

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 141 OF 2000

The State of Maharashtra,
through Public Prosecutor,
High Court, Aurangabad.

Appellant/orig.
complainant

versus

01. Sy. Habib s/o Sy.Noor Jahagirdar
age 40 years, occupation: Agril.
02. Sy. Hajat @ Chandsab Ashidullah,
age 45 years, occupation: Agril.
03. Sy.Akbar s/o Sy.Noor Jahagirdar,
age 45 years, occupation: Agril.
04. Mujahid s/o Akbar Jahagirdar,
age 19 years, occupation: Agril.
05. Samiulla s/o Daudkhan Jahagirdar,
age 45 years, occupation: Agril.

All r/of Udgir, Taluka Udgir,
District Latur.

Respondents/
ori.accused.

WITH CRIMINAL REVISION APPLICATION NO. 128 OF 2001

Sabbir Be w/o Shaikh Amin Sab
age 45 years, occup. business,
r/o Udgir, District : Latur.

Applicant/
ori.complt.

versus

01. Syed Habib s/o Sy.Noor Jahagirdar
age 40 years, occup. business,
02. Syed Hajat @ Chandsab Ashidullah,
age 45 years, occupation: Agril.

03. Syed Akbar s/o Sy.Noor Jahagirdar,
age 45 years, occupation: Agril.
04. Majahid s/o Akbar Jahagirdar,
age 19 years, occupation: Agril.
05. Samiulla s/o Daudkhan Jahagirdar,
age 45 years, occupation: Agril.

All r/of Udgir, Taluka Udgir,
District Latur.

Respondents/
Resp.Nos. 1
to 5 orig.
accused.

06. The State of Maharashtra

Shri K.M. Suryawanshi, A.P.P. for appellant-State in
Criminal Appeal No. 141 of 2000 and for Respondent No.
6 in Criminal Revision Application No. 128 of 2001.
Shri A.R.Borulkar, Advocate for Respondents No. 1 to 5
in Criminal Appeal, so also in Cri. Revn. Application.
None for applicant in Criminal Revision Application.

Coram : P.R.Borkar,J.
Date : 22/01/2010.

ORAL JUDGMENT

01. These appeal and criminal revision are filed
by the State and original complainant respectively
being aggrieved by the judgment and order passed on
18.12.1999 by the learned Additional Sessions Judge,
Latur, in Criminal Appeal No.29 of 1994 whereby he
acquitted the present Respondents-original accused of
the offences punishable under Sections 147 read with
Section 149 and 323 of Indian Penal Code for which
offences, they were convicted by the learned Judicial

Magistrate, First, Class, Udgir in Regular Criminal Case No. 181 of 1987 decided on 7.3.1994.

02. Briefly stated, PW-1 Shabbirbi lodged complaint on 29.9.1987 stating that she was owner of house bearing No. 2.2.217/1 at Udgir. She was making construction of one room after obtaining necessary permission from the Municipal Council, Udgir. She has also constructed a wall of 45 ft. in length. She also obtained injunction in respect of the said property, but present respondents-accused and other ten persons on 29.9.1987 came and asked her why she was making construction. At that time Respondent No. 5 Samiulla abused her, Respondent No. 3 Akbar gave blow with stick on her head and right hand. When her husband Shaikh Amin came to rescue her, Respondent 2 Sk. Hajat gave a blow with stick on the head of her husband. Even when brother and mother of the complainant came to rescue her, Respondent No. 2 Shaikh Hajat and Respondent No.3 Shaikh Akbar beat and injured them with sticks and stones. Thereafter complainant Shabbirbi lodged complaint with police. Injured were sent to hospital.

03. After usual investigation, charge-sheet was sent to the court against as many as 15 persons for committing offences punishable under Section 141, 148, 337 read with Section 149 I.P.C. and Section 323 read with Section 149 of I.P.C.

04. After considering the evidence on record, the learned Magistrate by his judgment and order dated 7.3.1994 convicted the Respondents who were accused Nos. 1,2,5, 9 and 10 of offences punishable under Sections 147 read with Section 149 and under Section 323 OF I.P.C. (sic). For offence punishable under Section 147 read with Section 149 of I.P.C. the learned Magistrate convicted each of the Respondents to undergo simple imprisonment of fifteen days and to pay fine of Rs.100/- each and for offence punishable under Section 323 of I.P.C. each of the Respondents was convicted to undergo simple imprisonment for fifteen days. Respondents were acquitted of the offences punishable under Sections 148 and 337 of the I.P.C. Rest of the accused were acquitted of all the offences levelled against them. As stated in paragraph 1 above, present respondents-convicted accused filed appeal before the Sessions Court in which they came to be acquitted by the learned

Additional Sessions Judge. Against the said acquittal, present appeal by State and criminal revision by original complainant are filed. It should be noted here that the learned Magistrate did not realise that offence under Section 47 of I.P.C. is individual offence and there could not have been conviction under Section 147 read with Section 149 of I.P.C. Similarly, when charge was for committing offence under Section 323 read with Section 149 of IPC, said aspect was not considered while acquitting other accused persons. Be that as it may. This appeal and the revision are necessarily against the judgment and order passed by the Additional Sessions Judge.

05. Learned Advocate Shri Borulkar for the respondents-accused argued that if the prosecution evidence is properly considered, the same indicates that it was a case of exercise of the right of private defence to property. Admittedly, there was dispute between the respondents-accused on one hand and the complainant and members of her family on the other. Civil suits were filed by both in respect of rights over the properties. It has come on record that the trial court had granted temporary injunction in favour of the complainant, but the District Court vacated the

same. However, when the matter was taken to the High Court, again temporary injunction was granted. Learned Advocate Shri Borulkar submitted that though injunction was obtained by complainant Shabbirbi, the said order did not give her right to make illegal construction on the property of the respondents-accused. He referred to cross examination of Shabbirbi at length.

06. Before we proceed to discuss evidence of complainant, as desired by learned Advocate for the Respondents, we may refer to the injuries found on the person of the prosecution witnesses who were examined by Dr. Sheshrao Yerolkar (PW-8). Dr. Yerolkar stated that on 29.9.1987 he was Medical Officer attached to Civil Dispensary, Udgir. On that day at 10.00 a.m. he examined Aminsab Mastan, the husband of the complainant, and found following injuries on his person;

1. Abrasion on parital part of scalp left side 1/2" x 1/8"
2. Contusion on left side of back oblique 2"x1/2"
3. Tenderness over right forearm.

Dr. Yerolkar also stated that on that day, at about 10.05 a.m. he also examined Bismillabee, the mother of

the complainant Shabbirbi and found that she had CLW on right dorsun of her hand near the base of ring finger 1/2"x 1/8" skin deep. Dr. Yeorokar further stated that he had also examined on that day Ahmadkhan, the brother of the complainant, and found that he had abrasion on left inner side of web of hand near thumb 1/2"x1/8". Dr. Yerolkar examined the complainant Shabbirbi and found that she had abrasion on forehand and swelling diffusing of 1/2" x 1/2" and abrasion on right anterior part of wrist of 1/8" x 1/8". All above injuries are discussed by the appellate court in paragraphs 13 to 16 of its judgment. On the person of Manjarkhan, there were no injuries. Doctor stated that injuries were minor in nature which were also possible in a fall. So, all injuries were possible in a scuffle.

07. Shri A.R.Borulkar, Advocate for the respondents-accused argued that in the complaint itself it is mentioned that besides one room, a wall was also being constructed and regarding said property, complainant Shabbirbi had obtained injunction order from the Court. She also deposed that at the time of incident, the accused were saying why she had kept stones at particular place and why she

was constructing house (at that place). So, the dominant intention of the accused, as can be seen from their conduct, was to prevent particular construction and though it is said that the house was pulled down, the spot panchanama dated 29.9.1987 (Exh.147) shows that it is not that entire house was pulled down, but it was a portion of wall of 3 ft. in width x 6 ft. in height. The remaining structure was there. The construction was in progress and construction material was lying there. There were also some broken bangle pieces which complainant claimed to be her own. In cross examination, the complainant Shabbirbi admitted that prior to her, nobody was residing in the premises. Her brother Jabbarkhan had neighbouring house property. She did not know dimension of her own property. She was not knowing whether the property was previously in the name of Jabbarkhan and she also did not know dimension of the house of Jabbarkhan. According to the complainant, Jabbarkhan got the property from municipality. She denied that, the premises belonged to Respondent-accused No.3 Shaikh Akbar. She, however, admitted that when she filed application with municipality for mutation in her name, accused No. 3 Akbar had opposed the same. The complainant denied that the municipality had informed

her and Jabbarkhan that the premises did not belong to them. The complainant then admitted that the municipality had served a notice on her to stop the construction. It was suggested to her that on 29.9.1987, municipal officials had come and demolished the house. The complainant said that she was not knowing if injunction was subsequently vacated by the District Court. The complainant admitted that her brother Manjurkhan was municipal councilor. She also denied knowledge if Respondent-accused No.3 Akbar having filed R.C.S. No. 100 of 1989 and an injunction order was granted in his favour. In her further cross examination, complainant Shabbirbi also admitted that there was dispute between her and accused Akbar about ownership of the premises. Houses of the complainant Shabbirbi and accused Akbar were adjoining each other.

08. So, if we consider totality of the circumstances, only conclusion is that there was dominant intention on the part of the respondents to prevent the complainant and her relatives from making construction on the property of the respondents. It does not appear that the intention was to beat the complainant and other witnesses. It is possible that when the respondents were exercising their right of

private defence to the property which they might have used some force against the persons on the side of prosecution. From the nature of injuries caused to the prosecution witnesses it does not appear that the right was exceeded. There were minor injuries possible in a scuffle. So, on the preponderance of probabilities it can be said that the respondents were exercising their right of private defence to the property.

09. In above view of the matter, in my opinion, this is not a case wherein interference in the acquittal recorded by the learned Additional Sessions Judge is called for.

10. In the result, appeal and criminal revision are dismissed.

