



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPEAL NO.365 OF 2004**

The State of Maharashtra Through
Mantha Police Station, Dist. Jalna. ..Appellant

VERSUS

1. Chagansing S/o Katusing Pawar
Age : 25 Years, R/o. Limbkhedda,
Taluka Mantha, Dist. Jalna.
2. Katusing R/o Dalsing Pawar (Abated) ..Respondent

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*Mr. N. B. Patil, Addl. Public Prosecutor for the appellant/State.
Mrs. Sabahat T. Kazi, Advocate for respondent.*

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**CORAM : SANDIPKUMAR C. MORE AND
VAISHALI JADHAV-PATIL, JJ.**

RESERVED ON : 28. 07.2026
PRONOUNCED ON : 08.10.2026

JUDGMENT (PER SANDIPKUMAR C. MORE, J.) :-

1. The appellant/State has challenged the acquittal of present respondents i.e. original accused in Sessions Case No. 135 of 2000, from the offence punishable under Section 302 of the Indian Penal Code at the hands of learned Ist Ad-hoc Additional Sessions Judge, Jalna (hereinafter referred to as the “learned Trial Judge”), under Judgment and order dated 27.02.2004 in the aforesaid case.

2. As per the prosecution case, one Meerabai i.e. P.W.5 is the daughter of deceased Ramsing. She was married

with one Namdeo i.e. brother of the accused No.1. Accused No.2 was father of accused No.1, who admittedly died during the pendency of trial, and therefore, proceeding against him was abated. As per the settlement took place in the marriage of Meerabai, it was agreed that deceased-accused No.2 would transfer the land admeasuring 2.5 Acres from his Survey No.7 in the name of Meerabai. Accordingly, the said land was transferred in the name of Meerabai by deceased accused No.2. But thereafter the accused and husband of Meerabai started harassing her, resulting into filing a complaint by Meerabai against them in the year 1994. They also took away the land already transferred to Meerabai by way of mutation entry, for which Meerabai raised a dispute in Tahsil Office, Mantha and got cancelled the said mutation entry. As such, there was dispute between the complainant i.e. brother of Meerabai and the accused persons.

According to the prosecution, on 30.10.1997, the informant i.e. P.W.3 along with one Vishwanathsingh Chandel i.e. P.W. No.4 had gone to village Limbkheda along with deceased Ramsing for collecting copy of 7/12 extract. On that day they reached the aforesaid village at 8.00 a.m. However, by that time, the Talathi had not come to his office. After waiting for some time, they started proceeding towards

their village Talani. The informant and Vishwanath were ahead of Ramsing and when they came on road adjacent to the field of one Kisan Jadhav, they heard shouts of Ramsing. When they turned back, they saw that deceased-accused No.2 had caught hold of legs of Ramsing and accused No.1 Chagansing was giving blows of axe on his head and neck. When the informant and Vishwanath started running towards Ramsingh for rescuing him, both the accused rushed to them, and therefore, the informant and Vishwanath ran away from the spot towards their village Talani. It is alleged by the informant that while both the accused were proceeding towards their village, complainant and Vishwanath again went near Ramsing, they saw the injuries sustained by him on his head and neck and blood was also oozing from those injuries. According to them, Ramsing was no more at the relevant time. Accordingly, the informant lodged a report to police, who registered crime No. 102 of 1997 under Section 302 read with Section 34 of IPC against both the accused. However, the learned Trial Judge, after conducting the trial arising out of the aforesaid crime, acquitted the accused No.1. Hence, this appeal.

3. The learned A.P.P. submits that, the learned Trial Judge, despite evidence of three eye witnesses, acquitted the

accused by relying on the hostile witness i.e. P.W.2 Police Patil of village Limbkheda, who narrated entirely different story than the prosecution case. He submitted that P.W.3 Kailash and P.W. 4 Vishwanathsingh had actually seen the incident, but their evidence is discarded by the learned Trial Judge without any proper reasoning, especially when P.W.6 Dr. Jethliya has proved the homicidal death of Ramsing, which was possible by the axe recovered at the instance of accused. He submitted that, laches on the part of Investigating Officer cannot be used for giving benefit to the accused. He relied on the judgment in the case of **Sunil Clifford Daniel Vs. State of Punjab (2012) 11 Supreme Court Cases 205.**

4. On the contrary learned counsel Mrs. Sabahat T. Kazi supported the impugned judgment and submitted that, the learned Trial Judge has taken a possible view, considering the short falls in the evidence and acquitted the respondent/accused by appreciating the evidence on record in appropriate manner. According to her, there is no C.A. report connecting the respondent/accused in crime. Moreover, his signature is also not there in memorandum as well as discovery of the alleged weapon of murder. P.W.5 Meerabai in her cross-examination has clearly admitted that they were having suspicion on accused No.2 in respect of the crime, which

indicated that the eye witnesses might not have seen the actual incident. In support of her submissions, she also placed reliance on the following judgments:-

- (I) **Judgment of the Hon'ble Supreme Court in the case of Talari Naresh Vs. The State of Telangana SLP (Cri.) No. 13614 OF 2025, dated 13.05.2026**
- (II) **Vinobhai Vs. State of Kerala AIR 2025 Supreme Court 845**
- (III) **Mallappa And Others Vs. State of Karnataka (2024) 3 Supreme Court Cases 544**

5. Heard rival submissions and also perused the impugned judgment along with record and proceedings of the original case.

6. As per the prosecution story, the incident took place on 31st October 1997 at about 9.30 a.m. on the road from village Limbkheda to village Talani, when the appellant Chagansing committed murder of Ramsing Chavan with the help of axe and by inflicting injuries on his head and neck. Admittedly, the death of Ramsing was homicidal, which is established by P.W.6 Dr. R.R. Jethaliya, who conducted the *post mortem* over the dead body. The prosecution case is based on evidence of eye witnesses, who are four in numbers. However, P.W.1 Deorao Namdeo Mhaske, one of the eye witnesses, has not supported the case of the prosecution and in his cross-examination also no material admissions are

extracted from him. As such, the evidence of P.W.1 is not helpful to the prosecution.

7. So far as evidence of P.W. No.2 Bhagwansing Fakirsing Chavan is concerned, he was Police Patil of village Limbkheda at the relevant time, who had seen the dead body of Ramsing after being informed about the incident by the villagers. The learned A.P.P. submits that, the learned Trial Court heavily relied on his story narrated by him, in the cross-examination. According to him, dead body of Ramsing was found at 6.00 a.m. at the place adjacent to the field of one Kisan Jadhav. It is stated by him that the said Kisan Jadhav had given information of the crime to him, and therefore, he had gone to the place of incident immediately and at about 7.30 to 8 a.m. All the villagers and adjacent land owners had gathered there. According to him, he sent Village Kotwal to Police Station Mantha for giving intimation of the incident to the police. He stated that he himself informed about the incident to the informant Kailash Ramsing Chavan and one PW-4 Vishwanathsing Chandel i.e. witness of the incident, and thereafter, they arrived on the spot in between 11.00 a.m. and 11.30 a.m. The learned Trial Court has believed this story and discarded the presence of the informant and another eye witness Vishwnathsing, which the learned A.P.P. strongly

resisted. However, if the cross-examination of this witness on behalf of the prosecution is perused, then it is evident that this witness has supported the prosecution case by way of admission that the villagers told him about the incident at 9.30 a.m. and thereafter, he went to the spot immediately and found the dead body of Ramsing with severe injuries on his head as well as neck. However, in the cross-examination on behalf of the accused, he has told entirely different story discarding the case of the prosecution. Therefore, *prima facie* it appears that the learned Trial Judge has erred in believing this witness to discard the prosecution story. It is to be noted that if a witness admits certain facts, as per the prosecution story and then deposes contrary to that in the cross-examination, evidence of such type of witness needs to be discarded then and then only, being an unreliable witness. Therefore, in our opinion, the evidence of this witness is not either helpful to the prosecution or defence.

8. The remaining two witnesses i.e. P.W.3- Kailash Chavan is the informant and P.W. No.4 Vishwanathsing is the person who had accompanied the informant at the time of incident. Both these witnesses were acquainted with the deceased. In fact P.W. 3, who was the son of the deceased, and therefore, their evidence has to be scrutinized with

caution, as the interested witnesses tilt in favour of prosecution case. The Informant P.W.3-Kailashsing has stated as per the prosecution story, but he has stated that his deceased father had stopped behind them for answering the nature's call, but this crucial fact is absent from his original F.I.R. Further, he has stated that after having seen the assault, he along with P.W.4 ran away from the spot without making any attempt to rescue the deceased from the clutches of the accused. This witness has stated that both the accused had rushed towards them and since the accused No.1 was armed with an axe, they ran away to save their lives.

9. Apparently, the explanation given by the said witness as to why he ran away is possible, but he has further deposed that after the accused left from the spot, they had again went near the deceased and inspected his condition. As such, when the accused had left from the said spot, what prevented P.W.3 and P.W.4 to report the incident immediately to the police. Even after going to the village Talani, they did not report the incident to the police, but instead of that P.W.3 has stated that he along with P.W. No.4 Vishwanathsing Chandel and Meerabai again came to the spot of incident, but by that time police had already arrived there and then he lodged the report with police. It can be seen that there was

ample opportunity for the informant to lodge the report from 9.30 a.m. when the incident took place, till their return to the spot of incident again, which was around 11.30 a.m. Under such circumstances, the conduct of this informant of not informing the incident immediately to the police appears to be doubtful and gives impression that he might not be present to see the incident. Moreover, nothing has come in his evidence that while watching the incident, they tried to raise shouts. This appears highly impossible and doubtful.

10. Same is the case with another eye witness i.e. P.W.4 Vishwanathsing Chandel, who had accompanied the informant at the relevant time. Though he has stated as per the prosecution story, but his evidence appears doubtful for the same reasons as that of P.W.3 informant in respect of unnatural conduct and contradictions and not reporting the incident immediately to the police. This witness is also a panch witness on the recovery of axe. While deposing on this aspect, he admitted that he was summoned by police specifically for the *panchnama*. Moreover, he has clearly admitted the Investigating Officer directly asked the accused to produce the axe allegedly used in the crime, and thereafter, the said recovery was done. Considering such admission, the very aspect of recovery *panchnama* being made voluntarily

has become highly suspicious and doubtful and it definitely casts doubt on the authenticity of the recovery of weapon.

11. So far as evidence of P.W.5 Meerabai Namdeo Pawar, who is the daughter of deceased, is concerned, her evidence at the most can be considered as hearsay evidence as she was not present at the scene at the time of incident. She stated that she was informed about the incident by P.W. 3 at 10.00 a.m. which has definitely contradicted the prosecution story of immediate report. She has also admitted that initially they were having suspicion in respect of the incident only on accused No.2 and not the main accused i.e accused No.1. Thus, it gives impression that neither she nor the informant and P.W.4 had actually seen the incident, but they named the accused merely on suspicion being involved in the incident.

12. Same is the case with P.W.7 A.P.I. Jayabhaye, who investigated the crime. Major lapses can be noted in his evidence. As per the prosecution case, the deceased and the informant had gone to Talathi of village Limbkheda for verifying the fact whether name of Meerabai was entered into the 7/12 extract of the disputed land. However, the Investigating Officer has not recorded the statement of said Talathi to confirm the very genesis of the prosecution case.

He also failed in not sealing the seized axe. Surprisingly no C.A. report was produced in the Court at any point of time. There is no signature of accused person on the memorandum as well as recovery *panchnama* (Exhs. 29 and 30) giving impression that those were prepared in absence of anybody and in Police Station itself.

13. Therefore, considering the overall prosecution evidence, it is doubtful that the informant as well as another eye witness P.W.4 Vishwanathsing were present on the spot of incident at the time of incident, considering their unnatural conduct as discussed above.

14. The evidence of Meerabai is also not helpful to the prosecution and the fact of admission from her that initially they were only having suspicion on accused No.2 indicated that she as well as the other eye witnesses had not seen the incident. One Deorao Namdeo Mhaske, who appears to be independent eye witness, had also not supported the case of prosecution and nothing has been extracted in his cross-examination, which can support the prosecution case.

15. On going through the impugned judgment, it appears that, the learned Trial Judge discarded the evidence of informant as well as P.W.4 being unnatural and trustworthy for the reasons, which we have already discussed

above. Further, the recovery of alleged weapon used in the crime also appears doubtful as there were no signatures of the accused on the memorandum as well as recovery *panchnama* and the Investigating Officer had directly asked accused to produce the axe, which has raised doubt over the voluntarily disclosure by the accused about the place, where the said axe was kept by him. The report of C.A. is not on record to connect the accused with the crime. There is no evidence on record about the motive behind the crime, as nothing is produced in support of the alleged land dispute between accused and the deceased.

16. Though the learned A.P.P. heavily relied on the judgment of the Hon'ble Apex Court in the case of **Sunil Vs. State of Punjab (supra)**, wherein it is held that merely because the recovery memo was not signed by the accused, will not vitiate the recovery itself, but as per the judgment of Hon'ble Apex Court in case of **Vinobhai Vs. State of Kerala** as relied upon by the learned counsel for the respondents, if the immediate disclosure of the incident is not made to the police by the informant and that he also failed to take the deceased to the hospital, the guilt of the accused could not be established, since there were omissions and contradictions in the testimonies of eye witnesses.

17. In the instant case also, even after the accused had left from the spot of incident, the informant after having noticed the injuries of the deceased, did not make any attempt to take the deceased to the hospital and on the contrary, he went to his village Talani leaving behind the deceased on the spot itself. Moreover, he also did not report to the police immediately. Therefore, considering this fact, coupled with the aforesaid deficiencies in the investigation, as stated above, the inference can be drawn that the prosecution has not established the guilt of the accused beyond reasonable doubts.

18. The Hon'ble Supreme Court, in the case of ***Mallappa And Others Vs. State of Karnataka*** (supra) has discussed the scope of appeal against acquittal and it has summarised the principles, when the interference with the acquittal is permissible. In the aforesaid case, it has been observed as follows :-

"25. We may firstly discuss the position of law regarding the scope of intervention in a criminal appeal. For, that is the foundation of this challenge. It is the cardinal principle of criminal jurisprudence that there is a presumption of innocence in favour of the accused, unless proven guilty. The presumption continues at all stages of the trial and finally culminates into a fact when the case ends in acquittal. The presumption of innocence gets concretized when the case ends in acquittal. The presumption of innocence gets concretized when the case ends in acquittal. It is so because once the

trial Court, on appreciation of the evidence on record, finds that the accused was not guilty, the presumption gets strengthened and a higher threshold is expected to rebut the same in appeal.

26. No doubt, an order of acquittal is open to appeal and there is no quarrel about that. It is also beyond doubt that in the exercise of appellate powers, there is no inhibition on the High Court to reappreciate or re-visit the evidence on record. However, the power of the High Court to reappreciate the evidence is a qualified power, especially when the order under challenge is of acquittal. The first and foremost question to be asked is whether the trial Court thoroughly appreciated the evidence on record and gave due consideration to all material pieces of evidence. The second point for consideration is whether the finding of the trial Court is illegal or affected by an error of law or fact. If not, the third consideration is whether the view taken by the trial Court is a fairly possible view. A decision of acquittal is not meant to be reversed on a mere difference of opinion. What is required is an illegality or perversity.

27. It may be noted that the possibility of two views in a criminal case is not an extraordinary phenomenon. The "*two-views theory*" has been judicially recognized by the Courts and it comes into play when the appreciation of evidence results into two equally plausible views. However, the controversy is to be resolved in favour of the accused. For, the very existence of an equally plausible view in favour of innocence of the accused is in itself a reasonable doubt in the case of the prosecution. Moreover, it reinforces the presumption of innocence. And therefore, when two views are possible, following the one in favour of innocence of the accused is the safest course of action. Furthermore, it is also settled that if the view of the trial Court, in a case of acquittal, is a plausible view, it is not open for the High Court to convict the accused by reappreciating the evidence. If such a course is permissible, it would make it practically impossible to settle the right and liabilities in the eye of the law.

28. *In Selvaraj V. State of Karnataka* (SCC pp 236-37, para 13) :

"13. Considering the reasons given by the

trial Court and on appraisal of the evidence, in our considered view, the view taken by the trial Court was a possible one. Thus, the High Court should not have interfered with the judgment of acquittal. This Court in *Jagan M. Seshadri Vs. State of T. N.* has laid down that as the appreciation of evidence made by the trial Court while recording the acquittal is a reasonable view, it is not permissible to interfere in appeal. The duty of the High Court while reversing the acquittal has been dealt with by this Court, thus :

'9... We are constrained to observe that the High Court was dealing with an appeal against acquittal. It was required to deal with various grounds on which acquittal had been based and to dispel those grounds. It has not done so. Salutary principles while dealing with appeal against acquittal have been overlooked by the High Court. If the appreciation of evidence by the trial Court did not suffer from any flaw, as indeed none has been pointed out in the impugned judgment, the order of acquittal could not have been set aside. The view taken by the learned trial Court was a reasonable view and even if by any stretch of imagination, it could be said that another view was possible, that was not a ground sound enough to set aside an order of acquittal.

29. In *Sanjeev Vs. State of H.P.* the Hon'ble Supreme Court analysed the relevant decision and summarised the approach of the appellate Court while deciding an appeal from the order of acquittal. It observed thus : (SCC p. 297, para 7) :

"7. It is well settled that :

7.1 While dealing with an appeal against acquittal, the reasons which had weighed with the trial Court in acquitting the accused must be dealt with, in case the appellate Court is of the view that the acquittal rendered by the trial Court deserves to be upturned (see *Vijay*

Mohan Singh Vs State of Karnataka and Anwar Ali Vs. State of H.P.).

7.2 With an order of acquittal by the trial Court, the normal presumption of innocence in a criminal matter gets reinforced (*see Atley V. State of U. P.*).

7.3 If two views are possible from the evidence on record, the appellate Court must be extremely slow in interfering with the appeal against acquittal (*see Sambasivan Vs. State of Kerala*).

19. Thus, in the light of the aforesaid observations, it is not permissible to take another view which is not in favour of the accused, when the other view favouring the accused is possible. Therefore, considering all these aspects, we are of the opinion that the prosecution has not made out the case for reversing the judgment of the learned Trial Judge and considering the scope of appeal against acquittal, we are not inclined to take other view than the view taken by the learned Trial Judge, merely because it is available. Thus, we dismiss the appeal. Pending applications, if any, also stand disposed of.

(VAISHALI PATIL-JADHAV)
JUDGE

Ysk/

(SANDIPKUMAR C.MORE)
JUDGE