



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 369 OF 2004

Ramkishan s/o Shivram Karle

Age : 48 years, Occupation : Agriculture,

R/o : Khupati, Taluka Newasa,

District Ahmednagar.

... Appellant

Versus

1. The State of Maharashtra

2. Vasant Gangadhar Karle

Age : 34 years,

3. Gorakshnath Gangadhar Karle

Age : 45 years,

4. Arjun Gorakshnath Karle

Age : 21 years,

5. Bhimraj Gorakshnath Karle

Age : 21 years,

6. Machindra Gangadhar Karle

Age : 40 years,

Occupation of all Agriculturist,

All R/o : Khupati, Taluka Newasa,

District Ahmednagar.

... Respondents

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Mr. Rajendra N. Chavan, Advocate for the Appellant.

Mr. S. M. Ganachari, APP for Respondent No.1-State.

Mr. A. Y. Pandole, Advocate for Respondent Nos. 2 to 6.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 01.07.2025

Pronounced on : 03.07.2025

JUDGMENT :

1. Original complainant herein takes exception to the judgment and order dated 22.07.2003 rendered by learned Additional Sessions Judge, Shrirampur in Criminal Appeal No. 18 of 2000 arising out the judgment and order dated 08.06.2000 passed by learned JMFC, Newasa in R.T.C. No. 7 of 1997, a private complaint at the instance of the present appellant.

2. Present appellant set law into motion on the premise that on 09.01.1997, present respondents (original accused) came to fell/cut babul tree over the common *bandh*, which was objected to, and as a result of it, he was assaulted. When his brothers came to prevent the assault, they too were assaulted by accused persons by means of axe, sickle, iron pipe and iron bar respectively, causing them multiple injuries. They had approached police who referred them to hospital, the complaint was registered as NC and therefore, they were constrained to approach the court of learned JMFC by filing above R.T.C. and trial therein was conducted by learned JMFC, resulting into recording conviction for offence under Section 324 of IPC.

3. Such judgment and order of conviction was challenged by the present respondents before learned Additional Sessions Judge, Shrirampur, who, after hearing both sides, acquitted the accused from all charges.

Hence the appeal.

4. Learned counsel for the appellant would submit that admittedly, PW1 and accused are immediate neighbours. That, there is a common *bandh*/ridge between their lands and there were disputes on account of the trees over the said *bandh* and as such, relations were not cordial. He further pointed out that, on relevant day, accused no.1 came armed with axe to cut the babul tree, which was objected but he left issuing threats and returned along with other accused in few minutes getting armed with articles like axe, iron pipe, iron rod etc. Initially, complainant was assaulted and on intervention by his brothers, they too were assaulted, causing them serious injuries. That, they were required to be treated. The treating doctor has been examined and the injury certificates issued by the doctor are got exhibited through the testimony of the doctor and as such, according to him, there was overwhelming evidence regarding commission of offence under Section 324 of IPC. That, learned trial court had accepted the prosecution version and had already recorded

guilt. That, unfortunately in appeal, without assigning sound reasons, such judgment of trial court has been interfered with. He further submitted that, even when there was no delay, case of prosecution is disbelieved. Secondly, there is improper appreciation of the injured eye witness account, as well as medical evidence. Therefore, due to failure to appreciate the evidence and the judgment in its proper perspective, injustice has occasioned and hence he prays to set aside the judgment passed by the first appellate court and to restore the conviction awarded by the learned trial court.

5. In answer to above, learned counsel for the respondents-original accused would support the judgment of learned first appellate court on the ground that there was delay, which was not explained. Secondly, there was contradiction in the number of accused involved and he emphasized that in police complaint four persons were named, but in private complaint, five are tried to be involved. That, there is variance in the allegation about use of articles as, according to him, in Non Cognizable complaint there are allegations of use of wire, but in witness box none of the witnesses uttered about use of article like wire. He pointed out that injured witness Gopinath has not been examined. That, there is no convincing evidence about recovery of articles and for all above reasons, he

supports acquittal recorded by the first appellate court thereby interfering in the judgment of the trial court and consequently, he prays to dismiss the present appeal for want of merits.

6. It seems that prosecution has examined in all four witnesses in support of its case. Their role and status and the evidence adduced by them is reproduced below :

PW1 Ramkisan Shivram Karle is the informant, who deposed at Exhibit 55 as under :

I know the accused before the court. My relation with them are not cordial. I am having landed property gat no. 214 at village Khupati. Raghunath and Gopinath are my brothers and co-owners. We are residing separately as per partition. Accused No.1 is having his land towards the Northern side of Gat no. 214. Accused are residing in their own land at vasti to my neighbour. My brother Raghunath is having his land adjoining to accused no.1. There is bandh in between my land Gat No. 214 and land of the accused, and on that bandh there are babul, berry and neem trees. The trees on the bandh are of common. Once accused had beaten me on the dispute of bandh.

I cannot tell the date of the incident however, incident took place before 3 years around 11.30 a.m. in my gat 214 in the share of Raghunath. At that time, I was working in my

share. Accused no.1 came there and there was exchange of words between accused no.1 and my brother Raghunath. Accused no.1 was cutting the babul tree to which my brother Raghunath opposing. Accused no.1 threaten my brother that he will come back and kill him. Accused no.1 left the spot. On hearing the noise, myself and my another brother Gopinath went away to Raghunath. Within 15 minutes all the accused again came to the spot armed with an axe and koyta. Accused nos. 1 and 5 were having an axe while accused no.2 was having koyta. Accused no.3 was having iron pipe while accused no.4 was having iron bar. All the accused came there and told us that they were going to cut tree. Thereafter they cut down the babul tree. There was exchange of words at that time accused no.1 is dealt an axe blow over my head. I had sustained bleeding injury. Accused No.5 dealt an axe blow over my head. I had sustained bleeding injury. Accused No.5 dealt an axe blow from blunt side on my left hand. I therefore fell down. My brother Gopinath tried to save me. At that time accused no.2 dealt a koyta blow on his head. Accused No.4 dealt blows of iron bar to Gopinath. When my brother Raghunath tried to intervene, accused nos. 3 and 4 gave him beating with pipe and bar. My brother Gopinath had sustained bleeding injury. While leaving the spot, accused threatened us that next time they will finish us.

Thereafter we three brothers approached the police station, Newasa and lodged oral report. Police referred us for medical examination under forwarding letter. We went to the R.H. Newasa. Doctor treated us and issued medical certificate.

Thereafter we approached the police and police did not take cognizance. Hence this complaint. Accused be punished according to law. Accused before the court are the same person. I have produced on record xerox copy of the injury certificate.

PW2 Raghunath Shivram Karle, brother of informant, at Exhibit 65 deposed as under :

I know the complainant and accused before the court. Complainant is my elder brother. Incident took place on 9-1-97 around 12 noon in land Gat No. 214 belonging to me. On that day, I was working in my field. Accused no.1 came to the common bandh and was intending to cut the babul trees. I raised objection. He started abusing me. I prevented him from cutting the trees. He went to his house by threatening me that he will see me in short while. Within 10 minutes all accused came there. Accused No.1 and 5 were armed with axes. Accused no.3 was having an iron pipe and accused no.4 was having iron pipe. My brother on hearing my voice reached the spot. My another brother Gopinath also reached the spot.

We 3 brothers asked the accused not to cut the tree. Accused no.1 dealt an axe blow on the head of complainant. Accused no.5 also dealt an axe blow on his hand. My brother Gopinath tried to intervene in the matter at that time, accused no.2 dealt sickle blow on his head. I have also tried to intervene, at that time accused nos. 3 and 4 gave me beating by pipe and rod. I had sustained injuries on my hand, both the

shoulders, back and leg. Complainant and myself fell down. At that time, accused left the spot and threatened to kill us at next time.

Thereafter we went to village Khupati and from there to the Newasa police station. My brother Ramkisan lodged report to the police. Police referred us for medical examination. Doctor treated us. Accused before the Court are the same person. Accused no.1 is having his land on the southern side of my land. There is common bandh between us.

PW3 Pratap Dada Shelar, the Head Constable at Newasa Police Station, deposed as under :

On 9-1-97 I was attached to the P.S. Newasa as a head constable. On that day, I was in charge of the station dairy. On that day, complainant Ramkisan Karle came to the P.S. and gave oral complaint which was reduced into writing by me. Today I have produced original complaint in the court. Now complaint shown to me it bears my signature. Contents thereof as per the say of complainant. On the basis of complaint, I have registered public N.C. No. 21/97 for the offence punishable u/s 323, 504, 506 r/w 34 of I.P.C. Now endorsement of the complaint shown to me it bears my signature and it is marked Exh. 72. The complaint lodged by the complainant shown to me it bears my signature at it is marked Exh. 72.

The complaint lodged by the complainant bears his signature. Complainant and his 2 brothers had come in the P.S. in injured position. I had referred them for medical

examination to R.H. Newasa under requisition letter. I have produced office copy of that letter. It bears my signature. Contents are correct and it is marked Exh. 73. Doctor sent the injury certificates alongwith the patients. I have produced all the three certificates today in the court.

PW4 Dhairyashil Gaikwad, Medical Officer at R.H. Newasa, is the treating doctor. His evidence is at Exhibit 74, wherein he has deposed as under :

On 9-1-97 I was attached to the R.H. Newasa as a M.O. On that day around 1.00 p.m. police of P.S. Newasa referred 3 patients namely Ramkisan Karle, Raghunath Karle and Gopinath Karle under the requisition letter. Today I have brought original requisition letter with me. First of all, I have examined Gopinath Karle and found following injuries.

- 1) C.L.W. right occipital region bleeding present size 5 cm x 1 cm
- 2) Abrasion over left forearm red floor 3 cm x 0.5 cm
- 3) Abrasion over left thigh posterior aspect red floor linear in shape 6 cm long.

All the three injuries were within 6 hours, simple in nature and probable weapon of injury no.1 hard and blunt object. Injury hard and pointing object. Then I issued injury certificate accordingly. Now injury certificate shown to me, it bears my signature, contents are correct, it is marked Exh. 75. Injury nos. 1 to 3 are not possible by sickle i.e. koyta. However, these injuries are possible due to the iron rod.

Then I examined Ramkisan Karle and found following injuries.

- 1) Swelling over left forearm on distal half movements 10 feet, red in colour size 8 cm x 6 cm
- 2) Abrasion over left forearm, red floor size 2 cm x 1 cm
- 3) Abrasion on left foot dorsum, red floor size 3 cm x 2 cm
- 4) Abrasion on right knee red floor 4 cm x 3 cm
- 5) Contusion on left thigh red floor 9 cm x 4 cm
- 6) C.L.W. on scalp right occipital region oblique bleeding present, size 5 cm x 1 cm
- 7) Abrasion left side chest red floor 6 cm x 4 cm.
- 8) Contusion on back left supra scapular region red colour 8 cm x 4 cm.

All the injuries are within 6 hours and simple in nature. Injury no. 1, 5, 6 & 8 can be caused by hard and blunt object while injury no.2, 3, 4 & 7 can be caused by hard and rough object. Accordingly I issued injury certificate, it bears my signature, contents are correct and it is marked Exh. 76.

All the injuries mentioned in Exh. 76 are possible by blunt side of an axe and sticks.

The I examined Raghunath Karle and found following injuries.

- 1) Contusion on right forearm upper third region on dorsal aspect, red in colour, 6 cm x 4 cm

- 2) Abrasion on left thumb, bleeding present 1 cm x 05 cm
- 3) Contusion left shoulder, red colour 4 cm x 3 cm
- 4) Contusion on right shoulder, red in colour 5 cm x 3 cm
- 5) Contusion right temporal red in colour 4 cm x 3 cm
- 6) Swelling on back left side dorsal part red colour tenderness present 6 cm x 4 cm
- 7) C.L.W. on left leg upper third region bleeding present 2 cm x 1 cm.
- 8) Contusion on right side of chest red in colour 4 cm x 3 cm

All the injuries were within 6 hours and simple in nature. Injury no.1, 3 to 8 are possible by hard and blunt object. Injury no. 2 can be caused by hard and rough object. Accordingly I issued injury certificate. Now injury certificate shown to me, it bears my signature, contents are correct, it is Exh. 77. Injuries mentioned in Exh. 77 will be possible by iron bar and pipe.

7. Here, it is emerging that, accused no.1 and complainant are immediate neighbours, of which there is no dispute. It also seems that parties are at loggerheads on account of trees over common bandh. The incident in question seems to have triggered out of the act of accused no.1 of felling babul tree over the common bandh, which was objected by PW2 Raghunath. Episode seems to have taken place at

two points of time. Initially, only accused no.1 and PW2 Raghunath were present, i.e. during heated exchange of words as a result of objection raised to felling of tree. Second episode seems to have taken place after a gap of 10 to 15 minutes and it is alleged that, four accused came armed with axes, iron pipe and iron rod, and it is so reflected from the complaint lodged with the police, which surprisingly is shown to be recorded as NC even when complainant party had come back with injury certificates on referral. Be it so. However, as pointed out, in the private complaint, contrary to four persons named in NC, five persons are impleaded as accused. Again, as pointed out, and it is evidence from the NC that, there is reference of use of wire for assault, regarding which neither PW1 nor PW2 has even whispered about use of wire. One of the persons who reached the spot was Gopinath and he has allegedly suffered multiple injuries, including injury by means of sickle, however, surprisingly he is not made to step in the witness box. On the contrary, PW1 is the brother who was not party to the initial quarrel between accused no.1 and his brother PW2. Though accused persons had come there armed with above mentioned articles like axes, iron pipe etc., *prima facie* they seem to have come to fell babul tree and they had not come there to indulge in any act of assault. Therefore, question of even *mens rea* crops up.

8. Surprisingly, the Investigating Officer is also not examined. From where and at whose instance and when the articles allegedly put to use were seized, is also not coming on record. Though there is delay of few hours, which seems to have been given undue importance by the first appellate court, considering above aspects of variance in the number of persons involved, nature of articles allegedly put to use, coupled with the fact of non-examination of crucial injured witness, namely Gopinath, the element of doubt over the prosecution story creeps in. Bearing in mind the settled principles to be applied while interfering in a judgment of acquittal, there being no strong reason apart from above discussed merits of the appeal, this Court refrains from interfering and consequently, proceeds to pass the following order :

ORDER

The appeal is dismissed.

[ABHAY S. WAGHWASE, J.]