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IN THE HIGH COURT OF JUDICATURE AT BOMBAY CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.233 OF 2015

The State of Maharashtra
Through Police Station,
Chandwad, Tal. Chandwad, Dist. - Nashik. ...Appellant
vs.

1. Manik Shivram Gadhe
Age – 42 years.
2. Subhash Bhavrao Gadhe
Age – 40 years.
3. Vinayak Shivram Gadhe
Age – 39 years.
4. Chhagan Shivram Gadhe
Age – 37 years,
All R/o Dighwad Shiwar,
Tal – Chandwad, Dist. Nashik ...Respondents

Mr. V.N. Sagare:	Advocate for Appellant - State.
Mr. Vikas Shivarkar a/w Mr. Vivek Joshi:	Advocate for Respondents.

CORAM : S. M. MODAK, J.
DATE : 5th APRIL 2024

ORAL JUDGMENT :-

1. The Court of J.M.F.C., Chandwad, District Nashik acquitted

four accused for the offence punishable under Sections 325, 323, 504 and 506 r/w 34 of the Indian Penal Code (“IPC”). They were acquitted mainly for two reasons:-

- (i) When there is allegation of breaking of teeth of the first informant - Sadashiv, he has not stated it to the Police on first occasion.
- (ii) There is variance in between the testimony of three eyewitness - P.W.1, P.W.2 and P.W.4.

2. So the issue involved in this Appeal is whether the trial Court was right in giving benefit of doubt to the present Respondents.

Whether the improvements are natural improvements or whether it pertains to material particulars. It is true that the Appellate Court should be slow in interfering the judgment of acquittal. Unless findings are perverse, it cannot be set aside.

3. With this view in mind, I have heard learned APP Shri Sagare and learned Advocate Shri Shivarkar for the Respondents. Incident took place on 19th December 2008 in the agricultural field belonging to Devram Gagre at village Dighwad, Tal. Chandwad. Accused claims that the land was owned jointly and the witnesses have deleted their

names in the 7/12 extract. The proceedings are going on before Tahsildar as chapter proceedings. This was denied on behalf of the prosecution witnesses while giving evidence before the Court. However, the first informant Sadashiv in his FIR has stated about initiation of chapter case.

4. There is reference of two Gat Numbers in the evidence of Sadashiv Gagre. Gat No.817 and Gat No.350. There is a house belonging to him on the land bearing Gat No.817. The incident took place in front of the house of the first informant – Sadashiv. The incident is in two parts:-

(a) Incident of beating prior to arrival of Sadashiv at the spot

and

(b) Incident of beating after arrival of Sadashiv.

5. Sadashiv was not at the spot on 19th December 2008 at about 10.00 am. **P.W.2 – Devram** and his son **P.W.4 - Shankar** were present in front of their house along with their other family members. They were fixing the pipes of the machine. There is general allegation that all accused came there and started beating them. Mangesh called his uncle first informant – Sadashiv for help. Sadashiv came there. He

was also beaten by Accused No.3 – Vinayak and others. His tooth was broken. When they went to Chandwad Police Station and gave a report, it is a matter of record that initially, it was registered as public non-cognizable offence under Sections 323 and 504 of IPC on 19th December 2008 at 11.45 am. Extract of that offence is not there on record. What is there is complaint dated 19th December 2008 at **Exh.42. In the margin, there are two references. They are :-**

- (i) Reference of public non-cognizable offence entry.
- (ii) Registration of FIR under Sections 325, 323, 504 and 506 r/w 34 of IPC on 21st December 2008.

NC Complaint

6. Mr. Shivarkar emphasized one fact that the extract of NC register is not on record and that has caused prejudice to them. It is for the reason that the fact of dislocation of tooth was not stated to the Police at the first instance. This fact is agreed by the first informant in his cross-examination. After going through the record even learned APP is unable to vouch that Exh.14 is extract of non-cognizable offence registered or as FIR. According to him, whatever is collected during investigation is a part of record. Mr. Shivarkar invited my attention to

the printed form of FIR on page 21. Its contents and contents of **Exh.42** are more or less same. I have perused **Exh.42**. First informant Sadashiv was supposed to give evidence on the basis of contents of **Exh.42**. On two aspects, he has deferred. They are as follows:-

- (a) dislocation of tooth.
- (b) Assigning role to Accused Vinayak.

Improvements by P.W.1 Vinayak

7. In **Exh.42**, there is a reference of arrival of Accused No.3 – Vinayak and Accused No.4 – Chhagan. This was after assault has occurred and no overt act was attributed to them. However, during the evidence there are roles assigned to them. It is true that trial is conducted on the basis of the previous statements and investigation. By passage of time, the Court can give leverage to witnesses in deposing exact facts stated before the Police. However, it should be minor. Not stating about dislocation of tooth and not assigning any role to Accused No.3 – Vinayak and Accused No.4 – Chhagan deals with the material particulars.

8. It is true that first informant – Sadashiv was examined by the Medical Officer – P.W.5 – Dr. Shaikh Nurgis Mahhomad Sabi. The

medical certificate of the first informant – Sadashiv Gagre is at **Exh.44**. There is a mention of loss of tooth. Medical examination comes at later stage. First there is a visit to Police Station and letter issued by police to Rural Hospital for medical examination which is at **Exh.43**. So the emphasis is on informing the facts on first occasion when visit to police station. If it is not there witness cannot be believed. The trial Court has not believed him. I find no reason to disagree those findings.

About the incident

9. As stated above, incident is in two parts. They are as follows:-
 - a. First incident witnessed by father -P.W.2 – Devram and his son P.W.4 – Shankar. Both have deposed about giving of abuses and fist blows by the Accused. This is prior to arrival of the first informant. All allegations are vague in nature without assigning specific role to any of the accused.
 - b. Incidents that took place after arrival of the first informant – Sadashiv. When I have read evidence of three of them the following facts emerges:-

According to first informant – Sadashiv

- (i) He came on spot on motorcycle. While parking the

motorcycle Accused No.3 – Vinayak and Accused No.4 – Chhagan dragged him and beat him with fist and blows.

- (ii) There is dislocation of tooth due to blow by Accused No.3 – Vinayak. **This is already disbelieved.**
- (iii) Accused No.1 – Manik beat him with the help of spanner.
- (iv) Accused No.2 – Subhash beat Devram with the sticks.
- (v) Uncle Ratan and his wife Haushabai and his son Ganesh came and they rescued them.

Incident as per the evidence of father P.W.2 – Devram

- a. Father Devram came there, accused beat him and fallen him down.
- b. Accused No.2 – Subhash fallen him down and gave blow.
- c. They also beat his son Shankar.
- d. Accused No.3 – Vinayak beat Shankar.

As per evidence of P.W.4 - Shankar

- (i) Accused No.3 – Vinayak and Accused No.4 – Chhagan beat first informant with fist and blows. Tooth was dislocated. This is already disbelieved.

(ii) Accused No.1 – Manik hit spanner on the head of the Shankar.

(iii) Accused No.2 – Subhash beat Devram with the stick.

10. Injuries caused to P.W.4 – Shankar and P.W. 2 – Devram are also duly proved by Medical Officer at **Exh.45** and **Exh.46** respectively. They are simple in nature. When I have read the findings by the trial Court he has noticed improvements in their evidence and absence of corroboration to each other witness. It is true that the two weapons i.e. spanner and stick were seized from the spot. It is proved through P.W.3 – panch witness Bhaskar. Though motive for false implication is suggested during the cross-examination there is no favourable answer. The law requires if there is one instance and if it is witnessed by many persons, at least they should corroborate with each other at least on materials particulars. Minor variations are bound to occur for various reasons. Law does not give importance to them. However, when perused in detail, I do not find the findings of the trial Court can be said to be erroneous. There are logical conclusions with reasoning. Trial Court in Para Nos.18 to 23 have discussed how there are variations in the evidence of P.W.1, P.W.2 and P.W.4. One witness has

deposed one fact about beating particular witness by one accused whereas other witness has deposed different fact about beating particular witness by different accused. These inconsistencies pertain to material particulars. It creates doubt about reliability of the witnesses. Learned APP could not convince me to reverse those observations.

11. It can be said that the accused were successful in pointing out dent in prosecution case and all these loopholes are provided by the prosecution witnesses themselves. First by first informant and then by his father and brother.

12. Though learned APP Sagare tried his level best to convince me that their evidence is reliable and cannot be disbelieved due to inconsistency, I am not influenced by the reasons stated above. The trial Court has correctly given benefit of doubt to the Respondents. It cannot be taken away unless there is justifiable grounds supported by some reasoning. So I do not find that the judgment can be interfered. Hence, no merit and dismissed.

[S. M. MODAK, J.]