

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1250 OF 2007

The State of Maharashtra

.... Appellant

Versus

1. Tanaji Mahadev Solse,
2. Ashok Maruti Solse,
3. Yuvraj Maruti Solse, &
4. Sakhubai Mahadev Solse.

.... Respondents

Ms. A.A. Takalkar, APP for the Appellant-State.

Mr. Omkar Mulekar, Advocate i/b. Niranjan Mundargi, for the Respondents.

CORAM : SARANG V. KOTWAL, J.

DATE : 17th AUGUST, 2021

JUDGMENT :

1. This is an appeal against acquittal filed by the State of Maharashtra challenging the judgment and order dated 4.7.2007 passed by Ad-hoc Additional Sessions Judge-3, Kolhapur in Criminal Appeal No.71/2006 before him, thereby acquitting all the respondents from the

original conviction recorded by the Judicial Magistrate, First Class, Kagal under Sections 324 and 323 read with 34 of IPC. The learned Magistrate had convicted the respondents under Section 323 of IPC and sentenced them to suffer S.I. for six months and imposed a fine of Rs.200/- each; in default, to suffer S.I. for 15 days each. The respondents were also convicted under Section 324 of IPC and were sentenced to undergo S.I. for nine months and to pay fine of Rs.200/- each; in default, to suffer S.I. for 15 days each.

2. The learned Magistrate had, however, acquitted the accused of the charges for commission of offence punishable under Section 504 of IPC. This order was passed by the Judicial Magistrate, First Class, Kagal on 28.9.2006 in Regular Criminal Case No.91/2002 before him.

3. The judgment and order of conviction was challenged by the original accused–present respondents

before the Sessions Court which passed the impugned judgment and order of acquittal in their favour. For the sake of convenience, the respondents are hereinafter referred to as the accused.

4. Heard Smt A.A. Takalkar, learned APP for the State and Shri Omkar Mulekar, learned Counsel for the Respondents.

5. The prosecution case is that, there was a dispute between the first informant Suvarna Nirmale's family and Mahadeo Salse and his brothers' families in respect of an agricultural land bearing Gat No.549 admeasuring about ten acres at village Kasaba Sangav, Taluka-Kagal, District-Kolhapur. The incident took place on 3.8.2002 at about 2:00 p.m., in which the accused gave blows with their weapons on the first informant Suvarna and her sisters-in-law Vijutai, Anandi and Kalpana. It is alleged that accused No.1 Tanaji was having an axe in his hand, accused No.2 & 3 Ashok and Yuvraj were having

sticks and accused No.4 Sakhubai was having scythe. In the incident, the first informant and her sisters-in-law suffered injuries. On that basis, the FIR was lodged. The investigation was carried out and the charge-sheet was filed. The accused faced their trial before the learned Magistrate, as mentioned earlier, resulting in their conviction under the aforementioned sections and acquittal under Section 504 of IPC. As mentioned earlier, that judgment and order was challenged before the Sessions Court wherein the impugned judgment and order was passed.

6. In support of its case, the prosecution examined PW-1 Suvarna Nirmale, who had lodged the FIR. PW-2 Vijutai Nirmale was another injured. PW-3 Anandi Nirmale was also an injured. PW-4 Tanaji Nirmale had not actually seen the incident but he came to know about the incident subsequently. PW-5 Shashikant Aawale was panch for the spot panchnama. The spot panchnama was exhibited at

Exhibit-40/C. PW-6 Dr. Mukund Sadigare was the Medical Officer, attached to Rural Hospital, Kagal, who had examined the injured Suvarna, Vijutai and Anandi. Their medical certificates were produced at Exhibits-44, 45 and 46. PW-7 Vilas Zanzge was a panch for the panchnama under which the weapons were allegedly recovered at the instance of the accused Tanaji and Ashok. He, however, had turned hostile and had not supported the prosecution case. The investigating officer is not examined as he was reported to be dead.

7. The defence of the accused was of total denial. It is their case that to get possession of the disputed land this criminal case was filed against them.

8. PW-1 Suvarna Nirmale had lodged the FIR. While describing the incident, she has stated that, at the time of incident the accused started abusing her and her sisters-in-law tried to stop them but the accused got annoyed and started beating the first informant and

others. According to her, accused No.1 Tanaji gave a blow of an axe on her left wrist. Accused No.2 Ashok gave a blow with stick on Vijutai's right leg. Accused No.3 Yuvraj gave a blow of stick on Kalpana's waist. Anandi also suffered injury on her right hand. She has further stated that accused No.4 Sakhubai tried to give a blow with scythe but Vijutai prevented her from giving any blow. She has produced her FIR at Exhibit-34. She had identified the weapons produced before the Court.

. In her cross-examination, she had admitted that there were lands of Nimbalkar, Mali and Jadhav adjacent to the spot of incident, but, she has stated that nobody else was present at the spot. She denied the suggestion that they suffered injuries as they fell down on a slippery land. Importantly, she admitted that she had stated about accused No.2 Ashok giving blow to Vijutai on her right leg by stick; for the first time in the Court. It was not mentioned in the FIR. She has also admitted that she did

not tell the police at the time of lodging of FIR that the accused assaulted Kalpana with stick on her waist. She had also not told the police about the accused Sakhubai's attempt to commit assault with scythe.

9. PW-2 Vijutai Nirmale has described the incident. She has stated that accused No.1 Tanaji gave a blow from the backside of his axe on the left wrist of PW-1 Suvarna, because of which she sustained bleeding injury. This witness herself was assaulted by accused No.2 Ashok with stick on her waist and accused No.3 Yuvraj assaulted Anandi on her hand. She has not spoken anything about participation of accused No.4 Sakhubai, except that she was having a sickle in her hand. She had also admitted that there were adjacent lands belonging to the persons mentioned by PW-1 Suvarna.

10. PW-3 Anandi Nirmale has also described the incident. She has stated that accused No.1 Tanaji assaulted PW-1 with backside of the axe on her left wrist, back and

left leg. Accused No.3 Yuvraj assaulted this witness with stick on her left thumb and shoulder and accused No.2 assaulted Kalpana on her waist by stick. Accused No.3 Yuvraj also assaulted Vijutai by stick.

11. As mentioned earlier, PW-4 Tanaji Nirmale had not seen the incident and, therefore, his evidence is not material.

12. The spot panchnama does not reveal anything more except that the grass was trampled at the spot of the incident.

13. PW-6 Dr. Mukund Sadigare, the Medical Officer, had described the injuries suffered by the witnesses. They are as follows:

(1) Suvarna Nirmale :

- [i] Tenderness over both scapular regions,
- [ii] Tenderness over right thigh, and
- [iii] Abrasion over left wrist dorsally.

(2) Vijaya Nirmale :

- [i] Tenderness over right shoulder region,
- [ii] Tenderness over right thigh.

(3) Anandi Nirmale :

- [i] Tenderness over left thumb.
- [ii] Tenderness over left shoulder.

14. Thus, it can be seen that there is some inconsistency between the versions of these eye witnesses and there is definite exaggeration on their part. PW-1 Suvarna has stated that PW-2 Vijutai was assaulted by accused No.2 Ashok on her right leg, whereas PW-2 Vijutai herself has not stated so and she has mentioned that accused No.2 Ashok had given blow with stick on her waist.

15. PW-1 Suvarna has stated that accused No.3 Yuvraj had given a blow on Kalpana's waist. PW-2 Vijutai has not supported this version and PW-3 Anandi had attributed that role to accused No.2 Ashok. Kalpana herself

was not examined.

16. As far as the injury to Suvarna's wrist is concerned, these witnesses have attributed the injury to accused No.1 Tanaji and they have stated that accused No.1 had used back side of axe. PW-2 has stated that PW-1 Suvarna had suffered bleeding injury, but the medical evidence shows that it was a minor abrasion.

17. The learned Sessions Judge while giving reasons, in paragraph-7 of the judgment has specifically referred to these contradictions *interse* between the witnesses and also has referred to exaggeration in their evidence. The role and presence of accused No.4 Sakhubai is also not consistently deposed by all the witnesses. The learned Judge has considered the possibility that accused were implicated falsely because of previous dispute.

18. The learned Judge has rightly discarded the version of PW-4 Tanaji as he had not seen the incident.

Recovery of weapons is also not supported as the pancha had turned hostile. There was a common statement of two accused. The evidence of recovery of weapons was rightly discarded. The learned Judge has committed only one error on facts. He has observed that the complainant herself had not stated about accused No.1 causing injury on her hand. In fact, she has stated that accused No.1 had caused injury on her left wrist. However, barring this error, other reasoning given by learned Judge in acquitting the accused is sound. The view taken by the Appellate Court is a possible view. The judgment and order of acquittal recorded by the learned Judge cannot be said to be perverse.

19. The learned Magistrate had herself disbelieved these witnesses as far as the offence under Section 504 of IPC is concerned.

20. Therefore, I do not see any reason to interfere with the learned Sessions Judge's judgment and order

allowing the appeal of the accused and acquitting them of the charges for commission of the offence punishable under Sections 324 and 323 read with 34 of IPC.

21. In view of this discussion, there is no ground made out for allowing this appeal and the appeal is accordingly dismissed.

(SARANG V. KOTWAL, J.)

Deshmane (PS)