

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

7 CRIMINAL APPEAL NO.57 OF 2020

BABA PANDHARI GADEKAR

VERSUS

GANPATI VENKAT GADEKAR AND OTHERS

...

Mr. A.S. Barlota, Advocate for appellant

Mr. A.V. Deshmukh, APP for respondent No.6

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CORAM : SMT. VIBHA KANKANWADI AND
Y.G. KHOBRAGADE, JJ.

DATE : 13th MARCH, 2023

ORDER :

1 Present appeal has been filed under Section 372 of the Code of Criminal Procedure, 1973 by the informant. Present respondent Nos.1 to 5 are the original accused persons, who stood prosecuted before learned Judicial Magistrate First Class, Ausa, Dist. Latur in Regular Criminal Case No.111/2011, for the offence punishable under Section 326, 143, 147, 148, 324, 323, 504, 506 read with Section 149 of the Indian Penal Code and under Section 135 of the Bombay Police Act. After the trial, the learned Magistrate held them guilty for committing offence under Section 143, 147,

148, 326, 324, 323 read with Section 149 of the Indian Penal Code and sentence has been imposed. The original accused persons challenged their conviction in Criminal Appeal No.1/2017 before Sessions Court, Latur. The appeal was heard by learned Additional Sessions Judge, Latur and it came to be allowed on 28.11.2019, thereby setting aside the Judgment of the Trial Court and acquitting the accused persons from all the charges. Hence, this appeal under proviso to Section 372 of the Code of Criminal Procedure.

2 Heard learned Advocate Mr. A.S. Barlota for the appellant and learned APP Mr. A.V. Deshmukh for respondent No.6, at the stage of admission. It will not be out of place to mention here that merely because the First Appellate Court has set aside the Judgment and order passed by the Trial Court, it does not require the present appeal to be admitted. It will have to be considered, as to whether the First Appellate Court was justified in allowing the appeal and whether case is worth admitting.

3 With the able assistance of the learned Advocate for the appellant and learned APP we have considered the evidence, which was before the Trial Court, which has been assessed by both the Courts below. Perusal of the said evidence would show that the prosecution has examined in all nine witnesses to bring home the guilt of the accused. PW 3 Baba

Pandhari Gadekar – the present appellant is the informant/injured, PW 4 Mainabai Pandhari Gadekar, PW 5 Usha Babasaheb Gadekar, PW 7 Gayabai Pandurang Mali are the eye witnesses. PW 8 Dr. Gangadhar Laxman Anmol was examined to prove the medico legal certificate. PW 2 Vinayak Narayan Bhojane and PW 6 Chandrakant Damodar Gadekar are the panch witnesses. PW 1 Haribhau Dnyanoba Kate was also posed as eye witness, but he has turned hostile. With this background, it is then required to be noted that what was the prosecution story and what evidence was brought. PW 3 Baba Pandhari Gadekar has stated that he has 20 Gunthas of land from Gat No.227 at village Hipparga. He had purchased it from one Devidas Laxman Gadekar. Accused No.1 Ganpati had purchased land from Dnyanoba Gadekar, who was the paternal uncle of informant. He has not given the year when those sale transactions had taken place, but then he says that the incident had taken place around 10.30 a.m. on 23.03.2011 in his field. He had taken she buffalo for giving water to her to drink. He says that the accused persons came there and started asking, as to why he has come there and the said land is purchased from his paternal uncle. He has no connection with the land. He has then assigned the role that accused No.1 had assaulted him by axe on his head, accused No.4 Hanumant assaulted his both hands and both legs by hoe, accused Nos.2, 3 and 5 assaulted him by stick on his legs, waist and back, as a result of which he sustained severe injuries and after hearing his cry his

mother Mainabai and wife Usha went there. The accused persons pushed his mother and assaulted his wife on her back by stick. After giving threat the accused went from the said spot. Informant was then taken by his mother and wife to Police Station and then police referred him to Civil Hospital. According to him, he was admitted to Civil Hospital, Latur for about 4-5 days. In the cross-examination he has stated that accused No.1 has purchased land from his uncle to the extent of 31 Gunthas on 12.04.1988. He had purchased the land at Hipparga in 1986. He then says that 02 acres of land has been purchased by him in four pieces. He has also stated that his father had filed suit for partition in 2009 against his uncle Dnyanoba. In categorical terms he says that he was under impression that the land, which has been purchased by accused No.1 from Dnyanoba, belongs to him. Further, as regards boundaries to the spot is concerned, he admits that the land of the accused No.1 is towards Southern side of the spot. He then states that no third person was present at the time of incident. He then admits that due to the dispute in respect of land there is enmity between him and the accused. Important point to be noted is that he has not given the relationship between accused Nos.3 to 5 on one part and accused Nos.1 and 2 on the other part. It can be seen that accused No.2 is the son of accused No.1 but the other relationship cannot be gathered. Why accused Nos.3 to 5 should have any kind of motive to commit crime against the informant, is a question, which

has not been answered. No doubt, there is a suggestion by the accused persons that since accused Nos.3 to 5 are the well wishers of accused Nos.1 and 2, they have been falsely implicated. PW 3 Baba has denied this suggestion, but then he has not given as to why the accused Nos.3 to 5 could have participated and what was their common object to take part in the commission of the crime. Mere presence of a person cannot attract Section 149 of the Indian Penal Code. One more factor to be noted that though he has tried to contend that the incident had taken place in his field, where the accused had come, the prosecution has not invoked Section 452 of the Indian Penal Code. With the background that he was under the impression that the said piece of land belongs to him, is not sufficient. Herein this case, the spot panchnama has not been proved, as the panch to the spot panchnama has turned hostile. The 7/12 extract of the land appears to be not collected and/or it was not exhibited by the learned Trial Judge. There is no evidence to show that there was arrangement of water in the land of the informant, so that he can take his she buffalo for drinking water. Another fact to be noted is that he has not stated in his examination-in-chief that he had gone along with his mother and wife to the land, then the question arises, how all of a sudden the mother and the wife would come at that place.

she stated that the incident has taken place around 10.00 a.m. about two years prior to her deposition in their field. She says that she, her daughter-in-law and son were doing work in the field. The accused persons went there and started asking, as to why her son has filed the suit against them. Then, she has assigned role to each of the accused. She states that she was assaulted by the accused by kicks and fist blows. She does not say that her daughter-in-law Usha was assaulted by accused persons. In the cross-examination she has stated that she is unable to give the survey number. Informant was at a distance of about 50 meters from the place where she was working. Thus, it can be seen from her testimony that she is giving a different reason. There was no whisper about the litigation in the testimony of PW 3 Baba Gadekar. Further, it has come on record from the cross-examination of the informant that the said suit which was filed against the accused was by informant's father and that too in the year 2009. The incident is stated to have taken place in 2011. There appears to be no proximity between the two incidences. PW 5 Usha Babasaheb Gadekar is the wife of informant. She has stated that she along with her mother-in-law had gone to the field and husband had gone to near well to fetch water. The accused persons went there and started asking to her and her husband as to why he had filed the suit. She then says that her sister-in-law Gayabai came there and the accused persons fled away. PW 7 Gayabai Pandurang Mali is

the sister of the informant. She then states that when she heard the hue and cry, she went to the spot. Gayabai's presence was not disclosed by PW 3 Baba. Thus, it can be seen that except the interested witnesses prosecution had not examined any other witness. They all have admitted that there was litigation pending and, therefore, the possibility of false implication cannot be ruled out.

5 PW 8 Dr. Gangadhar Laxman Anmol is the Medical Officer, who examined the informant. He has stated that from 23.03.2011 to 31.03.2011 informant was admitted in the hospital. There were 08 injuries, those were noted by him. Fracture was found to the left hand. In cross-examination he has admitted that the injuries noted by him on the person of informant are possible if a person falls on blunt object. Therefore, though the injuries were proved; yet, when only interested persons are examined, reliance cannot be placed.

6 The other witness, who was examined by prosecution, is PW 1 Haribhau Dnyanoba Kate, in whose auto rickshaw the informant was allegedly shifted to Police Station, but he has turned hostile. PW 6 Chandrakant, who is sated to be the panch to the memorandum panchnama has also turned hostile. Therefore, though the weapons were seized in the

matter in absence of proof under Section 27 of the Indian Evidence Act those weapons cannot be connected to the accused and the crime.

7 It is the cardinal principle that the prosecution has to prove the offence beyond reasonable doubt. With the discrepancy i.e. contradictions in the testimony of the eye witnesses, mainly in respect of the motive and also for the reasons of false implication the learned First Appellate Judge has rightly interfered in the matter. It was not only because the second view was possible; the second view was taken by the Appellate Court, but it was due to the non appreciation of evidence by the learned Trial Judge the Appellate Court was required to interfere. Under such circumstance, no case is made out for further re-appreciation of the evidence under Section 372 of the Code of Criminal Procedure. Appeal stands dismissed, at the admission stage.

(Y.G. Khobragade, J.)

(Smt. Vibha Kankanwadi, J.)