

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.388 OF 2016

1) PRADEEP DHARMA PAWAR	)
	)
2) VINOD DHARMA PAWAR	)
	)
3) HIRABAI DHARMA PAWAR	)
	)
4) SULOCHANA KAMALAKAR RATHOD	)
	)
5) SAVITA PRADEEP PAWAR	)...APPELLANTS

V/s.

THE STATE OF MAHARASHTRA	)...RESPONDENT
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Mr.Rushikesh Kale i/b. Mr.V.V.Purwant, Advocate for the Appellants.

Mr.A.R.Kapadnis, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : RESERVED ON 17th SEPTEMBER 2019
PRONOUNCED ON 7th OCTOBER 2019

JUDGMENT :

1 By this appeal, the appellants/convicted accused persons are challenging the judgment and order dated 26th May

2016, passed by the learned Additional Sessions Judge, Solapur, thereby convicting the appellants/accused persons of the offence punishable under Section 324 read with 34 of the Indian Penal Code and sentencing them to suffer simple imprisonment for 1 month apart from direction to pay fine of Rs.1,000/- by each of them and in default, to undergo simple imprisonment for 15 days. They were granted benefit of Section 4 of Probation of Offenders Act and instead of sending them to jail, the learned trial court directed their release on executing bond of Rs.10,000/- by each of them of good behaviour for the period of 1 year, as per Section 4 of the Probation of Offenders Act. All of them were acquitted of the offence punishable under Section 395 of the Indian Penal Code.

2 Facts, in brief, leading to the prosecution and the resultant conviction of the appellants/convicted accused persons are thus :

(a) Dharma Pawar was father of appellant/convicted accused no.1 Pradeep Pawar and appellant/convicted accused no.2

Vinod Pawar. Appellant/convicted accused no.3 Hirabai Pawar is his widow. On 10th October 2003, Dharma Pawar had sold three acres land from field Gat No.7/6 of Pratap Nagar shivar to First Informant/PW2 Anand Gundyale by registered Sale Deed Exhibit 54. On 8th June 2012, with the help of tractor driver PW7 Pandit Menkudale and in presence of his brother PW6 Mukund Gundyale, PW2 Anand Gundyale was ploughing the said land. His friend Vijay Bhoite was also present in the field. As soon as they started ploughing the field, all accused persons came there, threatened and abused them. They questioned them as to why he was ploughing their field. Appellant/convicted accused no.3 Hirabai then gave a blow of stick on back of PW2 Anand Gundyale. Appellant/convicted accused no.1 Pradeep Pawar took a bite of left wrist of PW2 Anand Gundyale. Appellant/convicted accused no.5 Savita Pawar and Sunita Rathod slapped him. Appellant/convicted accused no.2 Vinod Pawar pressed neck of PW6 Mukund Gundyale, who was taking photographs from his camera. His camera was then

snatched by appellant/convicted accused no.2 Vinod. The incident was then telephonically informed by PW2 Anand Gundyale to police and then he lodged the First Information Report Exhibit 55 in respect of the incident to Police Station Vijapur Naka, Solapur, which ultimately resulted in registration of the Crime No.164 of 2012 against the appellants/convicted accused persons.

- (b) Routine investigation followed. The appellants/convicted accused persons came to be arrested. On the basis of disclosure statement of appellant/convicted accused no.1 Pradeep, Exhibit 65, camera came to be recovered by Spot Panchnama Exhibit 66 in presence of PW5 Shivaji Takmoge. Spot came to be inspected and Panchnama Exhibit 59 came to be prepared in presence of panch witness PW4 Vijay Sapkale. Wooden log, frame of spectacles and pieces of cover of camera came to be seized from the spot of the incident. On completion of investigation, the appellants/convicted accused persons came to be charge-sheeted.

- (c) The learned trial court framed the Charge for offences punishable under Section 324 read with 34 and under Section 395 of the Indian Penal Code against the appellants/convicted accused persons. They pleaded not guilty and claimed trial.
- (d) In order to bring home the guilt to appellants/convicted accused persons, the prosecution has examined in all nine witnesses. Defence of the appellants/convicted accused persons was that of total denial. According to the defence, order of temporary injunction given in their favour by the Civil court in the suit filed by them was operating against PW2 Anand Gundayal, who was defendant in that suit. In order to vindicate his so called possession, he had falsely implicated appellants/convicted accused persons in the crime in question. After hearing the parties, the learned trial court, vide the impugned judgment and order, was pleased to convict the appellants/convicted accused persons and

sentenced them accordingly, as indicated in the opening paragraph of this judgment. They, however, were acquitted of the offence punishable under Section 395 of the Indian Penal Code.

3 I have heard the learned counsel appearing for the appellants/convicted accused persons. He argued that evidence of the so called injured witnesses is not acceptable and trustworthy because of the fact that a civil suit was filed by the appellants/convicted accused persons against the First Informant/PW2 Anand Gundyale and in that suit, temporary injunction was operating against the First Informant /PW2 Anand Gundyale. Still, according to the prosecution case, he entered in the field and has falsely implicated the appellants/convicted accused persons in the crime in question.

4 The learned APP supported the impugned judgment and order of conviction by contending that evidence of the prosecution is trustworthy.

5 I have considered the submissions so advanced and also perused the record and proceedings including oral and documentary evidence adduced by the prosecution. In the case in hand, the prosecution has adduced evidence of two injured witnesses namely PW2 Anand Gundyale and his brother PW6 Mukund Gundyale. As per prosecution case, PW7 Pandit Menkudale, the tractor driver, was an eye witness to the incident in question. If it is established that the eye witnesses have suffered injuries in the incident in question, then their evidence is generally accepted as presence of such eye witnesses on the spot of the incident is established by injuries suffered by them in the incident. However, at the same time, it is principle of criminal jurisprudence that burden of proving commission of offence rests on the prosecution and that burden is required to be discharged by adducing clear, cogent and trustworthy evidence for demonstrating that commission of the offence is established beyond all reasonable doubts. Let us, therefore, examine whether evidence of First Informant/PW2 Anand Gundyale and his

brother PW6 Mukund Gundyal is trustworthy and can be acted upon to base conviction.

6 As per version of PW2 Anand Gundyal, by virtue of registered Sale Deed at Exhibit 54, executed on 10th October 2003 by Dharma Pawar, he became owner of three acres of land from field Gat no.7/6 of Pratap Nagar shivar, Solapur. This field is the spot of the incident, as reflected from Spot Panchnama Exhibit 59 drawn by the Investigator in presence of PW4 Vijay Sapkale – panch witness. PW2 Anand Gundyal testified that on 8th June 2012, he along with his brother PW6 Mukund Gundyal, his friend Vijay Bhoite and servant PW7 Pandit Menkudale had been to that field with tractor. As per his version, as soon as they started ploughing the field, all appellants/convicted accused persons came on the spot and started abusing them. PW2 Anand Gundyal deposed that then appellant/convicted accused no.3 Hirabai gave a blow with stick on his back. Appellant/convicted accused no.5 Savita Pawar and one Sunita Rathod slapped him. Appellant/convicted accused no.1 Pradeep Pawar took a bite of his

left wrist whereas appellant/convicted accused no.2 Vinod Pawar caught hold of neck of his brother PW6 Mukund Gundyale and snatched the camera from him. PW2 Anand Gundyale further stated that he, therefore, lodged FIR Exhibit 55.

7 Material elicited from cross-examination of this witness is very relevant and material. His cross-examination reveals the following facts :

- (a) Dharma Pawar – the father of appellant/convicted accused no.1 Pradeep Pawar and appellant/convicted accused no.2 Vinod Pawar was the only party from the seller side to the Sale Deed Exhibit 54. Sons, daughters and wife of Dharma Pawar were not parties to the Sale Deed dated 10th October 2003, Exhibit 54, executed in favour of PW2 Anand Gundyale by Dharma Pawar. Description of the land sold under the Sale Deed Exhibit 54 and more particularly regarding length and width of the land sold was not described in the Sale Deed. Therefore, all appellants/convicted accused persons, who are sons, daughters and wife of Dharma Pawar, had filed

civil suit against PW2 Anand Gundyale. The civil court had granted temporary injunction in their favour and against PW2 Anand Gundyale in the said suit. Moreover, appellant/convicted accused no.3 Hirabai had lodged complaint against PW2 Anand Gundyale and in pursuance to her complaint, he was called by the Assistant Commissioner of Police Shri Rode for inquiry. Though denied by PW2 Anand Gundyale, the said complaint seems to be that of threatening given by him to the appellants/convicted accused persons for withdrawal of the suit. Cross-examination of PW2 Anand Gundyale further reveals that on the basis of report filed by Sarita Pramod Pawar, he came to be arrested, and in that matter, appellant/convicted accused no.2 Vinod Pawar and appellant/convicted accused no.3 Hirabai Pawar are witnesses. This report was filed on 19th March 2012 i.e. prior to lodgement of the FIR by PW2 Anand Gundyale against the appellants/convicted accused persons.

(b) It is further seen from cross-examination of PW2 Anand Gundyál that on 8th June 2012, rainy season had already started. He had visited the field on that day for ploughing and there was no other special occasion with him to visit the field on that day. His friend Vijay Bhoite was not having any knowledge in respect of agriculture and his brother PW6 Mukund Gundyál was not a professional photographer.

8 All these material elicited from cross-examination of PW2 Anand Gundyál unerringly points out that because of operation of order of the temporary injunction in favour of appellants/convicted accused persons, it was not legally permissible for PW2 Anand Gundyál to enter in the disputed field. On earlier occasion, he was arrested at the instance of appellants/convicted accused persons. He had threatened the appellants/convicted accused persons to withdraw the suit in respect of the disputed field filed by them. In that matter also, Senior Police Officer had conducted necessary inquiry against PW2 Anand Gundyál, who claimed to be the victim of the crime in

question. On the day of incident, as rainy season had already started, there was no question of ploughing the field by means of tractor. Still, PW2 Anand Gundyale had visited that field along with his friend and brother, who was equipped with camera for snapping photographs of the event. All these circumstances brought on record by the defence are pointing out the stage managed show created by First Informant/PW2 Anand Gundyale in order to enable him to implicate the appellants/convicted accused persons in some criminal case. Cross-examination of this First Informant/ PW2 Anand Gundyale shows that he as well as his brother PW6 Mukund Gundyale were facing several criminal cases in respect of gambling. PW2 Anand Gundyale has candidly admitted in the cross-examination that if the civil suit filed against him in respect of the subject field is withdrawn by the appellants/ convicted accused persons, then he would have no complaints against them in the matter. Thus, it becomes crystal clear that PW2 Anand Gundyale had entered in the field, despite order of temporary injunction against him, making all preparations for trapping the appellants/convicted accused persons in some

incident, so as to implicate them in some crime, and thus, he lodged the FIR against the appellants/convicted accused persons, with whom he was sharing extremely inimical relations.

9 PW6 Mukund Gundyale, who happens to be brother of PW2 Anand Gundyale, has deposed on similar lines, as is deposed by PW2 Anand Gundyale. As per his version, when he along with his brother and others went to the field and started ploughing it, appellants/convicted accused persons came there. They slapped his brother PW2 Anand Gundyale. Appellant/convicted accused no.3 Hirabai gave blow of wooden log on the back of his brother, whereas appellant/convicted accused no.1 Pradeep Pawar took a bite on the left wrist of his brother. He was shooting the scene but appellant/convicted accused no.2 Vinod snatched the camera from him by pressing his neck. In his cross-examination, this witness has also admitted filing of the civil suit by appellants/convicted accused persons in respect of that field against PW2 Anand Gundyale.

10 PW7 Pandit Menkudale is, undisputedly, employee of PW2 Anand Gundyale. At the relevant time, he claimed to be operating the tractor in the subject field. As per his version, all appellants/convicted accused persons assaulted PW2 Anand Gundyale and appellant/convicted accused no.2 Vinod Pawar snatched the camera from PW6 Mukund Gundyale.

11 PW9 Dr.Jatinder Sohal of Civil Hospital, Solapur, has deposed that upon examination of PW2 Anand Gundyale, he had noticed multiple abrasions over his back. However, ocular evidence of witnesses are to the effect that only one blow of stick was given to PW2 Anand Gundyale and that too, only by one accused i.e. appellant/convicted accused no.3 Hirabai. How, then, this injured sustained multiple abrasions over his back, is a fact, which is not clarified by the prosecution in its evidence. PW6 Mukund Gundyale has not claimed that he was assaulted in the incident by anybody. Other witnesses, who claim to be present on the spot, including PW2 Anand Gundyale and PW7 Pandit Menkudale have also not claimed that appellants/convicted

accused persons assaulted PW6 Mukund Gundyal. However, PW9 Dr.Jatinder Sohal has deposed that he found blunt trauma over right hip and blunt trauma over right shoulder of PW6 Mukund Gundyal. This medical evidence is also not corroborating the version of witnesses, allegedly injured in the incident in question.

12 In the result, it cannot be said that the prosecution has established its case beyond all reasonable doubts, and therefore, the appellants/convicted accused persons are certainly entitled for benefit of doubt. As such, the order :

ORDER

- i) The appeal is allowed.
- ii) Impugned judgment and order dated 26th May 2016, passed by the learned Additional Sessions Judge, Solapur, convicting the appellants/accused persons of the offence punishable under Section 324 read with 34 of the Indian Penal Code, is quashed and set aside.

- iii) All appellants/convicted accused persons are acquitted of the offence with which they are charged.
- iv) Their bail bonds stand cancelled.
- v) Fine amount, if any deposited by them, be refunded to them.
- vi) The appeal is disposed off accordingly.

(A. M. BADAR, J.)