

(2012) 09 BOM CK 0005
In the Bombay High Court
Case No : Criminal Appeal No. 480 of 1997

State of Maharashtra

APPELLANT

Vs

Vaijayanti Vasant Ghadi and Others

RESPONDENT

Date of Decision : 07-09-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 353, 506

Citation : (2013) 2 ABR 409 : (2013) ALLMR(Cri) 1950

Hon'ble Judges : P.D. Kode, J

Bench : Single Bench

Advocate : V.R. Bhosale, app, for the Appellant;

Final Decision : Dismissed

Judgement

P.D. Kode, J.—The State-Appellant has challenged the judgment and Order of acquittal dated 11th December, 1996 passed by Ld. JMFC, Sawantwadi in Summary Case No. 400 of 1995 acquitting the original accused-respondents from the accusation of commission of offence under Sections 353, 506 r/w 34 of Indian Penal Code. Such of the facts necessary for disposal of the present appeal are as under:-

1.1 PW.4 Vilas Chandrakant Tembulkar working as a police constable at Sawantwadi Police Station on 16th October, 1995 has lodged the report (Exhibit-31) that as per order dated 9th October, 1995 received from Civil Court, Junior Division, Sawantwadi, on 16th October, 1995 himself and lady police constable PW-3, Jayashree Dattatraya Sasane were posted for bandobast duty for cropping of the crops in the fields of PW.5, Anant Mahadeo Ghadi at village Kolgaon, Don-garwadi. Accordingly they have reported ASI Shri Kasal at about 8.45 a.m. on 16th October, 1995 and reached Kolgaon, Dongarwadi by 10.0 hours and reported PW.5. PW.5 appraised them that rice paddy from the field in Survey No. 111, Hissa No. 3 in Kolgaon was to be cropped and for the said work the police bandobast was ordered by the Court. Accordingly along with PW.5, one Subhash Babaji Ghadi, Babaji Mahadev Ghadi, Madhukar Mahadev Ghadi,

Bhagwan Madhukar Ghadi, Gurunath Madhukar Ghadi, Snehlata Anant Ghadi, Seema Anant Ghadi, Anandi Anant Ghadi, had commenced the work of cropping the rice paddy in said field at about 10.30 hrs. At that time three women came at the said place and told PW.5 that they would not permit cropping the rice paddy. PW.4 and PW.3 present at the said place in the police uniform appraised the order received from CJJD, Sawantwadi to the said women. However, the said women stated that they were not in agreement with said order and in any event they will not allow cropping of the rice paddy and after quarreling with them rushed towards PW.4 and PW.3. Similarly, after threatening PW.5 and the other persons cropping the rice paddy as to how they would carry out said work scuffled with PW.5. PW.4 and PW.3 tried to pacify them, however, without paying any heed to them, all the said three women rushed at them. Upon PW.4 asking the said women, they gave their names as Vijayanti Vasant Ghadi, Varsha Anand Ghadi. and Dhanashri Ankush Ghadi all resident of Kolgaon, Dongarwadi, Tal. Sawantwadi. By narrating the aforesaid matters, PW.4 had lodged the said complaint against the said persons named in the complaint i.e. respectively against respondent Nos. 1, 2 and 3 in the present appeal for themselves in furtherance of their common intention of having obstructed them while discharging the duty by preventing the persons from cropping the rice paddy.

1.2 According to the prosecution upon the said complaint, C.R No. 85 of 1995 for the offences under Sections 353, 506 r/w 34 of Indian Penal Code was registered. After due investigation of the same, the respondents were charge-sheeted by Sawantwadi Police Station for commission of such offences.

1.3 At the trial, the prosecution examined the above referred three witnesses and additionally panch PW.1 Ganpat Sitaram Rane, regarding the spot panchnama (Exhibit-18) drawn on 17.10.1995 and panch PW.2 Pandurang Krishna Naik regarding the arrest of the respondents effected on 16.10.1995. Learned JMFC trying the said case as a summary case after appreciation of the prosecution evidence came to the conclusion that no incident as deposed by PW.3 and PW.4 had taken place. The trial Court also took into consideration delay of one month in lodging the FIR (Exhibit-31) by PW.5. The trial Court also duly took into consideration that no injury was caused to PW.3 and PW.4. The trial Court thus came to the conclusion that the prosecution has failed to establish the respondents having committed any of the offence accused of.

2. Smt. V.R. Bhosale, learned APP urged that the trial Court did not properly appreciate the evidence of PW.3 and PW.4 and the same in turn establishes that incident as contended by the prosecution has occurred and during the same the respondents had rushed towards PW.3 and PW.4. Learned APP contended that thus trial Court committed an error in acquitting the respondents of the offences accused of.

3. Thoughtful considerations were given to the submissions advanced by learned APP and the record and proceedings were carefully examined to ascertain the merits of the same. Since none was present on behalf of the respondents, there

was no advantage to hear any submissions on behalf of them.

4. The perusal of the judgment-appeal reveals that the trial Court has duly taken into consideration all facets of the evidence given by complainant-PW.4 and so also his companion constable PW.3. Similarly the trial Court has also taken into consideration the relevant facets of the evidence of PW.5 who had obtained the order of bandobast for cropping of rice paddy in his field. The trial Court has duly taken into consideration the admission given by PW.3 that respondents had not assaulted PW.5 and his companion and contrary evidence of PW.4 that the respondents having scuffled with PW.5. It is also duly taken into consideration that it was not the claim of PW.5 that the respondents had scuffled with him, while PW.3 has alleged that respondents had pushed her. The trial Court in detailed recorded, variance in the evidence of PW.3, PW.4 and PW.5 regarding the manner in which the alleged incident had occurred in paragraph No. 12 of the judgment appealed.

5. Similarly, after duly taking into consideration the matters revealed from the spot panchnama to the effect that the paddy from the whole corner admeasuring 30 ft. x 24 ft. was cut and there existing other paddy of 200 ft. and paddy from the same was cut and the fact that the panchnama was drawn on 17.10.1995 in between 12 noon to 1.00 p.m., the trial Court came to the conclusion that claim of PW.3 and PW.4, that paddy could not be cut because of the obstruction made by the respondents is not proved by the prosecution. The trial Court thus came to the conclusion that the prosecution evidence failed to prove that the respondents had assaulted PW.3 and PW.4 or used criminal force against them or that they were deterred from discharging their duty as public servant. The trial Court also came to the conclusion that the allegation of PW.3 and PW.4 that paddy could not be cut due to the obstruction of the respondents was not proved. Resultantly, the trial Court came to the conclusion that commission of offence u/s 353 of Indian Penal Code was not established.

6. The trial Court after considering the evidence of PW.3 and PW.4 came to the conclusion that their evidence does not depict that the respondent had threatened them. The trial Court has also duly taken into consideration that on the said date PW.3 and PW.4 had taken the respondents to the Sawantwadi Police Station and about 5 to 6 hours were required for the said purpose and during the said period the respondents had not resisted or attempted to resist bringing them to the police station. On the said basis the trial Court came to the conclusion that the prosecution had failed to prove that the respondents have threatened PW.3 and PW.4 causing alarm in their minds. After examination of the said reasoning in the light of the evidence of PW.3, PW.4 and PW.5 and the matters in the spot panchnama, the same is clearly in consonance with the evidenced on record. None of the said conclusions can be said to be either de hors the record and/or being perverse. The view taken by the trial Court is not only probable view but is the view warranted upon the evidence which has surfaced at the trial. In view of the same, no fault can be found with the findings

arrived by the trial Court and order of an acquittal of the accused. Needless to add no interference with the same is necessary. Resultantly, there are no merits in the appeal and the same deserves to be and accordingly stands dismissed. Appeal dismissed.