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**(2015) 04 BOM CK 0375**  
**In the Bombay High Court**  
**Case No : Criminal Appeal No. 300 of 2002**

The State of Maharashtra

APPELLANT

Vs

Gundu and Others

RESPONDENT

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**Date of Decision :** 09-04-2015

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 324, 325, 34, 504, 506

**Citation :** (2015) 04 BOM CK 0375

**Hon'ble Judges :** A.I.S. Cheema, J.

**Bench :** Single Bench

**Advocate :** B.L. Dhas, A.P.P., for the Appellant; A.R. Nikam, Advocate, for the Respondent

**Final Decision :** Dismissed

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## Judgement

A.I.S. Cheema, J.—State has filed this appeal against acquittal of respondents - original accused No. 1 to 4 in R.C.C. No. 103/1999 vide judgment dated 1.3.2002, passed by Judicial Magistrate, First Class, Degloor.

2. In brief, the case of prosecution is as follows:

"Complainant (P.W.1) Sujalabai Digamber More filed F.I.R. (Exhibit 32) on 5.7.1999, at about 9.00 a.m. with Police Station, Markhel, claiming that on 4.7.1999 in the evening, respondent No. 1 Gundu and respondent No. 2 Shankar had come in front of their house under influence of liquor and abused her husband Digamber on the count of elections of the Society. Again on 5.7.1999, at about 6.00 a.m., when her husband Digamber was proceeding for toilet, the respondents No. 1 to 4 (original accused No. 1 to 4) came there with stone and sticks in their hands. Her sister-in-law Sumanbai (P.W.2) and nephew Madhav (P.W.7) rushed to the spot as Digambar was likely to be beaten. At that time, the accused, by stone hit complainant Sujalabai and her sister-in-law Suman (P.W.2) as well as the nephew Madhav. Complainant was hit near her chin and teeth of her sister-in-law were broken. The nephew Madhav (P.W.7) was hit on the head

and there was bleeding from the head. The quarrel was intervened and separated. In the beating, complainant lost her Bormal. The accused persons abused and threatened."

3. The offence was registered at Crime No. 44/1999 on 5.7.1999 at 9.00 a.m. and P.W.9 Head Constable Dattatraya investigated. He prepared spot panchanama. He recorded statements. He seized stick from accused No. 3 Gunwant and stone from accused No. 2 Shankar. He obtained medical certificates of the injured from P.W.10 Dr. Gutte from hospital at Degloor. P.W.2 Sumanbai was referred to Medical Officer at Nanded P.W.11 Dr. Arjun Mapare. After completing the investigation, charge sheet was filed.

4. Matter came up before the Judicial Magistrate, First Class, Degloor. He framed charge under Section 325 read with Section 34 of the Indian Penal Code, 1860 (I.P.C. In brief) against the accused persons for grievous hurt of dislocation of teeth of P.W.2 Sumanbai. Charge was also framed under section 324 read with Section 34 of the Indian Penal Code against the accused persons for voluntarily causing hurt to the complainant and other witness by stone and sticks. Charge under section 504 was framed against accused for intentional insult of Sujalabai and for criminal intimidation of Sujalabai under Section 506 of the Indian Penal Code. The accused persons pleaded not guilty. They have been tried by the Judicial Magistrate, First Class. Prosecution examined 12 witnesses to prove the offence. The defence of the accused persons is of denial. According to them, due to election dispute and due to earlier strained relations false case has been filed.

5. Prosecution has examined the following witnesses regarding the incident:--

"(i) P.W.1 Sujalabai Digamberrao More, complainant.

(ii) P.W.2 Sumanbai Kishanrao More, sister-in-law of complainant.

(iii) P.W.3 Rejabai Maruti More, mother-in-law of complainant.

(iv) P.W.4 Dyanoba Vithal Zare, eye witness.

(v) P.W.5 Kishan Marotrao More, injured - brother-in-law of complainant.

(vi) P.W.6 Digambar Marotirao More, injured - husband of complainant.

(vii) P.W.7 Madhav s/o Kishanrao More, injured - nephew of complainant.

(viii) P.W.8 Raju Kishanrao More, injured - nephew of complainant."

6. I have gone through the evidence of these witnesses. The witnesses claim that on the day of incident dated 5.7.1999, in the early morning around 6.00 a.m., the accused persons had come in front of the house of these injured persons and assaulted by sticks and stone. P.W.4 Dyanoba is examined as an eye witness, who happened to be passing from there. The trial Court went through the evidence of these witnesses in details and has recorded reasons regarding the discrepancies and came to the conclusion that the accused were liable to be acquitted finding that the witnesses were not reliable. The third person - P.W.4

Dyanoba was also found by the trial Court to be an interested witness and thus, discarded.

7. At the time of arguments before me, the learned A.P.P. referred to the evidence of the witnesses in detail to submit that the evidence of these witnesses and the witnesses who were injured and supported by medical evidence, was wrongly discarded. The learned counsel for the respondents - accused submitted that except witness No. 4, all the above witnesses were immediate relations and although the evidence shows that the incident took place for some time on the spot, no independent witness has been examined. It has been argued that, there was difference of versions between witnesses and there were contradictions. The counsel submitted that, the time when witnesses are supposed to have gone to police station to register the F.I.R., conflicts with the timings of the examination of the doctor at Degloor, which was 10-12 Kms. away. According to the counsel, the investigation does not appear to be truthful.

8. The following factors are noticed from the evidence of witnesses which has been brought on record:--

"(a) P.Ws. 1, 2, 4 and 5 deposed that, accused No. 2 Shankar had beaten P.W.7 Madhav by stick on the head and he suffered bleeding injury. Against this, P.W.6 stated that, accused No. 1 and 2 beat Madhav by stick on the head and also on the back. P.W.3 deposed that accused No. 4 Narsingh beat P.W.7 Madhav. P.W.7 Madhav himself stated that accused No. 2 beat him by stick. He further stated that he was given 10-12 blows. His medical certificate - Exh. 58 shows a C.L.W. on the scalp parietal region and one abrasion on the neck, one abrasion on the right leg and a contusion on right arm.

(b) P.Ws. 1 to 8 have deposed that, accused No. 4 Narsingh hit P.W.1 Sujalabai by stone, causing injury to her chin. As regards P.W.2 Suman, Kishan More, P.W.1, 2, 4 to 8 deposed that P.W.2 Shankar hit her by stone on her face and broke her teeth. Against this, P.W.3 Rejabai stated that, accused Gundu (accused No. 1) assaulted Sumanbai, dislocating her teeth. P.W.1 Complainant Sujalabai deposed that, she had noticed teeth of Sujalabai fallen on the ground. P.W.2 Sumanbai herself stated that she could not say if her teeth fell on the ground. P.W.3 and P.W.8 claimed that they did not notice if the teeth had fallen on the ground. P.W.1 and P.W.2 claimed that 13 teeth of Sumanbai had been dislocated. The investigating officer P.W.9 Head constable Dattatraya claimed that two teeth of Sumanbai were dislocated due to assault by stick. P.W.10 Dr. Ravindra Gutte, who examined Sumanbai earlier in time and gave certificate Exh. 60, deposed that, Sumanbai had lost seven teeth from her lower and upper jaws. He claimed that he had referred Sumanbai to the Civil Hospital at Nanded. The Doctor P.W.11 Dr. Arjun Mapare, who subsequently examined Sumanbai at Nanded, however, has deposed that she had lost only four teeth. P.W.11 was even not able to say as to when exactly the teeth were lost.

(c) P.W.1, P.W.2 and P.W.4 claim that P.W.5 Kishan was beaten by accused No. 3

Gunwant. However, P.W.5 himself claimed that he was beaten by accused No. 1 Gundu. P.W.7 claimed that, his father Kishan was beaten by all accused. P.W.8 claimed that it was accused No. 1 Gundu who beat Kishan by wood, kick and fist blows. Medical Certificate of P.W.5 Kishan (Exhibit 61) mentioned that he did not have any external injury. P.W.10 Dr. Ravindra did not claim that the witness stated about any internal discomfort.

(d) P.W.2 claimed that, P.W.6 Digambar was beaten by all the accused. P.W.6 Digambar himself claimed that he was beaten only by accused No. 1 Gundu.

(e) P.W.8 Raju Kishan More claimed that the accused No. 1 Gundu beat him by wood causing injury on nose and shoulder. P.W.5 Kishan deposed that, his son was beaten by accused No. 1 Gundu causing injury on nose. The medical certificate (Exhibit 62) mentioned only about contusion on nose."

9. After noticing the above factors from the evidence of witnesses, if the judgment of the trial Court is perused, it can be seen that the trial Court further considered the evidence which claimed that Sumanbai became unconscious on the spot and gained consciousness only after three days but there was evidence of P.W.10 of having examined Sumanbai on the same day at Degloor and that she was conscious. Trial Court noticed that, P.W.4 Dyanoba, although he deposed about incident, has not supported the prosecution regarding seizure of sticks from accused Gundu and Shankar. Examining the evidence of P.W.4, the trial Court observed that, this witness was not residing in the neighbourhood and is stated to have been at the spot that early morning. The trial Court noticed that he claimed that he was going to get the agricultural implements from the house of one Ananda, but there were no details as to where was the house of Ananda and which agricultural implements he wanted to borrow. Trial Court observed that this witness was a chance witness and he appeared to be interested witness.

10. The trial Court observed that, P.W.10 Dr. Gutte claimed to have examined the injured persons between 8.15 a.m. to 9.35 a.m., regarding which certificates Exhibits 58 to 62 were issued. However, the evidence of P.W.1 Sujalabai showed that she was at Markhel Police Station at 9.00 a.m. of 5.7.1999. Trial Court discussed the evidence of P.W.7 claiming that, after filing the F.I.R. for half an hour, they were at the police station. Trial Court took note of the fact that the distance between Markhel Police Station and Degloor, where medical examination is said to have taken place, was of 10-15 Kms. and thus, the trial Court doubted the medical certificates as well as the timings of the F.I.R. Trial Court also noticed that in the medical certificates issued by the doctor at Degloor, earlier words regarding which police station has referred to the injured, which was entered in the certificate as "Degloor", was scored out and later on "Markhel" was written.

11. Trial Court further noticed that, P.W.9 Waghmare claimed that the investigation was handed over to him on 5.7.1999. The trial Court expressed surprise as to how this P.W.9 could have recorded spot panchanama (Exhibit 36) which had the timing of 5.7.1999 at 10.30 - 11.00 Hrs. Thus, the trial Court has

raised questions regarding the manner in which investigation has been done.

12. Looking to the reasonings of the trial Court for discarding the case of prosecution, when they are examined along with the record, I do not find that the observations of the trial Court could be said to be baseless. There is reason to say that the whole truth of the incident was not brought on record by the prosecution and the investigation done was doubtful. There is material to show strained relations between the witnesses and the accused persons. P.W.1 admitted that, accused Gundu had earlier prosecuted Mahadu, Raja, Kishan and her husband Digambar. F.I.R. itself states that there was dispute due to elections. In view of all this, I am unable to say that the judgment of the trial Court acquitting the accused persons could be said to be perverse. When the trial Court has taken a view which is possible, and acquitted the accused persons, it would not be permissible for me to substitute another view.

13. There is no substance in the Criminal Appeal. The appeal is dismissed.