

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.69 OF 2014

State of Maharashtra,
 Through Police Station – Duggipar,
 Ta. Sadak/Arjuni, Dist. Gondia.

..... APPELLANT

// VERSUS //

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| 1. Rajkumar s/o Namdeorao Hedau,
Aged about 35 yrs, R/o. Sadak Arjuni,
Distt. Gondia. | |
| 2. Ravindra s/o Gajanan Bramhankar,
Aged about 36 yrs, R/o. Kewalwada,
Tq. Sadak/Arjuni, Dist. Gondia. | (Dead)
(Appeal is abated against
respondent no.2 as per
Court's order dtd.14/06/22) |
| 3. Mohan s/o Shrawan Patre,
Aged about 36 yrs, R/o. Sadak/Arjuni,
Dist. Gondia. | |
| 4. Yograj s/o Sakharam Lokhande,
Aged about 52 yrs, R/o Sadak/Arjuni,
Tah. & Dist. Gondia. | |
| 5. Gowardhan Ishwardas Bansod,
Occupation – Service, aged 47 years,
Resident of Kesalwada Post and
Tahsil Sadak Arjuni, Gondia. | (Respondent no.5 is added
as per court's order dated
07/06/2022)
.... RESPONDENTS |

 Mr. A. R. Chutke, APP for appellant.
 Mr. S. Kadam, Advocate h/f Mr. Rajnish Vyas, Advocate for respondent no.1.
 Ms. S. H. Bhatia, appointed Advocate for respondent no.5.

CORAM : AVINASH G. GHAROTE, J.
DATED : 06/07/2022

ORAL JUDGMENT :

1. Heard Mr. Chutke, learned APP for the appellant/State and
 Mr. Kadam, learned counsel for respondent no.1. Respondent no.2 has

passed away. None appears for respondent no.3 and 4, though served. Since respondent no.5 the complainant was unrepresented, Ms. Bhaita, learned counsel has been appointed to represent him.

2. The incident is dated 15.7.2009 at about 3.00 p.m. at village Kesalwada, field Survey No.250/1 of which the respondent no.5 claimed to be in possession at the relevant time. It is alleged that the respondent no.1, owned the adjacent field, where at the relevant time sowing work of paddy was going on in his field. It is further alleged that the respondent nos.1 to 4 along with 15 to 20 persons had come to the Bandhis (compartments created for sowing paddy crops) in the field, Gut No. 250/1 and had damaged the paddy saplings by the help of tractor and also abused the respondent no.5 by using caste name and given threats. It is stated that the incident had been witnessed by Shalikram - brother of complainant (PW 7), Ishwardas - father of complainant (not examined), Premlal Bansod - cousin brother of the complainant respondent no.5 (not examined) and Dinesh - nephew of complainant (not examined).

3. What is material to note, is that out of the aforesaid four persons who were claimed to have present on the spot at the time of the incident, only Shalikram has been examined as PW-7. It is therefore apparent, that even according to PW-1 the complainant, the incident has

not been witnessed by PW-2 Sitkura, PW-3 Gopichand, PW-5 Sukram. However, these persons have been examined as witnesses. This would clearly go to indicate that persons who even as per the complaint made by the PW-1 were not present on the spot, have been examined. The evidence of PW-2 Sitkura Aswale, PW-3 Gopichand Bansod, PW-5 Sukram and PW-7 Shalikram would indicate that in their examination-in-chief, any statements which may have been recorded by the police have not been put up to them. That apart, the record clearly indicates that PW-2 Sitkura, has turned hostile and therefore, his evidence is of no assistance to the prosecution case. Insofar as PW-3 is concerned, he is admittedly the cousin uncle of the complainant and is also accused in a criminal case filed by respondent no.1 Rajkumar at Sadak Arjuni and therefore, would naturally be a person, interested in implicating the respondent no.1 Rajkumar. In his cross-examination, the relationship has been specifically admitted. He also admits that since the respondent no.1 Rajkumar had lodged a report against the complainant/respondent no.5 on the said date, therefore a complaint had been lodged by the complainant/respondent no.5/PW-1 which would indicate that the complaint by the PW-1 was merely a counterblast to the complaint lodged by respondent no.1 Rajkumar which was in earlier point of time.

4. PW-4 Gajanan Shahare is the Head Constable, who has registered

the complaint on the written report of PW-1. PW-5 admits that there was longstanding quarrel between the PW-1 Govardhan and the accused Rajkumar. In his cross-examination, he admits that the accused no.1 Rajkumar was resident of Sadak Arjuni and was the headmaster in the school. He further admits that he was the resident of Wadegaon and was having good terms with the complainant who was the teacher in a school at Gondia and on the day before the evidence was to be recorded and on the day of recording of the evidence also, he had come with the complainant who had paid his travelling expenses and had also consultations about the case with the complainant, which would make his testimony suspect. There are material omissions which have come in his cross-examination, one of them being that though he has stated to the police that accused Rajkumar/respondent no.1 had crushed the paddy crops of the complainant by driving a tractor and he had seen the incident after coming near to the spot, the same was absent from his statement.

5. The evidence of PW-6, is telling, though, he has been declared as a hostile witness, in his cross-examination, it has come on record that his field was at a distance of 50 ft. from the field of respondent no.1 and though, he admits that there was a quarrel going on between the complainant and labourers, he specifically states that at that time

accused nos.1 to 4 were not present and there was no altercation between the accused and the complainant. He also specifically states that on the date of the alleged incident Sukharam Pathode PW-5, Gopichand Bansod PW-3 and Shalikram PW-7 were not present on the spot at all. The testimony of PW-6 coupled with that of PW-1, would indicate the absence of PWs- 3, 5 and 7 from the spot and therefore, reliance rightly has not been placed by the learned Sessions Court upon their testimony. PW-7 as indicated above, according to PW-6 was not present on the spot. Even then, if his testimony is perused, it is alleged that the complainant had come to the house from the school at about 1.30 p.m. In his cross-examination, he has categorically admitted that PW-1 Govardhan had gone to school on 15.7.2009. PW-1 states that the school timing was 10.45 a.m. to 4.45 p.m. There is no material brought on record by the prosecution as to how the claim of PW-1 of being on the spot at 3.00 p.m. was sustainable. No record has been summoned from the Ramabai Ambedkar High School, Gondia to indicate whether the complainant/PW-1 had applied for leave and if so whether it was sanctioned, considering that the school was working on 15.7.2009, as per the testimony of PW-7. The above discussion would clearly indicate that the presence of PWs- 3, 5 and 7 on the spot of the incident, on the fateful day was highly doubtful. That apart, even the presence of the PW-1 on the spot of the incident on 15.7.2009 in absence of any material

regarding any leave having been obtained by him and the same having been granted becomes suspect. Though, it is claimed that there were several other persons present on the spot who had witnessed the incident, there is no single person examined who can be called as an independent non interested witness. Even the evidence of PW-1 indicates absence of PWs- 3, 5 and 7 from the spot, as in his examination-in-chief he does not name them to the persons present on the spot.

6. The above analysis of the evidence which has come on record would indicate that the prosecution has not established the occurring of the alleged incident, which position has also been so held by the learned Sessions Court upon sifting through the evidence. Nothing has been brought to my attention, to digress from the view taken by the learned Sessions Court, considering which, I do not find any merit in the appeal. The same is accordingly dismissed.

7. Ms. Bhatia, learned appointed counsel for the respondent no.5 be paid the appropriate fees as per the schedule.

(AVINASH G. GHAROTE, J)

Sarkate.