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**(2013) 01 BOM CK 0212**

**In the Bombay High Court**

**Case No :** Criminal Revision Application No. 93 of 2002 and Criminal Appeal No. 248 of 2002

Kakasaheb Ranjitrao Ghumre

APPELLANT

Vs

Gulabrao Nilkant Ghumre and Others

RESPONDENT

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**Date of Decision :** 16-01-2013

**Acts Referred:**

**Citation :** (2013) ALLMR(Cri) 3551

**Hon'ble Judges :** T.V. Nalawade, J

**Bench :** Single Bench

**Advocate :** S.S. Bora holding for Mr. S.C. Bora in Cri. Rev. appl. No. 93/2002, for the Appellant; S.A. Nagarsoge h/f Shri N.L. Jadhav, Advocate for Respondents No. 1 to 7 in Cri. Rev. Appln. No. 93/2002 and in Criminal Appeal No. 248 of 2002 and Shri K.S. Patil, Assistant Public Prosecutor for State in Cri. Rev. Appln. No. 93/2002 and in Criminal Appeal No. 248 of 2002, for the Respondent

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## **Judgement**

T.V. Nalawade, J.—Both the proceedings are filed to challenge judgment and order of acquittal delivered in R.C.C. No. 98/1994 by the Judicial Magistrate (First Class), Patoda District Beed. The accused are acquitted of the offences punishable u/s. 147, 148, 149, 324 and 504 of the Indian Penal Code. Both the sides are heard. Original papers are perused. In short, the facts leading to the proceedings can be stated as follows.

The complainant and the accused hail from same place, Pargaon Ghumre Taluqa Patoda District Beed. Injured Vikram and Hanumant are real brothers of complainant Kakasaheb Ghumre. The accused are relatives interse.

2. On 19/02/1994 at about 4.00 p.m. the first incident took place which was quarrel between Vikram and Gulabrao Ghumre, accused No. 1. The quarrel had taken place over keeping account in respect of weekly contribution collected for religious purpose in the village. Due to quarrel both had approached police but they had settled the dispute and so no further action was taken by the Police.

3. On 20/02/1994 at about 8.00 a.m. Vikram was sitting in the shop of one Dadasaheb Ghumre. Complainant Kakasaheb and his brother Hanumant were present near temple which is in the vicinity of the shop. The complainant and Hanumant saw that all the accused went to shop. They picked up quarrel with Vikram. They dragged him out of shop and then they assaulted Vikram. When complainant and Hanumant went ahead to separate the quarrel, accused Gulabrao gave blows of knife on head and legs of Vikram. Kakasaheb, Nilkant, Shridhar held Vikram when Gulab was giving blows of knife. These persons assaulted the complainant and his brother Hanumant by using sticks. Some persons like Sarjerao Ghumre, Shamrao Ghumre, Ashok intervened to separate the quarrel. While leaving the spot, Gulab gave threat that one day he will finish the rival by using knife. When the complainant and his two brothers went to S.T. stand for going to Police Station, the accused again went there and they assaulted these three brothers at S.T. stand also.

4. Report came to be given to Patoda Police Station on the same day and on the basis of report of Kakasaheb Ghumre, crime came to be registered for aforesaid offences. The three injured were referred for medical examination. Statements of the witnesses came to be recorded. Panchanama of the spot, the place in front of shop came to be prepared. Blood stains were found on the spot. Weapons came to be produced by all the accused. After completion of investigation, charge sheet came to be filed for aforesaid offences.

5. The accused pleaded not guilty. The prosecution examined ten witnesses. The trial Court has not believed these witnesses. It was submitted for the complainant's side and the State that when there were injuries which include one incised wound sustained by Vikram, the trial Court ought to have believed the witnesses. The other side submitted that view taken by the trial Court is possible view. It was submitted that there was motive for false implication and stories given by witnesses are not consistent with each other.

6. In substantive evidence, Kakasaheb (P.W. 1) has stated that when he was sitting near temple, he saw that accused Nos. 1, 2 and 7 were dragging Vikram out of the ration shop. He has deposed that he and Hanumant rushed there and they noticed all the accused saying that they will finish Vikram. He has pointed out accused No. 1 Gulab though he has given his name Mohan Nilkant as the person who used knife and who gave atleast three blows of knife to Vikram. He has given evidence that the other accused assaulted him and Hanumant by using sticks. His evidence does not show that when Vikram was being assaulted by Gulab by using knife, others were holding Vikram. The report given by Kakasaheb (P.W. 1) is proved at Exh. 72.

7. In the cross examination of Kakasaheb (P.W. 1), some contradictions in relation to previous statement are brought on the record. He had not taken the name of Phakad Ghumre as witness in F.I.R. He had not made specific allegations only against accused Nos. 1, 2 and 7 that they had dragged Vikram out of shop. He had not informed Police that all the accused were saying that they would

finish Vikram. He has admitted in the cross examination that when the incident started, only two persons were present in the shop of Dadasaheb as witnesses. The evidence of these witnesses and other witnesses show that there is clear probability that this witness could not reach the spot when the incident was going on. He has given admission that at the relevant time civil suit was pending between him and accused No. 4 Ramdas.

8. Vikram (P.W. 2) the main witness has given evidence that he, Phakad and Dadasaheb were present in the shop when accused Bankat, Kakasaheb and Gulab came there. He has given evidence that these three persons dragged him out of shop. He has given evidence that Kakasaheb and Bankat held him and then Gulab gave blows of knife after taking out knife from pocket and three blows were given to him on different sites of his body. He has taken names of other accused like Vishwanath, Babu, Balu and Ramdas by saying that they were also pushing him out of ration shop. He has tried to say that these persons then assaulted him by using sticks and then he became unconscious. He has tried to say that he first time saw his brother Kakasaheb and Hanumant in Civil Hospital, Patoda. Thus, the version given by Vikram (P.W. 2) is not consistent with the complaint of Kakasaheb (P.W. 1). His evidence has created probability that both Hanumant and complainant were not there to witness the incident. In any case, even in F.I.R., there is no mention that Vikram had become unconscious due to beating.

9. Vikram (P.W. 2) has not uttered a word about the incident which took place at S.T. stand after the first incident. Some contradictions are brought in the cross examination of Vikram (P.W. 2). He had not stated before Police that Ramdas, Vishwanath, Babu and Balu were also pushing him out of shop to drag him out. He had not stated before Police that the accused Kakasaheb and Bankat had held him. These are material omissions. These omissions which are contradictions, can not be ignored as the formation of unlawful assembly was required to be proved and so it was required to be shown as to since when the accused were present on the spot. When Vikram (P.W. 2) has tried to say that all the injuries sustained by him were caused due to blows of knife, he has also tried to say that beating was given to him by using sticks also. The evidence of Doctor shows that there was only one incised wound on head and such injury can be sustained if a person falls on stone having edge. Thus, the medical evidence is not consistent with the version of Vikram and the version of Vikram can not be believed in respect of allegations made by him against other accused that they also assaulted him by using sticks when he attributed the three injuries to the accused Gulab.

10. In the cross examination, Vikram (P.W. 2) has admitted that Civil Suit was pending between his family and family of Ram das. Suggestion is given that to pressurise the accused to settle the dispute, they are falsely implicated.

11. Hanumant (P.W. 3), brother of Vikram has given evidence which is similar to the evidence of complainant. For the same reasons Hanumant can not be

believed. In the cross examination, some contradictions are proved. He had not stated before Police that the accused Kakasaheb, Ramdas, Vishwanath, Babu and Balu had assaulted on fingers of Kakasaheb. He had not stated before Police that all the accused had assaulted Kakasaheb. He had not stated before Police that due to assault by Ramdas, Kakasaheb had sustained bleeding injuries on his fingers. He had not stated before Police that Ramdas had assaulted on his waist by using stick. His evidence shows that he has tried to say that many villagers had gathered there. Such villagers are not examined. He has deposed that on the S.T. stand also the accused assaulted these three brothers by using sticks.

12. Shamrao (P.W. 4) has given different version. According to him, he came to the spot from his house when he learnt about the incident. He has deposed that in his presence, accused Nos. 1 to 7 gave beating to Vikram (P.W. 2) by using sticks and they were giving beating to the complainant and his brother Hanumant also. His evidence does not show that in his presence knife was used by Gulab or some accused had held Vikram when Vikram was being assaulted. He has tried to say that Dadasaheb and Kakasaheb informed him that injuries were caused by knife to Vikram. No such version is given by Dadasaheb and Kakasaheb. In his cross examination, he has admitted that he had contested the election of Panchayat Samiti but he was defeated. Accused Gulab got elected in the said election. He knows about land dispute which was pending between family of complainant and accused No. 4. He is interested witness but he has not supported the case of using knife against Vikram by Gulab. He was also used as panch witness on panchanama prepared at the time of seizure of weapons. It shows that the investigation was not made fairly. In any case, weapons were not recovered u/s. 27 of the Evidence Act. No weapon was sent to Chemical Analyser's office and no blood was found on any weapon during panchanama also and so that part of evidence needs no more discussion.

13. Sarjerao (P.W. 5) has given evidence that from his shop, Vikram was dragged out by accused Nos. 1 to 7. He has deposed that all the accused assaulted Vikram by sticks and he rescued Vikram with the help of Shamrao and Phakad. His evidence does not show that witness Hanumant and Kakasaheb were present on the spot when the incident was going on. This inconsistency is very material as allegedly the incident took place in front of the shop of this witness. His version falsifies version of Kakasaheb and brother Hanumant. Phakadrao (P.W. 6) has given evidence that he was present in the shop when the incident started. He has given evidence that all the accused assaulted Vikram by using stick. He has tried to say that he and Hanumant sustained injuries by sticks but he has not made allegations against anybody that they had assaulted him and Vikram at the same time. His evidence also rules out use of knife in the incident by Gulab. In the cross examination, he has tried to say that Hanumant and Kakasaheb had come there to separate the quarrel. But this version is not consistent with examination in chief. In view of evidence in chief, not much weight can be given to the improvement made during cross examination.

14. Laxman (P.W. 8) Police Officer who prepared spot panchanama, has proved it. Nothing was taken over from the spot, though he has tried to say that there were blood stains in front of the shop. In any case, only due to presence of blood stains, inference can not be drawn that knife was used in the incident and that too by Gulab.

15. The evidence of Dr. Dattatraya (P.W. 7) shows that he found as many as seven injuries on the person of Vikram. All the injuries were simple in nature. One injury was incised wound and it was caused over left occipital region. There were two C.L.Ws. He has admitted that even such incised wound can be caused due to fall on sharp edged stone. The injured was examined at 9.30 a.m. His evidence can support case of prosecution to some extent to prove that, Vikram was assaulted on that day. The evidence with regard to the injuries sustained by Hanumant and Kakasaheb could have also supported their case that they were present on the spot. However, nature of evidence, which is already discussed, has created clear probability that the complainant and his brother Hanumant were not present when the assault was being made on Vikram. There was motive for false implication of some persons like Gulab and Ramdas. There was political rivalry and there was civil dispute. There was also quarrel over use of funds collected for religious function. Thus, there is possibility of exaggeration and false implication of some persons. In view of these circumstances, it would not have been safe to convict some of the accused including Gulab. There is possibility that some incident took place at S.T. stand also, but the witnesses have not given particulars as to which weapons were used and which injuries were sustained at S.T. stand. In view of these circumstances, it can not be said that view taken by trial Court is not possible view. The trial court has disbelieved the witnesses and this Court sees no reason to interfere in the decision of the trial Court. So, both the proceedings stand dismissed.