

VISHWANATH
SATYANARAYANA
SHERLA

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

CRIMINAL APPEAL NO.318 OF 2003

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SATYANARAYANA
SHERLA

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State of Maharashtra

... Appellant
(org. Complainant)

Vs.

1. Suresh Hundraj Rupija
30 years, Occu.: Business
R/o. 574, Shukrawar Peth, Pune

2. Ganesh Shivajirao Misal
age 31 years, Occu.: Business
r/o. 366, Shukrawar Peth, Pune

3. Rakesh Suresh Modak
age 24 years, Occu.: Driver
r/o. 792, Ganj Peth, Pune

... Respondent

Mr.S.S. Hulke, APP, for the Appellant – State

Mr.Vikas B. Shivarkar for Respondent Nos.1, 2 and 3

**CORAM: S.S. SHINDE &
SURENDRA P. TAVADE, JJ.**

**JUDGEMENT RESERVED ON: DECEMBER 16, 2021
JUDGEMENT DELIVERED ON: DECEMBER 23, 2021**

JUDGEMENT (PER S.S. SHINDE, J.):

1. This appeal challenges the judgment and order passed by the learned Adhoc Additional Sessions Judge, Pune dated 20th December, 2002, in Sessions Case No.192 of 2001, thereby acquitting the Respondents – accused for the charges under

sections 307, 34 of the Indian Penal Code and under section 37(1), 135 of the Bombay Police Act.

2. The prosecution case in brief is as under:

The complainant Ramesh Belaram Ahuja was running a lottery centre at Pune. On 2.2.2001, in the evening at 4.30pm, 10 to 15 persons alongwith accused No.1 Suresh Rupija came to his shop to collect Gujarat Earthquake Relief Fund. At that time, some altercation took place between the complainant and accused No.1 Suresh and complainant uttered the words addressing the accused 'not to bark like a dog'. Therefore, accused Suresh asked his companions not to take contribution from the complainant and accordingly, they went away.

Thereafter, on 15.2.2001, at about 9.30pm, the complainant after closing his shop, was proceeding towards his house on his motor cycle on Tilak Road when near a furniture shop, a rickshaw came from behind and someone from that rickshaw, entangled a stick in the front wheel of his motor cycle and another person gave him a push due to which the complainant fell down on the road alongwith the vehicle. Suresh Rupija and his friend Ganesh Misal

came there and started abusing him. Suresh reminded the complainant of his words to him - 'a dog', and started assaulting him by giving him blows by knife. Ganesh Misal gave a blow of chopper on him. Complainant Ramesh started running towards his shop, however, the accused chased him. When the complainant started shouting, the accused ran away. Because of the blows, the complainant sustained bleeding injuries. In the meantime, one person Nikhil Gathani stopped his car on the road and admitted the complainant in Harjeevan hospital. Police came to the hospital and recorded his statement at about 1am on 16.2.2001. On the basis of the said statement, offence was registered at C.R. No.65 of 2001 with Swargate Police Station against accused Nos.1 and 2 under sections 307 and 34 of the Indian Penal Code.

On completion of investigation, chargesheet was submitted before the learned JMFC, Court No.8, Pune, however, as the case was triable by Sessions Court, it was committed to the Sessions Court, Pune.

Charge under section 307 and 34 of Indian Penal Code under section 37(1), 135 of Bombay Police Act was framed to

which accused pleaded not guilty and claimed to be tried. After completion of a full fledged trial, the Sessions Court acquitted accused and hence, this Appeal by the State.

3. Learned APP appearing for the Appellate – State submits that the evidence of the complainant, who is the injured witness, inspired full confidence. He has stated in his evidence that there was motive behind the said incident. It is submitted that during the course of investigation, incriminating material has been collected. The evidence of the first informant gets corroboration from the medical evidence and other evidence on record. Therefore, the learned APP submitted that the appeal may be allowed.

4. On the other hand, Mr.Shivarkar, learned Counsel appearing for respondent Nos.1, 2 and 3, invited the attention of this Court to the findings recorded by the trial Court and submitted that the trial Court has taken a plausible view. Hence, the appeal may be dismissed.

5. The prosecution had examined as many as 12 witnesses. PW1 Ramesh Ahuja is the complainant; one Nikhil Ramesh Gathani as PW2; Sangita Ramesh Ahuja, wife of the PW1

complainant, as PW3; Dr.Manohar Sheth as PW4; panch witnesses Mahadeo Kadu as PW5; Kisan Namdeo Samare as PW6; Sunil Kaluram Pawar as PW7; Ashok Maruti Torambe as PW8; Balasaheb Nathoba Ghate as PW9 and Sandip Yashwant Shinde as PW10; PSI Sou. Pratibha Sanjiv Joshi as PW11, who is the Investigating Officer and PI Baburao Dhondiba Patil as PW12.

6. We have given due consideration to the rival submissions with the able assistance of the learned APP appearing for the State and the learned Counsel appearing for the respondents. We have carefully perused the notes of evidence and also the findings recorded by the trial Court. As deposed by PW1 Ramesh Ahuja, on 2.2.2001, one Lalit Jain made a telephone call to him in between 5.30pm to 6pm that they are coming to collect money for Gujarat Earthquake Relief Fund. It was informed that Mr.Lalit Jain and others would come to collect the amount from the informant from his shop. Accordingly, they visited the shop of the PW1. PW1 deposed that he took the receipt book from Lalit Jain so as to find out as to how much money has been contributed by other persons. When he started turning the pages of the receipt book, appellant No.1 Suresh Rupija who was accompanying Lalit Jain uttered the

words “*Swatahapurta Baghayache, Dusryache Baghayache Nahi*”.

In reply, the complainant PW1 Ramesh said to Suresh ‘You and I are not on talking terms and I am talking to Lalit Jain and because he is not speaking about the amount, I am seeking the receipt book, so, don’t talk in between us’. Then, the complainant also said to Suresh, ‘do not bark like a dog’. Thereafter, Suresh asked Lalit and other persons not to collect the contribution from the complainant and then, they left the shop of the complainant.

7. According to PW1, the incident had happened on 15.2.2001. On that date, he closed his shop and started proceeding towards his house in between 9.30pm and 9.45pm. He was going to his house from his shop passing through Tilak road. At that time, one rickshaw came from his backside and after overtaking him, one of the persons from the said rickshaw put a stick in the front wheel of his motor cycle and some other person gave him a push. As a result, he fell down from the motor cycle. At that time, the said auto rickshaw and the passengers in it went ahead. While getting up from the motor cycle, Suresh Rupija and Ganesh Misal came infront of PW1 and both of them gave blows. While giving the said blows, Suresh Rupija uttered some abusive words. Suresh Rupija

gave blows by knife and Ganesh Misal by chopper on him. He has further narrated the incident in detail.

During his cross-examination, he admitted that one criminal case is pending against him and his son for taking forcible possession of land from Advocate Raju Shitole. He also admitted that there is one case pending against his son in law for the offence under section 376 of the Indian Penal Code in the Sessions Court. He admitted during his cross-examination that a criminal case is pending against him in the Court for assault on accused No.3 Rakesh Modak.

It appears that though the alleged incident had taken place on 15th February, 2001, the statement of PW1 was recorded by the police on 16th February, 2001.

8. PW1 is the star witness of the prosecution case. If his evidence is accepted, then, the only question of corroboration to his evidence would arise. We have carefully perused the cross-examination of PW1. It is stated by PW1 that, the vicinity of Tilak road, where the shop of PW1 is situate, is a crowded area and the shops are open upto 11pm to 11.30pm in the night. Importantly, he

did not mention in his statement about Mr.Rakesh Modak, who, according to the prosecution case, was driving rickshaw at the relevant time. It is an admitted position that one case is pending between the said Rakesh Modak (accused No.3) and the complainant (PW1) for assaulting Rakesh Modak. It appears that the case was filed by the said Rakesh Modak who was driving rickshaw at the relevant time. The trial Court has drawn the inference that when such criminal case is pending against Rakesh Modak in the Court, there was no reason for the complainant not to name him in his complaint. However, the complainant/informant has not named Rakesh Modak in his complaint. There is no material brought on record by the prosecution as to what happened in between 2nd February, 2002 till 15th February, 2001 pursuant to the altercation between PW1 and Suresh when they visited the shop of the informant on 2nd February, 2001. Therefore, the trial Court had drawn the inference that considerable time had elapsed between the date on which altercation took place between PW1 and the said Suresh. Importantly, when PW1 had the earliest opportunity to disclose the names to Dr.Manor Shet (PW4), who has first examined PW2, PW2 did not disclose the names of the accused to PW4 Dr.Shet.

In fact, it has come on record that PW4 Dr.Shet made enquiry about the incident and the names of the assailants. Therefore, except the evidence of PW1, which is also vague and doubtful inasmuch as at the earliest opportunity, he did not disclose the name of Rakesh Modak, who, according to him, was driving the rickshaw from which the assailants came and assaulted him.

9. PW4 Dr.Sheth in his deposition had stated that he had enquired about the incident and the names of the assailants, however, he stated that nothing was disclosed to him.

10. We have carefully perused the findings recorded by the trial Court and we are of the view that the view taken by the trial Court on the basis of the evidence brought on record by the prosecution is a plausible view. There is no perversity as such. The findings recorded by the trial Court are in consonance with the evidence on record. The trial Court has recorded the finding that due to previous enmity, PW1 and Rakesh Modak and also other accused, there was every possibility of roping them as accused in the alleged incident.

11. In our considered view, the view taken by the trial Court is a plausible view and, therefore, there is no reason to cause interference with the impugned judgment and order passed by the trial Court. The appeal filed by the State is devoid of any merit and as a result, the same stands dismissed.

(SURENDRA P. TAVADE, J.)

(S.S. SHINDE, J.)