

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

**CRIMINAL APPEAL NO.463 OF 2003**

The State of Maharashtra  
(Through Loni Kalbhor Police Station,  
Pune)

.... Appellant

versus

1. Suresh Bajirao Kalbhor  
Age about 39 years,  
R/o. Loni Kalbhor ,  
Dist.: Pune.
2. Smt.Jijabai Bajirao Kalbhor  
Age about : 60 years,  
R/at Loni Kalbhor  
Dist.: Pune.
3. Kundlik Namdeo Sanas  
Age about : 40 years,  
R/a. Amale, Tal.: Purandar,  
Dist.: Pune

... Respondents  
(Orig. Accused Nos.1 to 3)

.....

- Mrs.M.M. Deshmukh, APP for the State/Appellant.

**CORAM : SARANG V. KOTWAL, JJ.**  
**DATE : 30<sup>th</sup> JUNE, 2018.**

**JUDGMENT :**

1. This is an Appeal preferred by the State of Maharashtra, against the Judgment and Order dated 10/10/2002, passed by the learned Judicial Magistrate First Class, Court Room No.7, Pune. By the impugned Judgment and Order, the Respondent No.1 to 3 were acquitted from the charges framed against them u/s 325, 323, 504, 506 r/w 34 of the Indian Penal Code (for short 'IPC').
2. The incident is dated 27/06/1988. According to the prosecution case, the first informant Nivrutti Maruti Kalbhor was assaulted by all the Respondents and had caused grievous hurt when he was working in his agricultural field. As per the prosecution case, he had suffered fracture of his nose and therefore offence u/s 325 of the IPC was made out. The first informant Nivrutti Kalbhor lodged his FIR with Loni Kalbhor Police Station, bearing C.R.No.151/88. The investigation was conducted, statements of various witnesses were recorded. The accused were arrested and subsequently were released on bail.

During investigation Spot Panchanama was conducted and a Chappal was recovered from the possession of the Respondent No.2. At the conclusion of the investigation, charge-sheet was filed.

3. During the trial, the prosecution examined 8 witnesses.  
P.W.1 Nivrutti Maruti Kalbhor was the victim and the first informant. P.W.2 Sanjay Ganpat Pathare was examined as an eyewitness, but he did not support the prosecution case and was declared hostile. P.W.3 Nirmala Nivrutti Kalbhor, was the wife of the first informant, but her evidence appears to be hearsay, as she was informed by her husband regarding the incident. P.W.4 Sarjerao Ganpat Kamble was attached to Loni Kalbhor Police Station and had investigated the offence. He had conducted the Spot Panchanama, recorded the statements of witnesses. He had arrested the accused and had seized Chappal from the accused. He himself has produced the Spot Panchanama and the seizure of Chappal Panchanama. The Chappal was seized from the Respondent No.2 Smt.Jijabai Bajirao Kalbhor. P.W.5 Dyanoba

Maruti Kalbhor was the elder brother of the first informant. He had not seen the incident, but had accompanied the first informant to the police station when the FIR was lodged by P.W.1. P.W.6 Sarubai Ganpat Pathare was at her house in the field when the incident had taken place. She claimed to be an eyewitness to the incident. P.W.7 Chandrakant Shankat Kalbhor was one of the Panchas for the Spot Panchanama. P.W.8 Dr.Venkatesh Sharadchandra Ingale, had examined the injured first informant and had produced the medical certificate on record vide Ex.79 and 82. The defence of the accused was of total denial. After recording the evidence and the statements of the accused u/s 313 of IPC, the learned Trial Judge has passed impugned Judgment and Order acquitting all the accused from all the charges.

4. I have heard Mrs.M.M. Deshmukh, the learned APP for the State. Nobody appeared for the Respondent Nos.1 to 3. With the assistance of Mrs.Deshmukh I have gone through the entire evidence and the impugned judgment.

5. Mrs.Deshmukh submitted that the evidence of P.W.1 Nivrutti Kalbhor was cogent and reliable. It was supported by the medical evidence tendered by P.W.8 Dr.Venkatesh Ingale. She further submitted that the evidence of P.W.6 Sarubai Pathare is corroborated with the evidence of P.W.1. Therefore the Judgment passed by the learned Trial Judge was not correct. She further submitted that if the reasoning given in the judgment compared with the record available and the deposition of the witnesses, it is clear that the Judgment was perverse and should be interfered with.

6. The charge was framed on 06/11/2000 u/s 325 r/w 34, 323 r/w 34, 504 r/w 34, 506 r/w 34 of IPC. The entire prosecution case depends on veracity of the evidence of the first informant P.W.1 Nivrutti Kalbhor. He has lodged his FIR on 27/06/1988 itself. The FIR is produced by the prosecution on record through his evidence at Ex.50. According to deposition of P.W.1, he was knowing the Appellant Nos.1 and 2, but was not

knowing the Appellant No.3. He has deposed that four months before the incident dated 27/06/1988, he had been to meet the Appellant No.1 and had demanded Rs.4,000/-, due to which a quarrel took place between them and the Appellant No.1 had lodged complaint with the police. In respect of the main incident of assault he has deposed that he was levelling the field of one Chandrakant Pathare, at noon time. He has categorically stated that he was alone at that time. He has further deposed that all the Appellants came there. The Appellant No.2 assaulted him on his nose with a Chappal. The Appellant No.1 and 3 assaulted him by means of stone on his ears and then they went away from the spot. P.W.1 Nivrutti Kalbhor then went to police station and lodged his report. He was referred to Sasoon Hospital, Pune, where he was treated by the doctor and an injury certificate was issued. Injury certificate was produced by P.W.1 before the police on 01/07/1988. The advocate representing the Appellants did not cross examine this witness and the Appellants themselves had to cross-examine P.W.1. The Appellants merely put the suggestion that P.W.1 Nivrutti Kalbhor was deposing

falsely and they were wrongly implicated. The learned Trial Judge should have given some opportunity to the Appellants to engage another advocate or should have offered the services of legal aid advocates or the learned Judge himself should have put questions to bring out the truth. However, neither of these steps were taken and certainly prejudice was caused to the Appellants. Fortunately, the final outcome of the case was in favour of the Appellants. But in such cases it is duty of the Court to order that the accused are represented properly and there is no prejudice caused to the Accused, due to the circumstances which are beyond their control.

7. In any case, the learned Trial Judge has described the evidence of this witness based on cogent reasoning. The FIR was produced on record. The accused were not expected to confront the witness with the averments in the FIR. The accused/Appellants were not expected to know the procedure in law to bring the contradictions between the deposition of P.W.1 Nivrutti Kalbhor and his FIR on record. However, in the peculiar

facts and circumstances of case since, the FIR is produced on record and contents thereof are admitted by P.W.1 Nivrutti Kalbhor, the learned Judge had considered them. The FIR mentioned that the first incident had occurred on 27/06/1988. P.W.1 Nivrutti Kalbhor had gone to the Appellant to demand his money and at that time there was a quarrel. However, in his deposition the first informant has stated that, the incident of demand and quarrel had taken place four months prior to the incident of assault. There is no explanation in respect of the inconsistency. This is important in the context of the incident dated 27/06/1988 because this appears to be the motive behind the assault to P.W.1. He has mentioned in the FIR that on 27/06/1988 these three Appellants came to him and asked about a gold chain and on his denial of any knowledge about the same, all of them assaulted him. In the FIR he has stated that the Appellant No.1 gave fist blows on his left ear and the Appellant No.2 assaulted him on his nose with a Chappal, due to which he suffered injuries. He has not named the Appellant No.3 but has stated that cousin of Appellant No.1 abused him.



Admittedly, the Appellant No.3 was not known to P.W.1 Nivrutti Kalbhor and therefore to fix his identity, his identification parade was necessary, which was not conducted. In the FIR he has mainly attributed the role of giving abuses to the Appellant No.3. In the deposition he has improved his version and has deposed that the Appellant Nos.1 and 3 assaulted him by means of stone on his ears. Thus, there are material discrepancies in his two versions, which are irreconcilable.

8. The deposition of P.W.1 Nivrutti Kalbhor has to be tested in the light of evidence given by medical officer Dr.Venkatesh Ingale (P.W.8). He has described the injuries as follows;

- 1) *Fracture of nasal bone with edema over left eye-lid;*
- 2) *CLW over left ear pinna,  $\frac{1}{2} \times \frac{1}{2}$  c.c. skin deep;*
- 3) *Contusion abrasion over left scapular region 6 x 2 c.m.*
- 4) *Abrasion over right thigh, middle  $\frac{1}{3}$  medially 2 x 2 c.m.*

9. The first injury on the nose mentioned by P.W.8 Dr.Ingale is attributed to the Appellant No.2 in the deposition of P.W.1. He has deposed that the Appellant No.2 assaulted him on his nose by means of Chappal. However, in his FIR he has stated that when the Appellant No.2 assaulted him with Chappal, he had suffered injuries near his eye. He has not attributed the injury to his nose by Appellant No.2 in his FIR. The injury No.4 i.e. the abrasion over right thigh has not been explained by P.W.1. The injury No.2 i.e. CLW on left ear pinna, apparently was attempted to be attributed to the Appellant Nos.1 and 3. P.W.1 has deposed that the Appellant Nos.1 and 3 had assaulted him by means of stone. However, in his FIR he has stated that the Appellant No.1 had given fist blows on his ear. These two statements are inconsistent. Therefore it is not clear as to whom these injuries are attributed by the P.W.1.

10. P.W.2 Sanjay Ganpat Pathare was declared hostile and his evidence does not help the prosecution. P.W.3 Nirmala Nivrutti Kalbhor was wife of P.W.1 Nivrutti Kalbhor and her

evidence is inadmissible being hearsay because she had not witnessed the incident. P.W.5 Dyanoba Kalbhor had merely accompanied P.W.1 Nivrutti Kalbhor to the police station and he had not witnessed the incident. Hence his evidence is also not helpful to the prosecution. P.W.6 Sarubai Ganpat Pathare claims to be an eyewitness to the incident. P.W.1 Nivrutti Kalbhor has categorically deposed that he was alone when the incident took place. Therefore he does not support her claim of her presence at the scene of offence at the time of offence. She has deposed that when there was a quarrel between the Appellant Nos.1 to 3 and P.W.1, she had separated the quarrel. P.W.1 Nivrutti Kalbhor has not deposed in the like manner. He has not stated that P.W.6 Sarubai Pathare had separated the quarrel. Further More P.W.6 has deposed that the incident had occurred at somewhere between 10.00 a.m. to 11.00 a.m. and she went back to her house at 12.30 p.m. However, the FIR shows that according to P.W.1 Nivrutti Kalbhor the incident had taken place after 01.00 p.m. Therefore her presence at the spot of incident is not established.

11. The learned Trial Judge has taken all these aspects into account while deciding the trial. He has given cogent reasoning. It cannot be said that his Judgment is perverse or the view taken by him was not a possible view. In this view of the matter, I do not find any merit in the present Appeal. With the result, the Appeal is dismissed.

**(SARANG V. KOTWAL, J.)**