

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Appeal No. 150/2005
With
Criminal Revision Application No. 165/2004

APPELLANT:-

The State of Maharashtra
through the Police Station Officer,
Police Station Loni, Dist. Amravati.

VERSUS

RESPONDENTS:

1. Sahebrao s/o Bhimrao Raut,
aged about 31 years,
2. Nandu s/o Bhimrao Raut,
aged about 30 years,
3. Janrao s/o Bhimrao Raut,
aged about 40 years,
4. Gendaji s/o Amrut Raut,
Aged about 55 years,
5. Sunil s/o Gendaji Raut,
aged about 23 years,

All R/o. Ful-Amla, P.S. Loni,
Dist. Amravati.

Shri A. Joshi, Additional Public Prosecutor for appellant.
None for respondents.

With

Criminal Revision Application No. 165/2004**PETITIONER:-**

Dilip s/o Shankarrao Raut,
Aged 35 years, Occ. Agriculturist,
R/o. Fulmala, Amravati.

VERSUS**RESPONDENTS:**

1. State of Maharashtra,
through Police Station Officer,
Loni, Dist. Amravati.
2. Sahebrao Bhimrao Raut,
Aged about 31 years,
Occ. Agriculturist,
3. Nandu Bhimrao Raut,
aged about 30 years,
Occ. Agriculturist,
4. Janrao Bhimrao Raut,
Aged about 40 years,
Occ. Agriculturist,
5. Gendaji Amrut Raut,
Aged about 55 years, Occ. Agriculturist,
6. Sunil Gendaji Raut,
Aged about __ years,
Occ. Agriculturist,

All R/o. Fulmala,
Police Station Loni,
Dist. Amravati.

Shri P. R. Agrawal, Advocate for petitioner.

Shri A. Joshi, Additional Public Prosecutor for respondent No. 1.

None for respondent Nos. 2 to 6.

CORAM: VINAY JOSHI, J.

DATE OF RESERVE JUDGMENT :- 01.12.2018

DATE OF PRONOUNCEMENT OF JUDGMENT :-22.12.2018

JUDGMENT (PER VINAY JOSHI, J.)

Being aggrieved and dissatisfied by the order of acquittal for the offence punishable under Section 307 of the Indian Penal Code, in Sessions Case No. 41/1997, the State preferred appeal No. 150/2005 in terms of Section 378(3) of the Code of Criminal Procedure, whilst the original complainant (informant) equally challenged acquittal by way of Criminal Revision Application No. 165/2004. Since both proceedings are arising out of the same impugned judgment and order, they are heard and taken together for disposal. The learned Additional Sessions Judge has acquitted accused Nos. 1 to 5 for commission of offence punishable under Section 307 read with Section 34 of the Indian Penal Code, however convicted them for the offence punishable under Section 334 of the Indian Penal Code. The common grievance of appellant as well as revisionar petitioner is about acquittal of all the accused as aforementioned.

2. Heard Additional Public Prosecutor for the State as well as Adv Agrawal on the appeal and revision respectively.

Respondents and their Advocates were absent when called. Since the appeal is of the year 2005, I preferred to take up the matter for disposal on its own merits.

3. Before advertng to the factual aspect it is necessary to refer that there was counter case bearing Sessions Case No. 08/2001 arising out of the same incident. Both the cases were simultaneously tried by the same learned Additional Sessions Judge and decided on the same date by pronouncing two separate judgments. The record indicates that in cross case bearing Sessions Case No. 08/2001 the then accused were convicted for the commission of offence punishable under Section 324 read with Section 34 of the Indian Penal Code. The said order of conviction was challenged by the then accused (complainant and witnesses of this case) before this Court vide Criminal Appeal No. 564/2004. In-fact like cross-cases, the said appeal ought to have been heard and decided along with this appeal, but somehow the said appeal arising out of the counter case was came to be decided by this Court vide order dated 21.06.2018. This Court in Criminal Appeal No. 564/2004 was pleased to uphold the order of conviction in terms of Section 324 read with Section 34 of the Indian Penal

Code, however, reduced the sentence to some extent. In such background, the present appeal as well as criminal revision is called upon to decide on its own merits. It is informed that the accused of Sessions Case No. 41/1997 though convicted for commission of offence punishable under Section 334 of the Indian Penal Code, have not challenged the order of conviction. Since there was a case and cross case, it is advantageous even for this Court to decide both the appeals simultaneously so as to avoid conflicting adjudication but as said above appeal of counter case has been already disposed of.

4. Be that as it may, the legality and correctness of acquittal of accused Nos. 1 to 5 for commission of offence punishable under Section 307 of the Indian Penal Code, is to be tested in this appeal/revision. At the cost of repetition, I may add that since the accused have not challenged the order of conviction for offence punishable under Section 334 of the Indian Penal Code, the said aspect is no more remained for consideration.

5. Coming to the factual aspect, one Dilip Shankarrao Raut lodged report dated 12.09.1997 against the accused, on

the basis of which the offence was registered. As per FIR (Exh. 53) it was prosecution case, that on the day of incident, around 10.00 am, complainant's cousin brother Pandit had gone to ease himself. At that time all accused arrived on the spot armed with axes and assaulted Pandit as well as Milind Raut and Bhaurao Raut by means of axe. In said incident all of them sustained bleeding injuries at various parts of the body therefore Dilip Raut lodged report to the Police (Exh. 52) about the occurrence. The said report caused to register Crime No. 01/1997 against the accused for commission of offence punishable under Sections 307, 147, 148 and 149 of the Indian Penal Code. The Police completed the investigation and filed final report. After committal of case, the learned Additional Sessions Judge framed charge. Having been denied the guilt by accused, the prosecution examined as many as nine witnesses to establish the guilt. Certain documents were also pressed into service to substantiate prosecution case.

6. I may recall that the learned Additional Sessions Judge has simultaneously tried Sessions Case No. 08/2001 arising out of the complaint filed by the accused No. 1 Sahebrao. Precisely, the accused of this case were complainant and witnesses of Sessions

Case No. 08/2001 and vice-versa. The alleged incident took place on 12.01.1997 at about 10.00 at village Fulmala. Since it was a case and counter case which are also called as cross cases, the learned Additional Sessions Judge formulated a point for determination as to who amongst two groups was aggressor. After considering the evidence on record, the learned Additional Sessions Judge opined that accused of Sessions Case No. 08/2001 (Complainant and witnesses of this case) were the aggressor. The learned Additional Sessions Judge streamlined the admitted facts of the case to narrow down the controversy. Since the common stand of exercise of right of private defence was taken in both the cases, the learned Additional Sessions Judge appreciated the evidence to find out as to who was aggressor. On appreciation of evidence, the learned Additional Sessions Judge held that the complainant party was aggressor. It is further held that the accused had exercised the right of private defence. However, since they exceeded the right of private defence, they were held guilty for commission of offence punishable under Section 334 of the Indian Penal Code, and were sentenced to suffer rigorous imprisonment for one month each and to pay fine of Rs. 200/-which stipulation of default.

7. The learned Additional Public Prosecutor as well as learned counsel appearing for the revision petitioner submits that

the trial Court failed to appreciate the evidence in proper perspective. It is argued that the learned trial Court has deviated from the basic principle that evidence of each case shall have to be followed independently when there are cross cases. It is argued that the learned Additional Sessions Judge erred in holding that the accused have exercised the right of private defence. According to them, the complainant party sustained sever injuries by sharp weapons therefore, the offence of attempt to commit murder has been established.

8. With the assistance of learned Additional Public Prosecutor, I have gone through the record and proceedings of trial Court. The prosecution has examined as many as nine witnesses however, the evidence of PW-1 Dilip (complainant), PW-2 Pandit, PW-4 Meghraj and PW-8 Bhaurao carries importance. As regards to the rest of the witnesses concerned, it needs no reference since the occurrence is admitted one. PW-1 Dilip Raut testified that at relevant time, he heard commotion, hence he rushed to the spot. He noticed that Milind, Bhaurao and Pandit were assaulted by accused Sahebrao, Sunil, Janrao, Gendaji and Nandu by means of axe and gupti. However he neither specified the particular weapon held by each of the accused nor individual act. He has not disclosed about the rival complaint lodged against them by the accused party.

However during cross-examination, he admits that on the same day pursuant to the report lodged by the accused Sahebrao, the crime was registered against him and witnesses of this case.

PW-1 Dilip admits that there were several houses in the vicinity, however none of them has been examined. Therefore, it is difficult to hold that accused have chased the witnesses before the occurrence. The evidence of PW-2 Pandit is quite vague. He made omnibus statement that he was beaten by accused. He admits about the cross case filed by the accused party. The defence has brought on record several omission of his evidence through cross-examination. Precisely the evidence of PW-2 Pandit is vague as regards to details of incident and manner of occurrence. Pertinent to note that, had there been an assault by five persons with deadly weapons namely axe and gupti then there would have been serious injuries on the person of Pandit. However, the medical certificate (Exh.63) indicates that PW-2, Pandit sustained only two injuries at his scalp and left fourarm. Notably, PW-2, Pandit admits that accused Sahebrao, Sunil, Janrao and Nandu sustained injuries in the occurrence which assumes significance.

The medical evidence of PW-7 Dr. Deshmukh corresponds to the oral testimony of injured witnesses. PW-8 Bhaurao deposed about the occurrence in his own way. The learned

Additional Sessions Judge has scanned the entire evidence to find out aggression. It would not be out of place to state that though the learned Additional Sessions Judge has appreciated the evidence in proper perspective however, it relied on the cross-examination of counter case as well as referred the argument advanced in the said case. At this juncture, useful reference can be made of the Judgment of Hon'ble Supreme Court in case of ***Nathi Lal and ors. Vs. State of U.P. and anr.*** reported in ***1990 (Supp) SCC 145*** wherein the position of cross cases has been crystallized by the Hon'ble Supreme Court in para No. 2 of its judgment which is reproduced below:-

“2. We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be

influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other.”

9. In the light of said position, it is neither permissible to rely on the evidence recorded in cross case nor one can consider the submissions of said case.

Apart from that on the scrutiny of evidence, it reveals that though the accused sustained sever injuries, they were not explained by prosecution. Needless to say that if the prosecution witnesses shy away from the reality done to explain the injury caused to the accused, it casts a doubt on the genesis of the prosecution case since the evidence shows that the injuries were sustained by accused in the course of same transaction. Non-explanation of injuries on the person of accused clearly conveys that the prosecution witnesses are hiding or rather not bringing the true facts before the Court. The evidence unfolds that the accused did not arrive on the scene of occurrence but PW-8, Bhaurao first dragged accused No. 1 Sahebrao in the courtyard of his house i.e. at the place of occurrence. There were several

omissions in the evidence of PW-1 Dilip regarding occurrence. There was material omission that the witnesses failed unconsciously at the time of occurrence. Even the aspect of specifying the quarrel by the witnesses is an omission. PW-4 Meghraj Pawar admits that, accused Sahebrao, Gendaji, and Janrao sustained injuries. He further admits that on the same day, accused Sahebrao and Sunil were assaulted by witnesses Milind, Bhavrao and Pandit by means of axes and stick. The learned trial Court appreciated the evidence of these eye-witnesses in proper perspective. Even by neglecting the part of the evidence relied by the trial Court of another case, it reveals that the accused on provocation of complainant party had voluntarily caused hurt to prosecution witnesses. The said finding of fact is well supported by material on record. The evidence nowhere indicates that the accused were aggressor and they had caused injuries to prosecution party with an intention of causing death therefore, the conclusion arrived by the learned trial Court is well sustainable and calls for no interference. In the result, criminal appeal as well as revision petition being devoid of merit fails and stands dismissed.

JUDGE