

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.43 OF 2003**

The State of Maharashtra	Appellant/Complainant
Vs.	
Sampat Ramchandra Dhamale & Ors.	Respondents/ Accused nos.1 to 4

Ms. S.V. Sonavane, APP for appellant-State.
None for respondents.

**CORAM : K.R.SHRIRAM, J.
DATE : 7th MAY 2019**

P.C.:

1 The State is impugning a decision of the JMFC, Court No.7, Pune, given on 1st October 2002. The charge levelled against the four accused was under Section 324, 323, 504 read with Section 34 of the Indian Penal Code.

2 It is the prosecution's case that the accused in furtherance of their common intention voluntarily caused hurt to the complainant with stick and also abused the complainant. On 8th April 1996 the complainant lodged a complaint with the concerned police station alleging that he was physically assaulted with wooden logs and grievous injury was caused to him by the accused. The cause for this incident, according to the complainant, was on 6th April 1996 one Ramchandra Nanasaheb Dhamale and his son Rajendra Dhamale (accused no.3) destroyed/damaged the bund that was separating the land of the complainant and the land of one Balkrishna Nanasaheb Dhamale. It seems it happened at about 3.00 p.m. on

6th April 1996. On 8th April 1996, at about 11.00 a.m., accused no.3 - Rajendra Dhamale, when he was passing by the front of the house of the complainant, the complainant questioned the accused no.3 - Rajendra Dhamale as to why did he destroy the bund. The accused no.3 instead of replying, told the complainant that he had no business to ask any such questions and accused no.3 will do whatever he wants and started abusing the complainant. At that time, the other three accused, viz., Chintaman Dhamale, Sampat Dhamale and Ankush Dhamale, came out of their house, started abusing the complainant and went close to the complainant. When the complainant asked them why they are abusing him, the accused became annoyed and picked up fire wood-logs which were lying in front of the house of the complainant. Accused no.4 - Chintaman Balkrishna Dhamale hit the complainant on his head with one such log due to which the complainant got hurt and started bleeding. It seems the other accused started beating the complainant with logs. The cousin of the complainant one Santosh, complainant's mother Yashoda and complainant's wife came out and separated the accused and complainant. At that time Sampat Damale - accused no.1 hit the complainant's wife, who is PW-3, on her left hand. Thereafter, complainant went to the police station. The PSO registered the crime and handed over further investigation to ASI Dhende, who visited the spot and did spot panchanama. The statement of witnesses were recorded, injured were referred to hospital by the police and after

completion of the investigation, charge sheet was submitted. All the accused pleaded not guilty and claimed to be tried. The statement under Section 313 of the Code of Criminal Procedure of the accused was recorded. None of the accused have got themselves examined on oath or led any defence evidence.

3 The Trial Court has acquitted all the four accused and I would say, has very properly listed out the various contradictions in the statement made by each of the accused between themselves as well as with the prosecution's case. Prosecution in all examined seven witnesses, including complainant, who is PW-1, PW-2 is Shamrao Babanrao Dhamale, PW-3 is Indubai Yuvraj Dhamale, wife of PW-1 complainant, PW-4 is Santosh Ganpatrao Dhamale, PW-5 is Suresh Dhondiba Dhamale, PW-6 is Dr. Nandkishor Anant Deshmukh and PW-7 is ASI Namdev Sahadu Dhende. The statement of the complainant is at Exhibit 46, spot panchnama is at Exhibit 84 and injury certificates are at Exhibit 93 to 95.

4 It was the prosecution's case that all the prosecution witnesses, though interested, have categorically stated that the accused had beaten the complainant. Besides the testimony of the complainant is corroborated by PW-6 - Dr. Nandkishor Deshmukh. PW-6 has stated that on 8th April 1996 he examined the complainant at about 11.45 a.m. and found injury to his head. The prosecution submitted that PW-4 - Santosh Dhamale was an eye witness

and an independent witness, whose testimony also shows that the accused had beaten the complainant and they both reside in the same wada - the same cluster of houses. The defence case basically was the complainant in his cross examination has categorically stated that he had not shown spot of occurrence to the police but spot panchanama at Exhibit 84 discloses that spot of occurrence was shown to the police. Moreover, no weapon or wooden logs were on record and no blood stains of complainant are on record. The defence basically relied on various contradictions, which the Trial Court accepted.

5 Having considered the evidence, statements and the exhibits, I also feel that there are innumerable contradictions because of which the charges levelled against the accused cannot stick. There are material discrepancies between the statement, testimony of PW-1 - the complainant and his statement at Exhibit 46. In Exhibit 46, it is recorded that on 6th April 1996 Ramchandra Nanasaheb Dhamale and his son Rajendra Dhamale (accused no.3) had destroyed the common bund at about 3.00 p.m. on 6th April 1996. Exhibit 46, however, does not disclose that on 6th April 1996 the complainant was present at that time and there was a quarrel between the complainant and the accused Rajendra Dhamale and his father Ramchandra Nanasaheb Dhamale on that count. The testimony of PW-1, however, states that on 6th April 1996 accused no.3 - Rajendra Dhamale and his father abused the complainant and his father when the

complainant and his father asked the accused Rajendra Dhamale and his father Ramchandra Nanasaheb Dhamale not to destroy the bund. Exhibit 46 also does not mention about the presence of the complainant and his father when the accused Rajendra Dhamale and his father were allegedly destroying the bund. This is one inconsistency.

6 There are also discrepancies between the testimony of complainant PW-1 on the point of actual happening of the incident with Exhibit 46. It is the prosecution's case that on the date of the incident in the morning at about 11.00 a.m. accused no.3 Rajendra Dhamale was passing by the house of the complainant. The complainant allegedly asked as to why he destroyed the common bund when accused Rajendra Dhamale replied saying he will do whatever he wants and complainant had no business to question him and thereafter, started abusing the complainant. The evidence of the complainant is, however, silent on this aspect. The complainant has nowhere stated he asked the accused Rajendra Dhamale as to why he destroyed the bund or he replied as stated by the prosecution or started abusing him. What the complainant states that he was at the time of the incident was at the door of his house, sitting on the plinth (or one may even call it a verandah as could be seen in village houses in many parts of India) and his parents and wife Indubai were also with him. At that time, 7 or 8 persons plus the four accused came to his house, accused no.4 beat him with a piece of log due to which he sustained injury and all others, except the

four accused, ran away from the spot. Thereafter, the complainant states that he went to the police station and lodged a complaint. But in the prosecution's case it is stated that accused no.3 Rajendra Dhamale started abusing the complainant, the other accused came out of their house and started abusing the complainant and after some abuses, picked up fire wooden logs and accused no.4 hit the complainant on the head with the log. The other accused also alleged to have beaten the complainant with logs. There was no such evidence and the complainant's evidence does not disclose, apart from accused no.4 - Chintaman Balkrishna Dhamale, others had wooden logs in their hand. This is a material discrepancy which goes to the root of the matter.

7 One more reason why the charge cannot stick is that the complainant not only has failed to specify the role played by each of the accused, it is complainant's case that 7 or 8 persons accompanied the accused came to his house, whereas it is the prosecution's case that only the four accused were present at the time of incident. Exhibit 46 states that all the accused had beaten the complainant with logs but complainant's evidence is silent on this. He has not stated anywhere that all accused had beaten him with logs. He has only stated Chintaman Balkrishna Dhamale - accused no.4 beat him on his head.

8 According to prosecution theory, complainant's mother and wife and one Santosh Dhamale had rescued the complainant and at that time

accused no.1 - Sampat Dhamale hit the wife of the complainant (PW-2) on her left hand. The complainant, however, is silent about this in his complaint. It would be reasonable to assume that if this had really happened, the complainant would have mentioned in his complaint that even his wife was beaten in her hand. It is also the prosecution's case that all the accused had beaten the complainant with logs. If that was the case, one would have expected injury not just to the head of the complainant but also on the other parts of the body. Within an hour the complainant has been taken to the Doctor - PW-6 who has simply stated he examined the complainant and found only one injury on his head allegedly caused by hard and blunt object. If all the four accused had beaten the complainant with logs, I am sure, the doctor would have mentioned that there were other injuries or atleast marks of being beaten with logs found on the other parts of the body of the complainant. Therefore, the medical evidence also is inconsistent with Exhibit 46. PW-2 - Shamrao Babanrao Dhamale claims to be an eye witness but Exhibit 46 does not mention anything about him. Even the complainant does not state that Shamrao Babanrao Dhamale - PW-2 was present at the time of the incident. Therefore, the presence of PW-2 at the spot of occurrence is questionable. The evidence of Shamrao Babanrao Dhamale (PW-2), who claims to have sustained injury, is also inconsistent with the medical evidence. First of all Exhibit 46 does not say Shamrao Babanrao Dhamale was beaten by the accused. Even the

complainant does not say so. But Shamrao Babanrao Dhamale (PW-2) stated that he sustained injury to his back and has nowhere stated that he sustained injury to his right wrist. PW-6 Dr. Nandkishor Deshmukh in his report states that Shamrao Babanrao Dhamale had an abrasion over right wrist caused by hard and blunt object about six hours before he examined him on 8th April 1996. The Doctor's report does not state that he found any injury back of Shamrao Babanrao Dhamale (PW-2). Therefore, the evidence of PW-2 will have to be, in my view, discarded.

9 As far as the evidence of PW-3 - Indubai Dhamale, the wife of complainant is concerned, the same is also inconsistent with the prosecution's theory. There are material discrepancies between her testimony and Exhibit 46. PW-3 has stated that she was inside the house with her father in law, whereas the complainant - her husband was outside the house. When she and her father in law heard abuse, they went out of the house and saw Chintaman Dhamale, accused no.4, pick up a log and assault her husband on the head with the log. That caused bleeding injury to her husband's head. She has not stated that the other accused had assaulted her husband with logs but in Exhibit 46 it is recorded that other accused had beaten her husband, i.e., the complainant, with logs.

10 PW-3 has further stated that she and her father in law tried to rescue the complainant at which time Sampat, accused no.1, assaulted her

and her father in law with a log. But that is not the case of the prosecution. The prosecution's theory is the complainant's mother Yashodabai, complainant's wife Indubai, i.e., PW-3 and Santosh Dhamale had separated the quarrel. The prosecution is silent about the presence of Shamrao. It is not the prosecution's case that Shamrao was present and he tried to separate at which time he was beaten by the accused. Shamrao Dhamale also does not say that accused no.4 assaulted him. The evidence of PW-2 is not corroborated by PW-3. Moreover, if his wife Indubai Dhamale was also beaten by accused no.1, I would have expected the complainant to mention that in his complaint, which also is silent on this point. There is also inconsistency between the evidence of PW-3 - Indubai Dhamale and the medical evidence. PW-3 has stated that her father in law sustained injury to his leg. Shamrao Dhamale (PW-2), who is the father of PW-1 and father in law of PW-3, has not stated anywhere that he sustained injury to his leg. Infact he has stated that he suffered injury to his back but the medical report states that he sustained injury to his right wrist. There are many such inconsistencies which this Court can go on and on and on narrating.

11 The onus on the prosecution is to prove the guilt of the accused beyond reasonable doubt. The accused are presumed to be innocent unless proven guilty by a competent court of law. The Trial Court has considered the evidence and the documents and come to a conclusion that the prosecution has failed to prove the guilt of the accused beyond reasonable

doubt. The Appellate Court has full powers to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. The Code of Criminal Procedure, 1973 puts no limitation or restriction or condition on exercise of such power and an Appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

12 I have considered the evidence and the documents and I concur with the views expressed by the Trial Court. The inconsistencies are so damning that no Trial Court will be able to accept the case of the prosecution.

13 The appeal, therefore, deserves to be dismissed and is accordingly dismissed.

(K.R. SHRIRAM, J.)