

VISHWANATH
SATYANARAYANA
SHERLA

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

Digitally signed by
VISHWANATH
SATYANARAYANA
SHERLA

Date: 2021.12.23
14:56:36 +0530

CRIMINAL APPEAL NO.553 OF 2003

The State of Maharashtra

... Appellant
(org. complainant)

Vs.

1. Rajendra Sadashiv Wadkar
2. Surendra Sadashiv Wadkar
3. Ravindra Sadashiv Wadkar
4. Santosh Sadashiv Wadkar
5. Kishor Gajanan Kolsekar
all r/a. Revdanda, Tal.: Alibag, District Raigad

... Respondents

Mr.S.S. Hulke, APP, for the Appellant – State
Mr.A.C. Gavnekar i/b Mr.C.G. Gavnekar for Respondent Nos.1 to 5

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

**JUDGEMENT RESERVED ON: DECEMBER 15, 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 Sessions Judge, Raigad Alibag dated 26th November, 2002 in Sessions Case No.41 of 2000, thereby acquitting the Respondents – accused for the charges under sections 147, 148, 307 read with sections 194, 325 read with sections 149, 504, 149 and section 506 read with section 149 of the Indian Penal Code.

2. The prosecution case in brief is as under:

On 8.1.2000, the complainant Arun Vichare, a resident of Revdanda, had gone for dinner alongwith his friend Rajan Madrasi. After having dinner, upon returning from Hotel Surbhi at about 10pm, he saw that the accused were present on the road and the accused Ravindra called the complainant. Therefore, the complainant asked his friend to proceed further. Then, all the accused abused, threatened and assaulted the complainant with knife and inflicted blows on his back and other parts of the body. Blows were also given with the help of iron bar and sticks and because of these blows, the complainant sustained injuries and then, the accused ran away from the spot. After some time, one Sudhir Modak (PW2), who came to the spot, informed the police on phone and, therefore, the police came and took the complainant to Primary Health Centre at Revdanda. The complaint was registered by the police and upon investigation, arrested the accused. Chargesheet against the accused was filed in the Court of Chief Judicial Magistrate. Charge was framed under section 307 of the Indian Penal Code. Since the case was triable by the Court of Sessions, the case was committed to

Sessions Court, Raigad Alibag. After completion of a full fledged trial, the Respondents – accused were acquitted and hence, this Appeal by the State.

3. Learned APP appearing for the Appellant – State invited attention of this Court to the entire notes of evidence and submitted that the evidence of the injured witness PW1 is trustworthy and it gets support from the attending circumstances and medical evidence and, therefore, the trial Court ought to have believed his evidence.

4. On the other hand, the learned Counsel appearing for the contesting respondents invited attention of this Court to the evidence of prosecution witnesses and submitted that the said evidence suffers from omissions, contradictions and improvements. Therefore, the learned Counsel submitted that the appeal may be dismissed.

5. In order to prove its case, the prosecution has examined the complainant Arun Vichare as PW1; Sudhir Dattaram Modak as PW2; PW3 Naresh Patil as a panch witness, who has not supported the case of prosecution; PW4 Medical Officer

Dr.Rajashri Jagtap, who had examined the complainant and issued medical certificate; PW5 Dr.Badgire, Medical Officer, Civil Hospital, Alibag, who had given subsequent treatment to the injured Arun; PW6 Salim Tandel as panch witness who had acted as panch witness, however, he did not support the prosecution case and PW7 Amar Desai, API, who investigated into the case.

According to Arun Vichare, the informant, on 8th January, 2000 at about 10pm, the accused were present on road, when the complainant (PW1) was returning home after having dinner in Surbhi hotel with his friend. At that time, accused No.3 Ravindra Sadashiv Wadkar called the complainant (PW1) by name. The other accused were accompanying the said Ravindra. When PW1 went to them, Ravindra started abusing him. He asked him whether the complainant was bringing cable connection to the village and that if he does so, he will be killed. Then, accused No.1 gave one blow by knife on his back and also on right hand and the other accused having iron rods, grinding handle also gave blows. He had in detail narrated about the said incident after he was taken to Revdanda Primary Health Centre for medical treatment where his complaint was recorded and then, he was

transferred to Civil Hospital at Alibag. However, it appears that the said Rajan Madrasi, who accompanied the informant at the relevant time, has not been examined by the prosecution.

6. During the cross-examination of the complainant, he gave vital admission that he is an accused in a number of cases. He stated that the spot of incident is in a lane near to Alibag – Murud road. He admitted that there is a street light on the said road. He further stated that the distance between Surbhi hotel and his house is about 15 minutes by waking. He further stated that one Sharad Krishna Dandekar had filed application with Revdanda Police Station against him alleging that he used to threaten him. He also admitted that he is an accused in a robbery case at Revdanda. He further admitted that he collected and misappropriated some amount in the name of Kalbhairav Devasthan and a case was pending in that connection against him. He further stated that he was prosecuted in a case of murder of one Nandu Shedge. He further stated that he was prosecuted in a case of alleged attack on Appu Malbari. He was also prosecuted in connection with attack on Satish More and also attack on Purshottam Kalshekar. He admitted that due to assault

by the accused, he was in a semi conscious condition.

7. The prosecution examined Sudhir Dattaram Modak as PW2. He was in his house when he heard the shouts of the injured 'save, save, *melo melo*'. So, he rushed to the said lane from where he heard the shouts. He was the first to see the complainant lying in an injured condition when he asked him to call his friend Gaikwad and one other. However, he did not tell him as to who were the assailants and how the incident had occurred.

8. The other panch witnesses have not supported the case of the prosecution and, therefore, what remains is the only evidence of the informant. As already observed, the evidence of PW2 is of no use to the prosecution inasmuch as he stated that the complainant did not tell him the details about the alleged incident or the names of the assailants.

9. The trial Court after considering the evidence in its entirety, found that the evidence of the complainant Arun Vichare (PW1) is not trustworthy. The trial Court also noted that the complainant was involved in so many criminal cases and, therefore, possibility of assault on him by other persons than respondents cannot be

ruled out. The trial Court upon appreciating the evidence in its proper perspective has given benefit of doubt to the respondents. Upon independent scrutiny of the evidence of the complainant so also other witnesses, in our opinion, the same does not inspire confidence so as to reverse the order of acquittal. In the given set of facts, the evidence brought on record and the attending circumstances, the trial Court has taken a plausible view. We do not find any reason to interfere in the impugned judgment and order and upset the findings recorded by the trial Court.

10. Hence, the appeal filed by the State is devoid of merits and the same stands dismissed.

(SURENDRA P. TAVADE, J.)

(S.S. SHINDE, J.)