

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 561 of 1998

Mangesh Nanda Khedekar	.. Appellant
Versus	
The State of Maharashtra	.. Respondents

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Mr.Swaraj S. Jadhav for the appellant.
Mr.Y.Y. Dabake, APP for the State.

CORAM: BHARATI DANGRE, J.
RESERVED ON : 6th APRIL 2021
PRONOUNCED : 28th APRIL 2021

JUDGMENT:-

1 By the present Appeal, the appellant has questioned the judgment and order dated 20th May 1998 passed by the Addl. Sessions Judge, Raigad, Alibag in Sessions Case No.62 of 1997. The Appeal is admitted on 29th June 1998 and the appellant was released on bail.

2 Advocate Shri Swaraj Jadhav was appointed by the High Court Legal Aid Services Committee since the appellant remained unrepresented.

Heard the learned counsel for the appellant and
Mr.Y.Y. Dabake, learned APP for the State.

3 One Ramchandra Rama Mahadik working as watchman in the Wild Life Sanctuary on daily wages reported of an incident dated 8th February 1997 when he was on duty along with two other watchman being Bhaskar and Kiran. He report that while he was on round of the Sanctuary, he noticed mark of teak-log being pulled and on tracking the same, they reached the sea-shore at Danda, where four persons were cutting the log. As per the complainant, they managed to catch hold of two persons. On probing, they disclosed to be residents of Surale village. When they were interrogating the said persons, the accused/appellant Mangesh arrived at the spot and chided them for their act and asked to release the persons. On their refusal to do so till their superiors arrived at the spot, the complainant allege that the accused Mangesh gave a strong blow by his elbow on left portion of his face, as a result of which one tooth on the right side got uprooted and fell down, and caused bleeding in his gums. This incident was reported to have taken place at 11.15 am and after assaulting the complainant, the accused and the other two persons fled from the spot. The complainant then reached Murud Forest Office and thereafter, proceeded to Phansad Wild Life Sanctuary office. Thereafter, the FIR was lodged with Murud police station at 17.35 hrs, on the very same day. Offence punishable under Sections 353 and 333 of the IPC was invoked and the present appellant was arraigned as the accused. He was charged for

voluntarily causing grievous hurt to the complainant while discharging his duty as a public servant with an intention to prevent or deter him from discharge his duty. On the appellant pleading not guilty, he was made to face the trial, by committing the case to the Court of Sessions at Raigad for proving the charge under Section 333 of IPC.

4 To bring home the guilt of the accused, the prosecution examined seven witnesses during course of the trial. Dr.Maqbool Kokate attached to Fatima Begum Hospital at Murud as Medical Officer (PW 1) who had examined the complainant on being referred to him by the Murud police station at 6.30 p.m is examined as PW 1. He report of the following injury on the complainant.

“A dislodgement of upper four tooth fore on left side with a fresh bleeding from the said injury”

The injury certificate issued by PW 1 (Exhibit-9) in the column of age of injury describe the injury to be fresh and the nature of injury is classified as ‘Grievous injury’. The injury is opined to have caused on account of a blow with hard and blunt object. The Medical Officer clarify as to what is a fresh injury. He depose that fresh injury means injury within 2 to 3 hours. He also admit that a dislodgement of the tooth is possible in case a person falls on hard and rough substance.

5 The complainant himself is examined as PW 2 who has proved the complaint filed by him. His associate Kisan, the watchman accompanying him at the time when the alleged incident took place is examined as PW 3, whereas the superior officer of both the two watchmen – Pandurang Dandekar working as Forester when the incident took place is examined as PW 4.

6 The prosecution case either stand or fail, on the evidence of the said witnesses; if the witnesses are found reliable or it is the testimony of these three witnesses, with their inconsistent version which would fail the prosecution and I deal with the evidence of the prosecution witnesses, to appreciate the grounds in Appeal.

7 PW 2 (complainant) depose that he was accompanied by Kisan and Bhaskar when he went for surveillance to the Danda site of the Wild Life Sanctuary. He deposed before the Court that they followed the marks of the teak tree being dragged, that led them to a place where the work of cutting of the log wood was in progress. He state that the villagers of Surale were cutting the log and that there were two persons and he approached them and asked them to stop the work and sent Dhurup to call his superior, Mr. Dandekar, the Regional Forest Officer (RFO). As per PW 2, the appellant was one of the two persons who was cutting the log.

He testify before the Court that the appellant came running towards him and gave a blow of his elbow on the left cheek, resulting in dislocation of one of the tooth and breaking of another tooth, which fell down and this blow led to a bleeding injury. PW 2 further state that the appellant ran away from the spot taking away the saw. According to this witness, Dandekar – PW 4 arrived at the spot and thereafter, the FIR was lodged in the police station at Murud.

8 The deposition/version of the said witness is in contradiction of his version in the complaint and the whole story of the prosecution undergoes a change. In the complaint, PW 1 narrate that four persons were engaged in cutting of the wooden log and two persons were apprehended by them, who disclosed that they were residents of Surale village. As per the complaint, the appellant arrived when they were interrogating the persons who were cutting the log, conveying thereby that he was not the one who was cutting the log. The contradiction is apparent since PW 2 depose before the Court that Mangesh was amongst the two persons who was cutting the teak log.

When the version of PW 3, Kisan is perused, he reiterate the case of the complainant in the complaint, that four persons were seen cutting the wood but one of them ran away and they apprehended two out of three, both being from village Surale. PW 3 depose that Mangesh arrived later on and when he

was asked to wait till his superiors come, he gave a blow on the face of the complainant. The time of incident as per PW 3 is around 11.00 to 11.30 a.m. PW 3 accompanied the complainant to Murud when he was taken to the hospital.

There is also a variation about the version of dislocation of the tooth, as in the complaint, it is stated that the complainant was assaulted on his left cheek, as a result of which an upper tooth on his left side of the face got dislocated and fell down. In contrast, the injury certificate reveal dislodgment of upper four tooth on left side and PW 3 also confirm that tooth of the complainant on the left side of the jaw was dislocated. He also describe that the tooth firstly fell in the mouth and then on the ground and was handed over to the police. The complainant in his chief deposed that the blow given by the accused landed on his left cheek and resulted in dislocation of one of the tooth and broken down another tooth which had fallen down. The injury certificate, however, refer only to dislodgment of one tooth on left side with a fresh bleeding injury from the gums at the side. Pertinent to note that the complainant had given the time of incident as 10.15 a.m, whereas PW 3 depose that the time of incident is between 11 to 11.30 am. The case of the prosecution which has to stand on the basis of the evidence of these two witnesses, one being the injured and the complainant and other being the eye witness to the said incident is shaky on the aforesaid aspect.

9 When the evidence of their superior (PW 4), the Forester, to whom the complainant had approached is read, it corroborate to the extent that one of the watchman i.e. Bhaskar arrived to call him and informed that the accused Mangesh had assaulted Ramchandra Mahadik resulting in dislocation of his tooth. However, as per the version of the complainant, Bhaskar was immediately sent to fetch the Senior and he was deputed prior to the incident when the complainant was assaulted by the accused. PW 4 confirm that the tooth of the complainant was dislodged and was lying near the freshly cut teak-wood. The wooden log was taken into possession by drawing a panchnama (Exhibit-16) in presence of the panchas. The Investigating Officer has also admitted in his cross-examination that two to three persons from village Sarale had accompanied the complainant at the time of lodging of the report at the police station and out of the said persons, two have acted as panchas. In the cross-examination, the witness admitted that the panchas have signed the panchnama of seizure of tooth in the police station, when he tried to console the complainant by opening the mouth and at that time, none of the tooth had been noticed to have fallen or displaced in the natural course. He admit that there is no mention in the panchnama that the preserved tooth was kept in a bottle. The Investigating Officer also admit that though there was a case of illegal cutting of teak and its theft, no case was

registered for theft of teak wood and logs in Murud police station. He also marked portion 'A' in the statement of the complainant where he stated that four persons were engaged in the act of cutting of the tree.

10 The Range Forest Officer (RFO) examined as PW 7, deposed that he knew the complainant who had approached him at 3.00 p.m and informed him about the incident wherein his tooth was displaced on account of the assault by the accused and even the fallen tooth was shown to him, is his version. When the witness reached the spot, Dandekar PW 4 was present on the site.

11 The case of the prosecution which is sought to be established through the aforesaid witnesses do not inspire confidence as it is full of contradictions and improvements. In the complaint, the complainant alleged that there were four persons cutting the tree and out of whom two were apprehended and the accused came there later on and assaulted the complainant and one tooth from left side was dislodged. In his testimony before the Court, he came up with a different version and told that only two people were cutting the tree and accused was one of them. He deposed that one teeth was dislodged and another was broken. The contradiction is marked as portion 'A' at the instance of the Investigating Officer (PW 6). The version of PW 2 – complainant and that of Kisan PW 4 contradict each

other wherein before the Court he disclosed that there were four people cutting the tree and two were apprehended and the accused was one of the person who was apprehended. From the aforesaid evidence brought on record, it can be seen that the prosecution has failed to establish its case and the version of the prosecution witnesses about the case of illegal cutting of teak tree and the involvement of the accused therein becomes suspicious.

12 Another important aspect which the learned counsel Mr. Jadhav has argued and which according to him, is of great significance, the invocation of Section 333 and the charge faced against the appellant, for committing an offence of voluntarily causing grievous hurt to deter the public servant from his duty. Learned counsel Mr.Jadhav would urge that the evidence brought on record by the prosecution fail to establish that the complainant would fall within the meaning of the term 'public servant' as defined in Section 21 of the IPC.

I would therefore, deal with said submission and its counter, as propagated by the learned APP that the complainant is a public servant.

The complainant has identified himself to be the watchman working in Phansad Forest Wild Life Sanctuary since last five years along with the two other persons, working as watchmen. He admit that no order of appointment is issued to him in writing by the Forest Department. He however, depose

that he put his signature on the Muster Roll daily and his immediate superior is Shri Dandekar (PW 4) and payment is made to him by Shri Dandekar. He has deposed that his salary is Rs.1100/- per month but there is no fixed date of payment, nor any pay slip is issued but his signature is obtained while making the payment. PW 4 has deposed that at the relevant time, he was working as Forester and he admit that three watchmen i.e. Mahadik, Sangle and Dhurup are entrusted with the duty of watchman to guard the forest produce and they are in service of Forest Department and their salary is paid by the Forest Department and he maintain their Muster Roll. In his cross-examination, he state that all the three watchman were on duty in the month of February 1997 i.e. the complainant, Bhaskar and Kisan and he used to mark their presence, firstly at the time of resuming duty and lastly when they were relieved and it was his duty to mark the presence of the persons working in the Wild Life Sanctuary Phansad. In the Muster Roll which he had produced and which was exhibited at Exhibit-26, reflect that the three watchman were on duty on 8th February 1997. However, in the cross-examination, he admitted that the RFO has no documentary evidence to show that the complainant was working as a watchman and there is no order in writing appointing him as watchman and he admit that Exhibit-26 has been prepared subsequently. When document at Exhibit-26 is perused, there is no signature of the watchman but it inscribe a certificate which

read as under :-

“Certified that the labourers were employed actually on the work as per Muster Roll and were paid accordingly. Certified that they have checked the work with the labourers present on 6/2/97 and the work found was carried.

Certified that the work is satisfactory”.

Only the revenue stamps under which where the salary is received, the signature of the watchman can be seen.

13 However, since PW 4 has categorically admitted that the said Muster Roll is prepared later on, it is not to be considered as a document which has been maintained in due course as the Muster of daily wage workers and therefore, the engagement of the complainant and his two associates as watchman on the date of incident is itself doubtful. A certificate issued by the RFO Phansad, Murud came to be exhibited as Exhibit-19. The said certificate again fail to substantiate the case of the prosecution as it only certify that the three watchman, including the complainant, Ramchandra Mahadik were appointed as the persons to protect the Forest and they were entrusted with the duties under the Forest Conservation Act, 1927. However, the said certificate do not contain any mention of the date of appointment and since when they are discharging the said duties. The whole case of the prosecution about the incident, therefore, seem to be doubtful.

14 I need not go into the submission of the learned counsel Mr.Jadhav that they are not public servants since, in terms of Section 21 of the Indian Penal Code which enumerate the persons who shall be deemed to be public servants and as per clause 12, every person in the service or pay of the Government or remunerated by fees or Commission for the performance of any public duty by the Government will be a public servant. The complainant engaged as watchman was receiving payment from the Government as can be reflected from the evidence of PW 4 and PW 7 and since they were engaged in performance of a public duty, being protection of Forest and certificate issued by the RFO depict so, I am not inclined to hold that they are not public servants as is submitted by the learned counsel Mr.Jadhav. However, since it is not conclusively proved by the prosecution that on the date of incident i.e. 8th February 1997, they were discharging the said duty of watchman and the incident as alleged by the complainant had taken place and it is the accused/appellant who had voluntarily caused grievous injury to the complainant while he was discharging his duty, being not substantially proved by reliable evidence, the prosecution case must fail. The appellant who is charged for voluntarily causing grievous hurt, to a public servant from deterring him to discharge public duty being not proved by the prosecution, the appellant is legitimately entitled to an acquittal.

15 Thee Addl. Sessions Judge has failed to look into the various infirmities in the case of the prosecution and barely accepted the testimony of PW 4 Dandekar that both the witnesses were on duty on the said date of incident and has held the prosecution case to be convincingly established through evidence of PW 2, PW 3 and PW 4 and held the accused/appellant responsible for the assault. The Addl. Sessions Judge also fail to take into consideration that the medical evidence also do not support the case of the prosecution as the incident is alleged to have taken place between 10 to 11.30 am and the Doctor who has examined the complainant at 6.36 issued a certificate reflecting fresh bleeding from the gum at the side and in his evidence, he clarified fresh means within two to three hours. This inconsistency and contradiction, it is glaring has been missed in the impugned judgment while recording the guilt of the accused under Section 333 of the IPC. The prosecution case which is doubtful and do not inspire any confidence either on the case of the prosecution and the probability of the incident took place when the complainant was discharging his public duty, the conviction of the appellant under Section 333 of the IPC deserve to be set aside. Necessarily, the sentence imposed on him to undergo RI for three years and to pay fine of Rs.1,000/- in default to undergo RI for one month must necessarily be set aside.

16 Before the final dictum in the present Appeal is pronounced, I would place on record a word of appreciation for the learned counsel for the appellant, Advocate Swaraj Jadhav appointed by the High Court Legal Services Committee who has ably assisted this Court in espousing the cause of the appellant through his well researched submissions. For the able assistance rendered by Shri Jadhav, High Court Legal Services Committee is directed to pay the legal remuneration due to him as per Rules within a period of four weeks from the date of pronouncement of this judgment.

17 Appeal is allowed.

Judgment and order of Conviction dated 20th May 1998 in Sessions Case No. 62 of 1997 is set aside.

The appellant is acquitted of the charge framed against him. Bail bonds stands cancelled.

SMT. BHARATI DANGRE, J