

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.124 OF 2014

The State of Maharashtra .. Appellant
v/s.
Shivaji Mahadev Yadav And Ors. .. Respondents

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Mr. Arfan Sait, APP, for Appellant/State.

Ms. Meghna Gowalani, for the Respondents.

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CORAM: PRAKASH D. NAIK, J.

DATE : 25th JANUARY, 2024.

ORAL JUDGMENT:

1. This appeal is preferred by the State of Maharashtra under Section 378 (3) of the Code of Criminal Procedure challenging the judgment and order of acquittal dated 14th March 2012 passed by learned J.M.F.C., Palus, District Sangli in R.C.C. No.321 of 2008.

2. The case of the prosecution is as follows:-

On 20th January 2006, the informant was working in cattle shed. Accused nos. 1 to 4 came there with labourers in the field bearing Gat No.236A to cut the sugarcane crop. The first informant went to the field and questioned the accused about their acts and told

them not to cut the sugarcane without measurement and partition of their shares. The accused replied that they have order of the Court and abused the first informant. The informant again told them not to cut sugarcane without settling her share. Accused nos. 2 to 4 assaulted her with sticks. Her clothes were torn. She sustained bleeding injuries. She shouted for help. Some persons came to the spot and rescued her. The informant went to Bhilwadi outpost of Palus Police Station and filed report. FIR was registered for offences punishable under Sections 324, 354, 504, 506 r/w. 34 of the Indian Penal Code. On completing investigation, charge-sheet was filed.

3. Charge was framed for the offences punishable under Sections 324, 325, 504, 506 r/w. 34 of the Indian Penal Code.

4. Learned J.M.F.C., vide judgment and order dated 14th March 2012, acquitted all the accused of the offences under Sections 324, 354, 504, 506 r/w. 34 of the Indian Penal Code.

5. Learned APP for the Appellant State submitted that the judgment of acquittal is contrary to the evidence on record. The prosecution has succeeded in adducing cogent evidence. The occurrence of incident is not denied by the accused. The injured had sustained injuries. The prosecution has proved injury certificate. The injuries were sustained by the injured due to assault by accused. It is

not the case of the defence that the injuries were self-inflicted. The judgment of trial court is perverse and contrary to evidence. There is corroborative evidence on record to prove the charges. The evidence does not suffer from any omissions, contradictions. The accused, in their statements under Section 313 of Criminal Procedure Code, admitted the fact that there was a dispute over cutting of sugarcane on the day of incident between the accused and the first informant. The statements under Section 313 of Criminal Procedure Code indicate that there was an incident of assault due to such dispute and accused no.1 had suffered injury in that incident. P.W. no.1 had identified the weapon of assault. Assault caused injuries to the injured. The injuries suffered by the injured were CLW of 2x1x 1cm bone deep over frontal region. CLW of 2x1x1 cm bone deep over right parietal region no fracture and various contusions and abrasions. There was no reason to discard the evidence of eye-witnesses. The statement of informant and eye-witnesses corroborate. The weapon was seized. The trial court has erroneously discarded the evidence of witnesses. There were eye-witnesses to the incident.

6. Learned Advocate for Respondent Nos.2 to 4 submitted that the trial court has adopted possible view. No case is made out to interfere in the judgment of acquittal. The evidence of witnesses suffers from serious infirmities. Panch witnesses have turned hostile. Two witnesses have supported prosecution case. It is a settled law that

the presumption of innocence is reinforced by the acquittal of accused. The trial court's acquittal bolsters the presumption that he is innocent. If the trial court's view is possible and plausible, the High Court should not substitute the same by its own possible views. Reasons given by the trial court for recording the order of acquittal were cogent and convincing. The prosecution case suffers from serious infirmities of which a benefit is given to the accused. The trial court has rightly held that the prosecution has failed to prove the charges. The prosecution case is that P.W. 1 was assaulted by accused no.1 with scythes and accused nos. 2 to 4 assaulted with sticks. Sticks and scythes were seized. The Panch witnesses (PW4 and PW11) have supported prosecution's case. Evidence of P.W.9 is not reliable. P.W.9 stated that accused Yashwant Yadav produced scythes and two sticks at police station. Description of the articles was not given. The witness admitted that such articles are available easily in the market. The recovery panchnama does not show any blood stained stick. There are contradictions in the evidence of witnesses. The witness of Medical Officer shows that he examined P.W.1. Certificate was issued by P.W.2. The medical certificate does not mention the history of assault by scythes or sticks. Hence, no case is made out for the interference in the judgment of acquittal.

7. Ms. Goyalani has relied upon the following decisions:

1. Ramesh Babulal Doshi vs. State of Gujarat
(1996) 9 SCC page 225
2. Ghurey Lal vs. State of Uttar Pradesh
(2008) 10 SCC 450

8. In the case of *Ramesh Bhai Doshi vs. State of Gujarat*, the Apex Court has referred to the approach of the appellate court while adjudicating the appeal against acquittal. In the said case, the Gujarat High Court had reversed the acquittal of the accused tried for the offence under Section 302 IPC. The Apex Court observed that the approach of the High Court in dealing with the appeal was patently wrong for it did not access itself to the question as to whether the reasons which weighed with the trial court for recording the order of acquittal were proper or not. High Court thereof made independent of the entire evidence to arrive at the conclusion. The Apex Court had repeatedly laid down that mere fact that a view other than the one taken by the trial court can be legitimately arrived at by the appellate court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial court in dealing with the evidence was patently illegal or the consequences arrived at by it were wholly untenable. While sitting in judgment over an acquittal, the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly

erroneous or demonstrably unsustainable. If the appellate court answers the above questions in the negative, the order of acquittal is not to be disturbed. If the appellate court holds, for the reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the infirmities, it can only reappraise the evidence to arrive at its own conclusions.

9. In the case of *Ghure Lal vs. State of Uttar Pradesh* (supra), the Apex Court was dealing with an appeal directed against the judgment of the High Court passed in appeal. The trial court had acquitted the accused in the case of murder. The High Court refers the trial court's decision, and convicted the accused. The Apex Court observed that the appellate court failed to give proper weight to the powers of the trial court as to the credibility of the witnesses, thereby ignoring the standards by which the appellate court consider appeals against acquittal. It was observed that the appellate court is given wide powers to review the evidence to come to its own conclusions. But this power must be exercised with great care and caution in order to ensure that the innocents are not punished, the appellate court should attach due weight to the lower court's acquittal because the presumption of innocence is further strengthened by the acquittal. The appellate court should, therefore, reverse an acquittal only when it has very substantial and compelling reasons. The accused has presumed innocence until proven guilty. The trial court's acquittal bolsters the presumption that

he is innocent. Presumption of innocence in favour of accused further gets reinforced and strengthened by the acquittal of trial court. If trial court's view is possible and plausible, the High Court should not substitute the same by its own possible views. Due or proper weight and consideration must be given to the trial court's decision and findings. An acquittal by the trial court should not be interfered unless it is totally perverse or wholly unsustainable. The trial court has the advantage of watching the demeanour of the witnesses. The appellate court undoubtedly has wide powers of re-appreciating and re-evaluating the entire evidence. But it would be justified in interfering with the judgment of acquittal only when the judgment of the trial court is palpably wrongly, totally ill-founded or wholly misconceived, based on erroneous analysis of evidence and non-existing material, demonstrably unsustainable or perverse.

10. P.W. 1 has stated that incident took place on 20th January 2006. Accused were having sticks. They rushed towards her. She was assaulted. She admitted that there was civil suit pending in the Court and that there are strips in the land behind their houses and, out of that, first strip belongs to her husband and the other belongs to accused no.1. She also admitted that accused no.1 is cultivating the land since last 6 to 7 years by growing sugarcane. At the time of incident, 15 to 16 labourers had come to cut the sugarcane with articles like scythes. There was quarrel between the complainant and the

accused. The workers surrounded her. She sustained injury. Some of the labourers were women. She asked them not to cut sugarcane. P.W.2 is the Medical Officer. He has referred to the injuries sustained by the injured. He admitted that he has not brought the original register with him. He has not mentioned yadi number in his certificate as well as OPD number. At the time of examination of lady patient, lady attendant must be there and such reference should be made in his certificate. PW2 admitted that assault is by sticks. There can be wheel marks on body. Certificate is silent. The colour of injuries is not mentioned. Reason is not mentioned in the certificate. Injuries in Exhibit-41 are possible by fall on the ground. PW3 is the panch witness for recovery. He did not support prosecution case. PW4 is another panch witness for spot panchnama. He admitted that he was Vice Chairman of Laxmi Irrigation, which supplied water to Gat No.236/1 belonging to father of accused. He always visits police station in relation to work of villagers. Accused are paying water charges for the water scheme. He did not seek sugarcane bill in Gat No.236/1. He has good relations with the complainant and her husband. He admitted that nothing was seized in his presence. PW5 is the son of informant. He is the eye-witness to the incident. He admitted that in Gat No.236/1, sugarcane crop was taken by accused and, from time to time, sugarcane has been sent to the factories in the name of accused. He admitted that labourers in the field were having scythes in their hands. Torn clothes of his mother was shown to the

police. Accused no.1 lodged complaint alleging that his mother had inflicted blow of axe on him. He also admitted that the accused have lodged complaint against his maternal uncles, namely, Dilip and Mahadev. PW6 is daughter of informant. She has reiterated the version of PW1 and PW5. She admitted that her father-in-law is in police department. At the time of incident, her father-in-law was employed at Palus Police Station. She admitted that accused no.1 lodged complaint of assault by axe on the same day. Sugarcane crop was cultivated by accused in the said field. Her mother obstructed the labourers from cutting sugarcane. She tried to rescue her mother. But the sad fact is not mentioned in the statement recorded by police. PW7 is another eye-witness to the incident. He stated that there was dispute between the complainant and accused relating to the field. Accused assaulted complainant by sticks and scythes. During the quarrel, the clothes of the complainant were torn. The witness admitted that sugarcane crop cannot be seen from the cattle shed situated from the house of the complainant. Weapons like scythes are available in the market. PW8 is the Medical Officer. He stated that the patient had narrated history of assault. He produced MLC register. Patient received primary treatment at Bhilwadi. He found three injuries. The inward/outward number is not mentioned in Exhibit-59. He has not produced the register and case papers. He has not personally treated the patient. Exhibit-59 does not bear seal of the office as well as signature. No identification mark is recorded in

Exhibit-59. PW9 has stated that axe and sticks were seized. He do not know whether accused no.1 filed complaint against complainant about assault. The articles like scythes are available in market. P.W.10 has stated that complainant and accused are neighbours. There were frequent disputes between the parties in relation to the field. He admitted that the incident took place on 20th January, 2006 at 8.00 a.m. He admitted that in the field, sugarcane crop was cultivated by accused. At the time of the incident, there were 10 female and 10 male labourers cutting sugarcane. PW11 is the panch witness of seizure panchnama. He has not supported the prosecution case. PW12 is the Investigating Officer. He did not produce occurrence report with charger-sheet, though occurrence register is maintained with outpost Bhilwadi. He stated that the incident took place at the time of cutting sugarcane crop. The labourers of sugar factory did not come for cutting the sugarcane. Nothing was seized from the spot of incident. He has not seized the torn clothes of complainant. In front of the house of complainant, there is cattle shed. From the cattle shed the field cannot be viewed. On the same day, accused no.1 lodged a complaint against the complainant. On 20th January 2006, one complaint was lodged against brothers of complainant regarding assault to accused and wife of accused no.1. Crime was registered.

11. The trial court analyzed the evidence of witnesses and also noted the flaws of investigation. On appreciating the evidence, the

trial court acquitted the accused. I do not find any reason to interfere in the judgment of acquittal.

12. On scrutiny of evidence, it is apparent that there was dispute between both the sides on account of agricultural field. The accused were cultivating the agriculture field. The complainant had questioned the accused. There was allegedly quarrel. The medical evidence does not corroborate the version of the witness. Panch witnesses have not supported. Both of the witnesses are relatives of the complainant. On the same day, complaint was lodged by accused no.1 against the complainant alleging that she was assaulted with axe. Apparently, no investigation was done in respect of the said complaint. The trial court has given benefit of doubt to the accused. The relationship between the accused and the complainant were strained. There is every possibility of exaggeration of the incident but to falsely implicate the accused. There are contradictions in the evidence of the witnesses. Considering the circumstances, there is no reason to disturb the findings of the trial court. The medical certificate does not mention the alleged history of assault by scythes or sticks. The certificate refers to 11 injuries caused to PW1. PW2 has stated that injuries no. 1, 2 3 are possible with assault by scythes and sticks. Remaining injuries are possible by assault of sticks. All the injuries are of simple nature. History does not support the version that shot was their size. Certificate does not refer to the name of the lady attendant.

The evidence of Medical Officer refers to discrepancies. The trial court has given a finding that the evidence suffers from omissions, contradictions and exaggerations. The informant was aggressive party. The Investigating Officer has not taken due care while investigating and not made enquiry in relation to complaint lodged by accused no.1. The prosecution has failed to give explanations about injury suffered by accused no.1. The delay in not lodging FIR is not explained. The evidence of PW1 is not corroborated by eye-witnesses and medical evidence. Accused cannot be held guilty of such evidence. Considering the nature of case and the principles enunciated by the Apex Court, no case is made out to allow the appeal.

ORDER

- (i) Appeal dismissed.
- (ii) For the assistance rendered by appointed Advocate Ms. Meghna Goyalani, High Court Legal Services Authority shall pay the professional fees to her in accordance with rules.

(PRAKASH D. NAIK, J.)