

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

CRIMINAL APPEAL NO.485 OF 2004

The State of Maharashtra

...Appellant

vs.

1. Subhedar Mugutrao Bhosale
Age 43 years

...

2. Dattatraya Mugutrao Bhosale
Age 30 years

...

3. Mugutrao Sawala Bhosale
Age 70 years

...

4. Usha Subhedar Bhosale
Age 40 years

...

5. Malan Dattatraya Bhosale
Age 28 years

...

6. Darubai Mugutrao Bhosale
Age 65 years
All r/o Jawale, Tal.Khandala
District Satara

...Respondent

Ms. Rashmi S. Tendulkar APP for the Appellant-State.

Mr. Ayush Pasbola for Respondent Nos.1 to 3.

CORAM : SHYAM C. CHANDAK, J.

RESERVED ON : 6th FEBRUARY, 2025

PRONOUNCED ON : 14th FEBRUARY, 2025

JUDGMENT :

. The aforesaid Appeal is directed against the Judgment and Order dated 9th December 2003 passed by a Court of learned Judicial Magistrate, First Class, *Khandala*, District Satara in Regular Criminal Case No.56 of 1997, thereby the Respondent Nos.1 to 6/Original Accused Nos.1 to 6 have been acquitted for the offences punishable under Sections 147, 148, 323, 504 read with section 149 of Indian Penal Code (for short 'I.P.C.') and under Section 37 (1) read with Section 135 of the Maharashtra Police Act read with Section 149 of the I.P.C. (*Hereinafter, the Respondents are being referred to by their original status before the trial Court*).

2) Record indicates that Appeal was admitted only against the Accused Nos.1 to 3, *vide* Order dated 21st July, 2004. Thereafter, the procedure under Section 390 of the Cr.P.C. was followed.

3) Heard Ms. Tendulkar, learned A.P.P. for the Appellant-State and Mr. Pasbola, learned appointed Advocate for Accused Nos.1 to 3. Perused the record.

4) Facts giving rise to this Appeal are as under:-

The prosecution story is that, On 18th July 1997, at about 5.30 p.m., PW1-Bhanudas Sopan Bhosale- the first informant, his wife-Sujata, brothers Sanjay and PW6-Narhari and others had gone

to their native village *Jawale*, Tal.Khandala, District Satara. At that time the informant's mother-Narmada complained that on 17th July 1997, Accused No.1 and his wife-Accused No.4 Usha, abused her. Therefore, PW1 went to the house of Accused No.1 around 7:30 p.m. and asked as whether Abba @ Accused No.1 was at home and inquired as to why the accused were abusing his mother. The Accused No.4 replied that she would call the Accused No.1. Hence, PW1 stayed there. But at that time the Accused Nos.1 to 3 came there armed with sticks and Accused Nos.1 and 2 assaulted to PW1 on his back by means of the sticks. Therefore, PW1's father-Sopan Bhosale, brothers Sanjay and PW6 came there. But Accused Nos.1 and 3 assaulted them by means of sticks and hands. Meanwhile, PW1's mother, his wife-Sujata and sister-in-law Shalan came there to intervene. However, Accused Nos.4 to 6 manhandled them and Accused No.6 assaulted PW1's father by means of a footwear. Therefore, PW1 lodged an oral report (Exh.45) with Khandala police station, District Satara.

5) Police registered the said oral report at FIR (Exh.45) at C.R.No.83 of 1997 for the offence punishable under Sections 143, 147, 148, 323, 504 read with 149 of Indian Penal Code (for short 'I.P.C.'). During investigation, police referred the injured for their medical examination, recorded the spot panchnama (Exh.51) and PW9 PSI

Pathare arrested the accused persons. One stick each was seized from Accused Nos.2 and 3 when they produced said sticks before the police on 20th July 1997 *vide* seizure panchnama (Exh.69). One stick was seized from Accused No.1 under panchnama (Exh.55) when he produced the same on 22nd July 1997. On completion of investigation, the police submitted the charge-sheet adding the offence under Section 37 (1) read with Section 135 of the Maharashtra Police Act.

6) The learned Magistrate of the trial Court framed charge (Exh.19) of the offences punishable under Sections 143,147, 148, 323, 504 read with 149 of Indian Penal Code (for short 'I.P.C.') and under Section 37 (1) read with Section 135 of the Maharashtra Police Act read with Section 149 of the IPC. The accused pleaded not guilty to the charge and claimed to be tried. The defence of the accused was of total denial and false implication.

7) To prove the charge, the prosecution examined in all nine witnesses. However, PW2-Rangrao Bhosale, panch to seizure of stick from Accused No.1; PW5-Hanmant Bhosale and PW7-Shivaji Aburao Satale, both panch to the seizure of sticks from the Accused Nos.2 and 3, turned hostile to the prosecution. They were cross-examined by the learned A.P.P. but nothing fruitful could be elicited from their cross-examination. Therefore, their testimony is not worthy of discussion.

8) The evidence of PW1-Bhanudas is verbatim to the text of his report (Exh.45). He deposed that on 18th July 1997, in the evening when his mother complained him that the accused persons abused her, he went to the house of Accused No.1 and inquired whether Accused No.1 was present at home. The Accused No.4 replied in the negative. PW1 stated that he, therefore, stayed there. At that time Accused Nos.1 to 3 came there armed with sticks and, gave the sticks blows over his back. PW1 deposed that his brothers Sanjay and PW6-Narhari came there, but accused persons also assaulted them by means of sticks. PW1 deposed that his wife Sujata and sister-in-law Shalan separated them, however, they were also assaulted by the accused party. PW1 deposed that the Accused No.6-Darubai assaulted his father by means of chappal/footwear. Villagers Rajendra Patil and Chandrakant separated the quarrel. PW1 deposed that thereafter he went to the police station and lodged the report (Exh.45).

8.1) In the cross-examination PW1 admitted that his father, brother PW6-Narhari knew the dispute regarding a landed property. He has admitted that Criminal Case No.54 of 1997 was pending against them in which he, 8 members of his family and two other were accused. He has denied that he and other ten co-accused with him in that case had assaulted the accused persons in this case by

means of sticks and axe. PW1 has denied that he has falsely deposed that that the incident occurred as stated above. PW1 has denied that he and his family members reached the police station first in point of time and falsely lodged the report (Exh.45).

9) PW6-Narhari deposed that on 18th July 1997, at about 5.30 p.m., when they had been to their village Jawale, his mother informed him that Accused No.4 abused her, therefore, PW1 went to the house of accused and inquired about the abusing. At that time the daughter of Accused No.1 went to call the accused. Then the accused came there armed with sticks and assaulted the PW1. Therefore, PW1 was shouting. He deposed that thereafter they went to the police station and lodged the report. In the cross-examination, PW6 admitted that the FIR was registered against ten members of his family. However, he has denied that he alongwith said family members formed an unlawful assembly and assaulted the accused person in this case.

10) PW8-Dr.Ramesh Thorat, Medical Officer deposed that on 18th July 1997, at about 11.30 a.m., PW1 and Sanjay Bhosale came to Rural Hospital, Khandala along with Police Yadi. They gave history of assault to them by means of sticks and hand on 18th July 1997. PW8

deposed that he examined PW1 and found following injuries on his person:-

- “(1) Tenderness on right side of back without any visible mark.
- (2) Tenderness on lower abdomen without any mark”.

10.1) PW8 deposed that thereafter he examined Sanjay Bhosale and found following injuries on his person :-

- “(1) Contusion with swelling on right wrist lateral border of palm about 2cm x 1 cm”.

10.2) PW8 deposed that he issued the injury certificates in respect of the medical examination and the injuries of PW1 and Sanjay Bhosale. PW8 deposed that injuries found on the person of PW1 are not possible due to assault by stick. In the cross-examination PW8 has denied that the injury on the person of Sanjay Bhosale was not possible due to assault by means of stick.

11) PW3-Subhash Patil has testified that on 19th July 1997, PW9- PSI Pathare called him in Bhosalewadi at village Jawale. Accused No.3 Mugut Savale Bhosale showed the spot of incident. The police recorded the spot panchnama (Exh.51). Its contents are correct and true. In the-cross examination, PW3 deposed that PW1 was not present at the time of recording the spot panchnama.

12) PW4-Kantilal Satale deposed that on 22nd July 1997 he was called at the police station by PW9 PSI Pathare. At that time Accused No.1 produced a stick in his presence. The police recorded the stick seizure panchnama (Exh.55). Its contents are correct and true. In the cross-examination PW4 has denied that the stick was 4 to 5 feet long. He has denied that the stick was either of *Babool* tree or *Kawali* tree. He has denied that he has deposed false that on 22nd July 1997 the accused No.1 produced the stick in his presence at the police station and the police recorded its panchnama (Exh.55).

13) PW9 PSI Pathare has testified that on 19th July 1997 he visited the spot of the incident with panchas and recorded the spot panchnama (Exh.51). On the same day, he recorded statement of witnesses. He arrested two accused on 20th July, 1997. Accused Nos.2 and 3 produced the two sticks. He seized the same and recorded the seizure panchnama (Exh.69). He arrested two more accused on 22nd July 1997. Then Accused No.1 produced a stick and he seized the same under the seizure panchnama (Exh.55). After completion of the investigation, he submitted the chargesheet. He identified the sticks at Article 'A' to Article 'C' as the same. PW9 admitted that the witnesses in this case were prosecuted in R.C.C. No.55 of 1997.

Except this nothing significant has come in the cross-examination of PW9.

14) In view of the aforesaid evidence, the Trial Court held that, there is no evidence that the accused persons had formed an unlawful assembly. There is inconsistency in the evidence of PW1 and PW6. That, there is inconsistency in the ocular testimony of PW1 and PW6 on one hand and the expert's evidence of PW8 on the other. Therefore, the Trial Court acquitted all the accused giving a benefit of doubt.

15) Ms. Tendulkar, the learned APP submitted that, the evidence of PW1 and PW6 clearly indicate that just because PW1 inquired with the accused about the incident of abusing to his mother, the accused persons formed an unlawful assembly and in prosecution of the common object of the said assembly, all the accused persons assaulted to the members of the informant side. The evidence of PW1, PW6 is corroborated with the prompt FIR. The testimony of said witnesses and PW8 proved that PW1 and others had sustained certain injuries due to assault by the accused persons. The spot pachanama and seizures of the sticks were duly proved. Thus, the said evidence cumulatively proved the charge against the accused. However, the Trial Court acquitted the accused. As such, the impugned Judgment

and Order is not sustainable in law. The learned APP, therefore, submitted that the said Judgment and Order be set aside and the accused be convicted.

16) In contrast, Mr. Pasbola, the learned Appointed Advocate submitted that, there is material inconsistency in the testimony of PW1, PW6 and PW8. The evidence of PW8 clearly shows that the injuries of PW1 were not caused by means of sticks. The injured Sanjay Bhosale is not examined, therefore, the evidence as to his injuries is of no avail. The witnesses in this case are accused in the counter case instituted on the FIR of the accused party. As such there was reasonable doubt of truthfulness in the prosecution story. As a result, the Trial Court acquitted the accused. Therefore, the impugned Judgment and Order is lawful and need not be interfered.

17) On a careful scrutiny of the prosecution evidence I found that, according to PW1 all the Accused Nos.1 to 3 assaulted him over back by means of sticks. Then his father and brothers came there. But the accused persons also assaulted to his father and brothers. However, PW6 has not specifically deposed that the Accused Nos.1 to 3 assaulted to PW1 by means of sticks. Similarly, PW6 has not deposed that the accused persons assaulted to his father, brother Sanjay Bhosale and 3 others of their family. PW6 has not ascribed any

role to Accused Nos.4 to 6. In fact, PW6 even did not state that said Accused Nos.4 to 6 were present at the spot at the time of the incident. In the report (Exh.45) it is stated that, PW6 was also assaulted by sticks. This fact is also deposed by PW1. Yet, neither PW6 deposed he was assaulted in the incident nor he sustained any injury. As such, there is material inconsistency in the evidence of PW1 and PW6 as to the manner of the incident and the involvement of the accused persons.

18) According to PW1 the Accused Nos. 1 to 3 assaulted him over back by means of sticks, but he has sustained only one injury over the back. In all two injuries were sustained by PW1 due to the alleged assault. However, in the opinion of the expert witness PW8, the said injuries are not possible by means of stick. It is not the case that the accused Nos.1 to 3 used any other object to assault the PW1 and others with him. Thus, there is material inconsistency in the version of PW1 and the expert evidence of PW8. The another injured Sanjay Bhosale is not examined by the prosecution. As such the evidence as to his injury is hearsay in nature. The seized sticks were not shown to PW8 in relation to the alleged injuries. Moreover, the injury certificates of PW1 and Sanjay Bhosale were not proved.

19) In view of the above discussion, I hold that the prosecution failed to prove the unlawful assembly. There is material discrepancy in the evidence of PW1, PW6 and PW8 as to how the assault took place and the cause of the injuries sustained by the PW1. Sanjay Bhosale who was also injured in the incident, is not examined by the prosecution. Therefore, the evidence as to his injury is hearsay and is of no avail to the prosecution. Therefore, there is a reasonable doubt about the truthfulness of the prosecution case. As such, the trial Court has rightly acquitted the accused. Thus, there is no perversity in the impugned Judgment and it needs no interference by this Court.

19.1) As a result Appeal fails and is liable to be dismissed and is dismissed, accordingly.

[SHYAM C. CHANDAK, J.]