



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 137 OF 2006

The State of Maharashtra,
(Through P.S.O. Sonkhed P.S.,
Taluka Loha, District Nanded.

... Applicant

Versus

1. Kishan Ramji Kadam
Age : 35 years, Occupation Agril.,
2. Baban Ramji Kadam
Age : 25 years, Occupation Agril.,
3. Rangnath Ramji Kadam
Age : 32 years, Occupation Agril.,
4. Suresh Ramji Kadam
Age : 22 years, Occupation Agril.,
All R/o Bhendegaon, Taluka Loha,
District Nanded.

... Respondents
(Orig. Accused)

.....

APP for the Appellant-State : Mr. S. M. Ganachari
Advocate for Respondents : Mr. Sanjay Kolhare

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CORAM : ABHAY S. WAGHWASE, J.

DATED : 18.07.2025

JUDGMENT :

1. This is a State Appeal wherein the judgment and order passed by learned J.M.F.C., Loha dated 26.07.2005 acquitting the respondents herein from offence under Sections 447, 326, 504 r/w 34 of IPC is questioned.

2. Case of prosecution is brief is that, on 31.12.1999, four accused persons i.e. present respondents, after committing criminal trespass in the field of complainant Vithal, committed offence under Sections 447 r/w 34, 326 r/w 34 and 504 r/w 34 of IPC. After report was lodged by PW1 Vithal and investigation was carried out by PW7, accused persons were chargesheeted and tried before learned J.M.F.C. who, on appreciation of documentary evidence, reached to a finding that prosecution has failed to bring home the charges and hence, by judgment and order dated 26.07.2005, acquitted the accused, which is now taken exception to.

SUBMISSIONS

On behalf of the Appellant-State :

3. Learned APP would submit that prosecution had proved the case beyond reasonable doubt by examining in all eight (8) witnesses. That, informant Vithal, on account of suffering injuries, was treated by PW8 medical expert who is also examined. That, there is independent eye witness account in the form of PW3. That, articles were seized and identified by the injured. Complainant-injured withstood the entire cross without getting shaken at any point of time. That, all ingredients to attract the charges were available in

prosecution evidence but the same were not appreciated in correct perspective. Hence, he seeks indulgence by allowing the appeal and setting aside the impugned judgment.

On behalf of the Respondents :

4. Per contra, learned counsel for the respondents-original accused would submit that, prosecution has miserably failed to bring home the charges. That, there was no occurrence as alleged. Apart from delayed FIR, medical examination was also delayed, creating serious doubt about prosecution version. That, witnesses are not consistent and their evidence is full of material omissions, variances and contradictions. That, panchas have also not supported. He pointed out that the occurrence is of 31.12.1999 and medical examination is of 14.01.2000, for which there is no explanation and as such, very assault or alleged injuries suffered by complainant have come under shadow of doubt. Therefore, learned counsel for the respondents justifies acquittal and urges to dismiss the appeal for want of merits.

EVIDENCE BEFORE THE TRIAL COURT

5. The sum and substance of the evidence of prosecution is as under :

PW1 Informant Vithal testifies that on 31.12.1999, while he was in his field, accused persons, namely Kishan, Rangnath, Baban and Suresh came there and they intervened his agricultural activity. He alleged that, after accused Kishan held him, accused Rangnath gave two blows with cane cutter on his left hand, i.e. one near wrist and another near elbow, causing injuries. Whereas, accused Suresh and Baban gave him kicks and fist blows. Tukaram Kadam, Nilkanth Kadam and Bapusaheb Kadam came there to separate them. He went to police station and filed application. Complaint Exhibit 41 is identified by him.

While facing cross, he has admitted that relations between him and accused are strained. He further answered that, apart from injuries to wrist and elbow, he also suffered injury to his nose resulting into nose bleeding and except such injuries, he did not suffer any injury. His clothes were also stained by blood. **He answered that 10 minutes after the assault, witnesses came there.** He answered that, contents in the complaint about Baban and Kishan catching hold of him are false and rather, the fact mentioned in the complaint about Suresh assaulting him on face and head by fist and kick is correct. He admitted that due to mistake, the fact of assault by kicks and fist blows by Suresh only might have been mentioned in the complaint. He answered that even his inner wares were stained with blood.

PW2 Vishwambhar has acted as pancha to spot panchanama Exhibit 45.

PW3 Nilkanthrao, in his evidence at Exhibit 48 stated that he knew complainant as well as accused. According to him, complainant was in his field and that time he himself was cutting grass for the cattle in his own field. He stated that, two/three of accused brothers came in the field of complainant and questioned him for not allowing cultivation, and it is stated that, all accused abused complainant. According to this witness, he went to the spot of quarrel and that time, accused Kishan and Baban had caught hold of complainant, whereas accused Suresh gave blows of fist and kicks on mouth and head of complainant, whereas accused Rangnath gave blow of cane cutter on the hand of complainant, i.e. on the left hand elbow and wrist, resulting into bleeding injuries.

In cross, he has admitted that he is cousin of complainant. Regarding occurrence, he is cross-examined in para 4 wherein he stated that after arrival of accused, there were preliminary talks going on for four minutes and then there were abuses to the complainant. Then he stated that, Bapusaheb also came to the field. By the time he reached the spot, Kishan and Baban caught hold of complainant and Suresh was giving kicks and fist blows. In further cross, his case is of entire denial.

PW4 Bapusaheb also, in his evidence at Exhibit 50, stated that hearing noise in the field of complainant, he went there and at such time, there was scuffle going on between complainant and accused. Kishan and Baban had caught hold of complainant whereas, Suresh inflicted fist blows and kicks on the mouth of complainant. He also gave blows on forehead and head. According to this witness, accused Rangnath came there and inflicted blow of katti on the left elbow and wrist of the complainant.

In cross, he has admitted that he was cousin of complainant. Rest is all denial.

PW5 Narayan, who acted as pancha to memorandum panchanama allegedly at the instance of accused Rangnath, has not supported prosecution.

PW6 Daulat is another pancha, who also did not support prosecution.

PW7 Police Head Constable Ashok Jondhale is the Investigating Officer.

PW8 Devidas Kanwate is the medical expert who, in his evidence at Exhibit 63, deposed that on 14.01.2000, while he was on duty, injured Vithal was referred for examination and he had suffered one incised wound on left elbow which was grievous injury caused due to sharp object and its age was 24 hours.

In cross, he admitted that when patient came to him, at that time, injury was bleeding and clothes of patient were blood stained. He admitted that injury noticed by him and reflected in the injury certificate is possible on account of fall on sharp or edged stone.

ANALYSIS

6. On meticulous re-appreciation of entire evidence, it is emerging that, there is previous animosity between complainant and accused persons. When the alleged incident took place, at that time, Vithal claims to have been abused and assaulted by Rangnath with cane cutter and Suresh and Baban giving kicks and fist blows. As regards to Kishan is concerned only role attributed to him is of catching complainant. However, in cross, complainant has added about he suffering injury to the nose which was consequently bleeding. He also deposed about his clothes to be stained with blood. However, clothes are not seized by prosecution for dispatching it to CA. He admitted that due to mistake he had reported in the complaint regarding being beaten by fists and kick blows only by Suresh. In cross, he has answered that, 10 minutes after the assault, witnesses i.e. Tukaram Kadam, Nilkanth Kadam and Bapusaheb Kadam came to his rescue. In view of such vital admission given by complainant in cross, evidence

of such witnesses is valueless and though they have deposed before the Court, they are apparently tutored and moreover, are also not found to be consistent.

7. Another special feature which is emerging here is that, though occurrence is of 31.12.1999 and though complainant deposed about visiting police station and being referred for treatment, PW8 Medical Officer Devidas Kanwate in spite of deposing about treating and examining complainant, surprisingly he has given date of examination as 14.01.2000, i.e. a fortnight after the alleged occurrence. This aspect also creates doubt about the very occurrence and alleged injuries allegedly suffered by PW1 Vithal.

On above counts, case of prosecution cannot be said to be proved beyond reasonable doubt

8. Perused the judgment under challenge. On undertaking such exercise, it is emerging that the findings are in consonance with the evidence adduced by the prosecution. Appreciation is done bearing in mind the legal requirements. Findings reached at are supported by sound reasons. There is no perversity or infirmity in the manner of appreciation of such quality of evidence. The view taken by the

learned trial court is the possible view that could emerge even on re-appreciation. Bearing in mind the principles enunciated while dealing with an appeal against acquittal, no case being made for interference, the following order is passed :

ORDER

Appeal is dismissed.

[ABHAY S. WAGHWASE, J.]

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