

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

CRIMINAL APPEAL NO.105 OF 2006

Bajarang Nivrutti Desai

Age-30 years, Occu.:

Agriculturist, R/o.Ane,

Tal.Karad, Dist.Satara

..... Appellant.

(Orig.Complainant)

Versus

1. Shyamrao Ramchandra Desai

Age-26 years, Occu.:

Agriculturist, R/o.Ane,

Tal.Karad,Dist.Satara.

2.State of Maharashtra

... Respondents.

(Resp.No.1-Orig.Accused)

Mr Ashish Satpute, an appointed Advocate from legal aid for Appellant.

Mr Sharad T. Bhosale i/b Dilip Bodake for respondent No.1.

Ms MR Tidke, APP for respondent No.2 State.

Coram : R.N.Laddha,J.

Reserved on : 01.09.2023.

Pronounced on: 26.09.2023.

Judgment :

This Appeal is directed against the Judgment and Order passed by the learned Judicial Magistrate, First Class, Karad, Satara, in Regular Criminal Case No.235 of 1999, on

13.07.2004, whereby, the accused/respondent No.1 came to be acquitted of the offence punishable under Sections 324, 504 and 506 of the Indian Penal Code (for short 'IPC').

2. The facts which are essential to be exposited for the disposal of this appeal are that, on 27.06.1999 at about 5:30 pm, the complainant- Bajarang Nivrutti Desai and his brother Laxman Nivrutti Desai (PW2) were working in their field when the accused arrived. The accused initiated a quarrel with the complainant and attacked him with a sickle on his head. Additionally, he bit Laxman's right hand. Subsequently, Santosh Garud (PW3) intervened and rescued the complainant from the clutches of the accused. Afterwards, the complainant and his brother approached the Kole Police outpost and attempted to lodge a report.

3. It is alleged that the police constables at the said outpost refused to record the complaint and threatened the complainant and his brother. They also asked them to avail treatment at the government hospital and drew them out of the police outpost. Thereupon, the complainant and his brother went to a government hospital for treatment. While returning home, they met their father on the way and narrated the incident about the assault to them. On their way

back home, near the bridge of Kole-Ane, the accused and his relatives from village Belvade intercepted them. The complainant's father asked them about the incident, but in response, the accused assaulted him with a stick on his left leg, chest, back and shoulder. At that time, the relatives of the accused caught hold of the complainant and his brother. They all threatened and abused them. After hearing the commotion, Anil Desai, Mohan Desai, and other villagers rushed there and rescued the complainant and his brother. The accused and his relatives fled away. In this incident, the complainant's father sustained bleeding injuries.

4. Further, it is the case of the complainant that on the next day, at about 9.00 a.m., he, along with his brother and father, went to the police station to lodge a complaint against the accused. However, the police recorded a non-cognizable crime and advised them to visit the government hospital for treatment. After receiving treatment at the government hospital, they returned to the police station with injury certificates to file a complaint. Unfortunately, the police did not take any cognizance or action against the accused. Consequently, the complainant was constrained to lodge a private complaint in the Court of learned JMFC, Karad, on

03.08.1999 for the offences punishable under Section 324, 325, 504 and 506 IPC.

5. The learned JMFC issued a process against the accused, Shamrao Ramchandra Bhise. After recording evidence before the charge, the learned trial Court framed the charge against the accused for the offences punishable under Sections 324, 504 and 506 IPC. The accused abjured his guilt and claimed to be tried.

6. During the course of the trial, the learned trial Court recorded the evidence of Bajrang Nivrutti Desai (PW 1), complainant; Laxman Nivrutti Desai (PW 2), brother of the complainant and injured; Santosh Ramchandra Garud (PW 3), an eye witness to the incident; Nivrutti Sidu Desai (PW4), father of the complainant and injured; Dr Smita Prabhakar Kasar (PW 5), a Medical Officer at Cottage Hospital, Karad; Dr Jayant Govind Dabhole (PW 6), a Medical Officer at Primary Health Centre, Kole.

7. As the prosecution closed its evidence, the accused was questioned under Section 313 of the Code of Criminal Procedure, 1973, as to the incriminating circumstances found in the evidence of the prosecution witnesses, and he denied

them as false. The accused did not lead any evidence in his defence.

8. After appraisal of the evidence and the material on record, the learned Magistrate acquitted the accused. Being aggrieved and dissatisfied with the impugned judgment of acquittal, the complainant has preferred this appeal.

9. Mr Satpute, learned Counsel appearing on behalf of the Appellant, submitted that the learned trial Court committed a manifest error in acquitting the accused/respondent No.1. He submitted that the complainant and the injured have given a vivid account of the assault which is amply corroborated by the medical evidence. His main contention is that the testimonies of the eyewitnesses/injured, in which they explicitly stated the acts of assault by the accused, are clinching evidence of his guilt and cannot be disregarded.

10. Mr Sharad Bhosale, the learned Counsel appearing on behalf of respondent No.1/accused, made various submissions countering the arguments put forward by the appellant. To refute the allegations, the learned Counsel has taken this Court through the canals of evidence and argued that the prosecution's claims are baseless. According to him, the

allegations of assault by the accused are improbable and highlight the complainant's false claims. In his view, it was the handiwork of the complainant's party due to animosity between both families. The medical evidence does not render corroboration to the exaggerated account of the alleged injured persons. Additionally, there was an unexplained delay in lodging the complaint. No independent witnesses, though available, were examined by the prosecution. The learned Counsel asserts that there are no faults with the impugned judgment.

11. Before asserting the intrinsic worth of the testimonies of the alleged injured witnesses, it is necessary to examine the evidence of the prosecution witnesses briefly.

12. Bajarang Nivrutti Desai (PW 1), complainant, informed the Court that on 27.6.1999, he and his brother were working at their field. At about 5.30 p.m., the accused approached him, raised a quarrel, abused him, and attacked him with a sickle, causing a bleeding head injury. At that time, his brother Laxman (PW 2) managed to snatch the sickle from the hands of the accused, but the accused bit his right hand. He stated that Santosh Garud was at the scene and pacified the quarrel. The complainant (PW 1) and his brother

(PW 2) went to the Kole police outpost to file a complaint. However, the police constables on duty refused to accept their complaint and instead advised them to go to the government hospital. After that, they went to the government hospital for medical treatment.

13. The complainant (PW 1) testified that after receiving medical treatment while returning home, they met their father on the way. When they reached the Kole-Ane river bridge, the accused and his relatives from Belavade village intercepted them. The complainant's father then enquired why the accused had assaulted his sons. Thereupon, the accused struck his father's leg, chest, back and shoulder with a stick, which led to bleeding injury on his leg. He claimed that Anil Desai and Mohan Desai arrived at the scene and rescued them from the clutches of the accused and his relatives.

14. Laxman Nivrutti Desai (PW 2), who is the brother of the complainant, injured, an eyewitness to the incident, seeks to lend support to the version of Bajrang, the complainant (PW1). After appraising the Court about the incident, he affirmed that he had sustained a bite injury on his right hand. He further testified that the accused had assaulted them in the field at 5:30 p.m. and subsequently, on the bridge at about

11:30 p.m.

15. Santosh Garud (PW3), who is related to both the accused and the complainant, testified that on 27.6.1999 at about 5:30 p.m., he was working with the complainant and his brother in a field when the accused assaulted the complainant with a sickle, injuring him on the head. The accused also bit Laxman on his right hand. After the incident, at about 5:30 p.m., Santosh went home.

16. Nivrutti Desai (PW 4), the father of the complainant, deposed that on 27.6.1999, he learnt that the accused had assaulted his sons. He went to search for them and met his sons Bajrang and Laxman near village Ane. They narrated the incidents that occurred in the field and at the police station. On their way back home, around 11:30 p.m., the accused and his relatives arrived and attacked Nivrutti with a stick, causing a bleeding injury on his knee. At that time, the relatives of the accused held Nivrutti's sons captive. The accused and his relatives threatened and abused them. When the villagers arrived at the scene, the accused and his relatives fled.

17. According to Dr. Jayant Dabhole (PW 6), on 27.6.1999, he examined the complainant (PW 1) and found a contused

lacerated wound on the right side of the occipital region. The medico-legal certificate (Exh.30) came to be proved in his evidence.

18. This Court has carefully considered the submissions made at the Bar and perused the material placed on the record.

19. The criticism that has been advanced against the prosecution witnesses is that they are relatives of the complainant, making them interested witnesses. As a result, their version does not deserve acceptance. It is an admitted fact that Nivrutti (PW 4) is the father of Bajrang (PW 1), the complainant, and Laxman (PW 2), while Santosh Garud (PW 3) is a maternal grandson of Nivrutti. There can be no cavil over the proposition that the relationship may put the Court on guard, and the evidence is required to be appreciated with greater care and caution. But, the testimony of witnesses who happens to be relative cannot be thrown overboard on that count alone.

20. In the instant case, it is alleged by the complainant that he had gone to the police station on 27.6.1999 and 28.6.1999, but the police did not take cognizance or any

action. As a result, the complainant was constrained to file a private complaint. Nevertheless, there is no evidence available to substantiate the claim that the police refused/declined to accept the complaint and take action against the accused.

21. According to the deposition of Bajrang (PW 1), Laxman (PW 2) and Nivrutti (PW 4) and the complaint, Anil Desai and Mohan Desai rescued them from the clutches of the accused. However, the complainant has not examined them.

22. Furthermore, the complaint does not mention the names of the relatives of the accused who allegedly caught hold of Bajrang and Laxman while the accused was beating Nivrutti. These names were neither disclosed in their evidence nor made them accused in the present case.

23. The natural and independent witnesses who were allegedly present at the time of the incident were not examined by the complainant. The prosecution witnesses claimed that the accused entered the field of the complainant and suddenly assaulted them. However, the complaint does not mention the exact motive behind the assault or any alleged claim over a disputed way.

24. During the cross-examination of Nivrutti (PW4), it was revealed that he started returning to his village with his bullock cart after 3:00 p.m. on the day of the incident. Santosh (PW 3) and his son were with him in the bullock cart, and they reached the village within an hour. However, Santosh's evidence demonstrates that he had already left for home from the agricultural land immediately after the first incident. According to Bajrang and Laxman, their father, Nivrutti, was not present in the field. However, Nivrutti admitted in his cross-examination that he went for sowing the land along with his bullock cart and impediments with him, reached the field at about 9:00 a.m., completed his work at about 3:00 p.m., and thereafter started returning to his village along with his bullock cart. At that time, Santosh and his son were with him in the bullock cart, and they reached the village within an hour. However, according to Santosh, Bajrang and Laxman; Nivrutti was not present in the field at the time of the incident. Bajrang and Laxman stated that they met Nivrutti on their way home while returning from the hospital. The evidence of Santosh shows that after the incident at about 5:30 pm, which occurred in the field, he left for home while Bajrang and Laxman went to the police station. These circumstances create doubt on the testimony of

the prosecution witnesses.

25. In order to appreciate the question, it will be relevant to reproduce the injury certificate (Exh.14).

“This is to certify that Nivrutti Sidu Desai came to this hospital for treatment on 28-6-99. H/O-Alleged assault at about 11.30 PM on 27-6-99. O/E (1) CLW of size 4 x ½ x ½ cm on Lt. Leg 5 cm below knee jt. bleeding + (2) Contusion of size 7 x 2 cm present on back scapular region on Rt. Side 2 d 2cm below 1st one. (3) Contusion on Lt. chest wall mammary region, Tenderness + (4) Contusion on 7x 2 cm present on Lt. side back region. (5) Contusion on Lt.region shoulder+ 4 x 2 cm Tenderness +. Cause of injury- Hard and Blunt object. Age of injury- within 24 hours.

Dr.Ms.S.P. Kasar
Medical Officer,
Cottage Hospital,Karad.”

The evidence of Dr Smita Kasar (PW 5) is not in agreement with the injury certificate (Exh.14). The relevant portion of her evidence is reproduced herein below.

“The injury at Sr.No.1 in M.L.C. certificate was below the knee joint of left leg. The injury was bleeding injury. The size of the injury was 4 x ½ x ½ cm. The injury of sr.no.2 is on the chest on the left side and the injury was invisible injury. There were pains to the patient because of this injury. The injury at sr.No.3 was on the scapular region of

left side. The injury was invisible injury. The injury at sr.No.4 is on the back and was invisible injury. The injury No.5 is on the left shoulder and there was contingent.”

(sic)

26. Additionally, the complaint does not specify the exact words of abuse that the complainant claims to have used by the accused. There is nothing on record to show that the accused threatened the complainant and his father with criminal intimidation. There are many contradictions and omissions in the evidence of the prosecution witnesses.

27. It is a principle that has been established in law that when on the basis of prosecution evidence, two possibilities are created, out of which one is pointing out the innocence of the accused; he is undoubtedly entitled to the benefit of doubt.

28. The trial Court has discussed the entire evidence in detail and, in the opinion of this Court, has rightly acquitted the accused/respondent No.1.

29. Moreover, it is a settled principle in law that an acquitted individual benefits from a dual presumption in their favour. The first presumption stems from the fundamental

tenet of criminal jurisprudence that every individual is presumed innocent until proven guilty by a competent Court of law. The second presumption arises post-acquittal, where the individual's innocence is not only presumed but further fortified, validated, and amplified by the verdict of the trial Court.

30. Resultantly, this Appeal fails and is hereby dismissed.

[R.N.Laddha, J.]