourav Patil had assaulted reporter Shivaji Patil, his wife Vijaya Patil and son Vitthal Patil by means of stick as well as fist and kick blows.

11 Evidence of P.W.No.1 Shivaji Patil is to the effect that when the procession taken out by Hutatma Panel came to the Patil Lane at about 3.00 p.m. on 27/11/2012, appellants/accused abused him as well as his family members on account of result of election and then appellant/accused Prithviraj Patil went to his house and returned with stick and assaulted him, his wife Vijaya and son Vitthal by that stick. The appellant/accused Deelip and Ashok gave fist and kick blows to him as well as his wife Vijaya and son Vitthal. This witness deposed that persons gathered there and rescued them. Then they took medical treatment at Rural Hospital, Ashta.

12 In paragraph 5 of cross-examination of this witness, he was confronted with his report Exhibit 23 to point out that this report is silent about procession, threatening by appellant/accused Prithviraj, leaving of the spot by Prithviraj and returning on the spot with stick. It is further pointed to this witness that in the report Exhibit 23, it is not mentioned that Ashok and Deelip gave kick and fist blows to the members of the prosecuting party. It is pointed that name of the son of P.W.No.1 Shivaji is written Shivaji

itself in the report Exhibit 23. It is also brought on record from the cross-examination of this witness that in the cross-case arising out of the same incident, the prosecuting party is accused and the same case is also pending in the Sessions Court.

13 P.W.No.2 Vitthal Patil is son of P.W.No.1 Shivaji Patil. His evidence is congruous to the evidence of P.W.No.1 Shivaji Patil. This witness has also stated that when the procession came in front of their house, appellants/accused persons had assaulted them. Stick was attributed to appellant/accused Prithviraj @ Gourav whereas rest of the appellants/accused are stated to have assaulted by fist and kick blows to this witness as well as to his parents. In cross-examination, this witness has stated that their house is not adjacent to main road and about 30 persons were present in that procession.

14 P.W.No.6 Vijaya is wife of P.W.No.1 Shivaji Patil and she is also an injured witness. Her evidence is also congruous to evidence of P.W.No.1 Shivaji and P.W.No.2 Vitthal so far as mode and manner of assault by accused persons is concerned. In cross-examination, this witness has stated that her house is not adjacent to the road.

15 D.W.No.1 Suresh Kamble is a defence witness. He has stated that he has recorded the report of non-cognizable case at Exhibit 23 as per say of P.W.No.1 Shivaji Patil.

16 As indicated by me in foregoing paragraphs, the report at Exhibit 23 lodged by P.W.No.1 Shivaji Patil is to the effect that appellants/accused had assaulted him, his wife as well as his son by means of stick as well as fist and kick blows. True it is that, different role is not attributed to each of the appellant/accused, but what is important is the report lodged with due promptitude on the day of the incident soon after the incident goes to show that appellants/accused assaulted him as well as his relatives i.e. wife and son. Incorrect mentioning of name of the son is not of relevant because the report Exhibit 23 categorically mentions that assault was also on son of reporter P.W.No.1 Shivaji.

17 Much capital is sought to be made out to the fact that P.W.No.2 Vitthal and P.W.No.6 Vijaya have stated that their house is not on the main road. However, evidence of P.W.No.1 Shivaji is clear on this aspect. He has stated that the procession has come to Patil Lane. He has not stated that the assault took place when procession was passing from the main road of the village. Therefore, the admissions elicited from P.W.No.2 Vitthal and P.W.No.6 Vijaya in this regard are of no use. Moreover, this aspect not touching to the core of the prosecution case. The prosecution has proved spot panchanama Exhibit 29 through evidence of P.W.No.3 Toufik Mujawar. The spot panchanama goes to show that the incident in question took place in front of the house of P.W.No.1 Shivaji. Hence, the fact that house of P.W.No.1 Shivaji is not situated on the main road of village is of no consequence.

18 P.W.No.1 Shivaji, P.W.No.2 Vitthal and P.W.No.6 Vijaya were referred to the Rural Hospital on the day of the incident i.e. 27/11/2012 itself. There they were examined by P.W.No.5 Dr.Dhananjay Patil. Evidence of P.W.No.5 Dr.Dhananjay Patil shows that P.W.No.1 Shivaji Patil was found to have suffered two injuries, which are as under :

(i) Contused lacerated wound on left shin of tibia, middle aspect, anteriorly bleeding 1 x 1 c.m. caused by hard and blunt object. Simple in nature. Caused within 12 hours.

(ii) Contusion 1 x 1 c.m. on left shoulder posteriorly on acromion. Tenderness plus. Simple in nature. Hard and blunt aspect. Caused within 12 hours.

19 Evidence of P.W.No.5 Dr.Patil further shows that P.W.No.6 Vijaya has suffered hurt in the nature of changing colour of her skin to red colour. So far as P.W.No.2 Vitthal is concerned, P.W.No.5 Dr.Patil has stated that P.W.No.2 Vitthal Patil has suffered contusion of size 2 x 2 c.m. size on right forearm. The evidence of P.W.No.5 Dr.Patil of Rural Hospital Ashta is supported by contemporaneous Medical Certificates at Exhibit 38, 39 and 40. The wounds stated by P.W.No.5 Dr.Patil which have been suffered by the injured definitely show that injured P.W.No.1 Shivaji,

P.W.No.2 Vitthal and P.W.No.6 Vijaya suffered hurt on 27/11/2012. The cross-examination of P.W.No.5 Dr.Patil to the effect that the injuries are possible by falling on hard substance is of no consequence because it is not pointed as to on what occasion all these injured suffered a simultaneous fall on hard surface. When these injured witnesses are attributing those injuries to the appellants/accused, possibility of suffering such injuries due to fall pales into insignificance.

20 In the matter of *Shivalingappa Kallayamappa v. State of Karnataka* reported in 1994 Supp. (3) SCC 235, the Honourable Apex Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies. In the matter of *State of U.P. v. Kishan Chand* reported in 2004 SCC (Cri.) 2021, similar view has been reiterated by observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witnesses sustained injuries at the time and place of occurrence, lends support to his testimony that they were present during the occurrence.

21 It is thus seen from the evidence on record that evidence of injured witnesses is duly corroborated by evidence of Medical Officer P.W.No.5 Dhananjay Patil and as such, I seen no

infirmity in the impugned Judgment and Order of conviction and the resultant sentence. In fact, a lenient view is seen to have been taken by the learned trial Judge.

22 The appeal, as such, is devoid of merit and the same is, therefore, dismissed.

(A.M.BADAR J.)