

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

CRIMINAL APPEAL NO.113 OF 2003

The State of Maharashtra ...Appellant
V/s.
Santosh Shantaram Vyavahare & Ors. ...Respondents
....
Mrs. S.V. Sonawane, APP for the appellant/State.
Mr. R.S. Kate, for the Respondents.
....

CORAM : N.B. SURYAWANSHI, J.

DATE : 3RD SEPTEMBER, 2019

ORDER

1. This is an appeal filed by the State challenging the judgment and order of the acquittal passed by the learned Additional Sessions Judge, Pune in Sessions Case No.501 of 2000. The Respondent Nos. 1 to 14 / original accused were charged for the offences punishable under sections 147, 148, 333 read with 149 of the Indian Penal Code.

2. Heard learned Additional Public Prosecutor and learned counsel for the respondents. With the assistance of learned APP and learned counsel, I have perused the record.

3. The appeal stood abetted as against the respondent

Nos. 1, 2 and 8 / original accused Nos.1, 2 and 8 in terms of the order passed by this court dated 14th September, 2018.

4. In short the case of the prosecution is that the accused persons are the members of Bundgarden Mitra Mandal. The complainant Uttam Oval, Police Constable, Buckle No.1247 (PW-1) and Police Constable Dhumal, Buckle No.4279 (PW-3) were attached to Bundgarden Police Station. On 8th September, 2000, the complainant was on bandobast duty during Ganesh festival and he was given duty at Chanchal Tarun Mandal and PC Dhumal (PW-3) alongwith Homeguard Raut (PW-8) was given duty at Bandgarden Mitra Mandal. The duty hours of both were from 10.00 a.m. to 2.00 a.m. in the night. At the relevant time, directions were issued by the Hon'ble Supreme Court to stop the loudspeakers at 11.00 p.m. On the date of the incident, i.e., 8th September, 2000, at 5.30 p.m., Bandgarden Mitra Mandal and Chanchal Tarun Mandal started their loudspeakers. However, they were not stopped even after 10.30 p.m. Complainant PC Oval (PW-1) and PC Dhumal (PW-3) alongwith Homeguard Raut (PW-8) requested the members of the Mandal to stop the loudspeakers. However,

they refused to listen. Some of the members instigated others to assault the policemen. Accused No. 1 Santosh and Accused No. 9 Prashant caught hold of complainant Oval by his neck and started abusing him. Accused No. 1 Santosh snatched away the leather belt and rest of the accused started assaulting him with sticks and iron pipes. Police Constable Dhumal (PW-3) was also assaulted and he somehow rescued himself and went running towards the road. After sometime, PSI Mirge from Parnakuti Police Chowkey alongwith police staff arrived at the spot. They arrested members of Bandgarden Mitra Mandal and brought them to police Station. In the assault, complainant PC Oval (PW-1) sustained injuries on the head, chest and back and his clothes were stained with blood. PC Dhumal (PW-3) sustained injuries on the legs and on left shoulder. During the assault, the hooks of the pant of PC Dhumal (PW-3) were broken. FIR was lodged by PC Oval (PW-1) on the next day, i.e., on 9th September, 2000, which is at Exhibit 33. After conducting the investigation, chargesheet came to be filed and the learned Sessions Court framed the charge against 14 accused/respondents with the offences punishable under sections 147, 148, 333 read with 149 of the Indian Penal Code.

5. The prosecution examined in all 18 witnesses in support of their case. The defence of the accused persons was that both the police constables (Oval and Dhumal) were in drunken condition and they fell down from the motorcycle and sustained injuries.

6. The learned APP has vehemently argued that PC Oval (PW-1) and PC Dhumal (PW-3) were on duty and were assaulted by the accused persons. They corroborated each other on material particulars. Their medical evidence is on the record through the Medical Officer (PW-15), who has proved the injury certificates (Exhibits 61 and 62) of PC Oval (PW-1) and PC Dhumal (PW-3) respectively. She has further pointed out that the CA reports brought on record are supporting the prosecution case as bloodstains found on the clothes were of the blood group of injured witnesses, i.e., PC Oval (PW-1) and PC Dhumal (PW-3). Though, the panch witnesses have not supported the prosecution, there is recovery of articles, which were used in the crime, from the accused persons, i.e., accused Nos. 1, 2 and 3, which is proved by Investigating Officer PW-10. The learned APP, therefore, states that there is sufficient

evidence on record to warrant conviction and the learned Sessions Judge has misconstrued the evidence brought on the record by the prosecution. Hence, she prays for setting aside the acquittal and to convict the accused persons.

7. The learned counsel for the respondents/accused has drawn my attention to the order passed by this court dated 14th September, 2018, whereby the appeal stood abetted as against the respondent Nos. 1, 2 and 8. He placed reliance on the judgment of the Apex Court in the case of **State of Maharashtra Vs. Eknath Yeshwant Pagar** reported in **(1981) 2 Supreme Court Cases 299** and the judgment dated 22nd June, 2007, rendered by the Division Bench of this court in the matter of **The State of Maharashtra Vs. Ravikant Shankarappa Patel & Ors.** in **Criminal Appeal No.848 of 1991**, to contend that in the appeal against acquittal, on death of the main accused, the appeal would abate not only against him, but also the abettor. The Hon'ble Apex Court in the judgment cited supra has held that if the appeal abets against the main accused on account of his death and the other accused has already been acquitted by the trial court, the appeal against the other

accused becomes infructuous. The Division Bench followed the judgment of the Hon'ble Apex Court cited supra and another unreported judgment of the Apex Court in Criminal Appeal No.1233 of 2003 in the matter of Dnyaneshwar Narayan Pote Vs. State of Maharashtra.

8. On merits, the learned counsel for the respondents urged that no specific role or overt act is attributed to any of the accused persons except accused No.1, who is no more. PC Oval (PW-1) and PC Dhumal (PW-3) had no occasion to know the names of the accused persons and inspite of this, full names of the accused persons have been mentioned in the FIR. He further argued that the FIR (Exhibit 33) on record is not an FIR, as the investigating agency had already received an information in respect of the assault on PC Oval (PW-1) and PC Dhumal (PW-3), prior in point of time, which was not brought on record by the prosecution, and hence, the FIR on record cannot be said to be FIR. All the members from Mandal were made accused by the prosecution. He further sates that there is unexplained delay in lodging the FIR/complaint. The accused persons were not even identified by PC Oval (PW-1) and PC

Dhumal (PW-3) in court. The trial court has taken the serious note of demeanor of PC Oval (PW-1) and has rightly disbelieved him. Hence, he supported the judgment of acquittal and prayed for dismissal of the appeal.

9. After carefully analyzing the evidence brought on record by the prosecution, I am of the view that the prosecution has failed to prove the charge framed against the accused. There is a delay in lodging the complaint as the incident has taken place at about 11.00 p.m. on 8th September, 2000. At the relevant time, PC Oval (PW-1) was on Bandobast duty at Chanchal Tarun Mandal and PC Dhumal (PW-3) alongwith Homeguard Raut (PW-8) was on Bandobast duty at Bundgarden Mitra Manda. It is pertinent to note that Homeguard Raut (PW-8) has not supported the case of the prosecution. The incident has taken place at about 11.00 p.m. and the information about the same, that the police on duty were assaulted by the persons at Bandgarden Mitra Mandal, was received by ASI Chavan (PW-17) at about 11.30 – 11.45 p.m. The same is not recorded in the occurrence register at Mangaldas Police Chowky. This information in relation to

cognizable offence ought to have been registered as complaint.

10. The learned counsel for the respondents was justified in contending that the FIR is not an FIR and the information of the incident has been already received by the investigating agency. ASI Chavan (PW-17) has also admitted in his evidence that he realized that the information he received of incident is relating to the cognizable offence. Even API Mirge (PW-11), who was incharge police officer at Parnakuti Police Chowkey at the relevant time, has deposed that at about 11.00 p.m. when he was sitting in the police chowkey, two persons came from Mahatma Udyan Chowk and told him that the workers of Ganpati Mandal were assaulting to police. He immediately rushed to the spot with constables Shaikh and Nikam. He stated in his Examination-in-Chief that the workers of the Mandal were assaulting to police and they separated those persons. In the cross-examination, he admits that when he went to the spot, PC Oval and PC Dhumal were standing in injured condition. He further admitted that when he saw the incident, he noticed that it was a cognizable offence and then he contacted PI of Bandgarden Police Station. Even PC Oval (PW-1) has

admitted in cross-examination that "ASI Chavan, PSI Mirge, ACP Kishor Jadhav had been at the spot and they have seen the whole situation. Then we all the persons had been at Bundgarden Police Station at about 11.30 p.m. DCP Kishor Jadhav made inquiry with him in connection of the incident. DCP Jadhav has noted down the submission which is made by me". The FIR (Exhibit 33) came to be registered only on next day, i.e., on 9th September, 2000 at C.R. No.244/2000. The prosecution has failed to explain the delay in lodging the said complaint / FIR.

11. Though, ASI Chavan (PW-17) and other police personnel reached the spot of incident immediately, they all are stating that there are crowd of 50-60 persons. It is also admitted by ASI Chavan (PW-17) that both the injured were taken to Sasoon Hospital at 1.30 p.m. Why they were taken belatedly is not explained by any of the prosecution witnesses. The prosecution has further failed to explain as to why after the medical examination of PC Oval (PW-1) and PC Dhumal (PW-3) was over, the complaint was not registered at the earliest ?

12. As stated earlier, Homeguard Raut (PW-8) was

independent witness, though claimed to have been present on the spot of incident alongwith PC Oval (PW-1), he has not supported the prosecution case. It is admitted fact on record that due to Ganesh Festival, large number of people were visiting the pendols of Chanchal Tarun Mandal and Bandgarden Mitra Mandal. However, not a single independent witness is examined by the prosecution.

13. PC Dhumal (PW-3) though was not knowing the accused persons, no identification parade was held by the investigating agency. All the members of the Mandal were taken to the police station from the spot and thereafter on the next day the complaint has been registered.

14. The learned trial court has taken serious note of demeanor of PC Oval (PW-1) and has come to the conclusion that he does not appear to be the truthful witness and he was repeatedly warned, for not behaving properly while giving evidence. PC Dhumal (PW-3) has also admitted in his cross-examination that he only knew accused No. 1 by name and did not know accused Nos. 2 to 14. In spite of this fact, in the FIR (Exhibit 33) full names of all the accused persons are

mentioned. The evidence of PC Oval (PW-1) also does not give clear picture of the specific overt act played by each of the accused.

15. The learned trial court was also right in observing that the version of PC Oval (PW-1) and PC Dhumal (PW-3) is not consistent as PC Oval (PW-1) has not stated that accused persons also assaulted PC Dhumal. The fact remains that third independent eyewitness Homeguard Raut (PW-8) has not supported the prosecution case. There are material discrepancies in the evidence of prosecution witnesses, which renders prosecution version doubtful.

16. The panch witnesses (PW-4, PW-5, PW-6, PW-7 and PW-9) have not supported the prosecution case. The recovery of leather belt from accused/respondent No.3 is not of help to the prosecution, since it is from open space accessible to all.

17. Taking into consideration the evidence on record, the learned trial court was justified in recording acquittal in favour of the respondents/accused. No fault can be found in the

reasoning adopted by the learned trial court.

18. In view of the judgments relied upon by the learned counsel for the respondents and in view of the discussion hereinabove, there is no reason to interfere with the order of acquittal. Hence, the following order :-

ORDER

- (i) The appeal stands dismissed.
- (ii) The accused are on bail. Their bail bonds stand cancelled.

(N.B. SURYAWANSHI, J.)