

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.147 OF 1996

The State of Maharashtra

.. APPELLANT
[Orig. Complainant]

VERSUS

- 1] Arman Gulzar Tadvī,
Age 43 Yrs.
- 2] Badar Gulzar Tadvī
Dead [deleted]
- 3] Supdu Manue Nabab Tadvī
Age 28 Yrs., R/o. Rasalpur,
Tq.Raver
- 4] Raju Arman Tadvī,
Age 27 Yrs.
- 5] Rashid Gani Nathu Tadvī,
Age 29 Yrs.
- 6] Samsheer Yuvraj Nathu Tadvī,
Age 23 Yrs.
- 7] Latif @ Mula Nathu Tadvī,
Age 27 Yrs.
- 8] Ahmed Subhan,
Age 35 Yrs.

No.1, 2, 4, 5, 7 & 8
R/o. Khorpda, Tq.Raver.

RESPONDENTS
[Ori. Accused]

...
Mrs. S.G.Chincholkar, APP for Appellant – State
Mr. G.V.Wani, Advocate for Respondent Nos.1, 3 to 8.
...

WITH
CRIMINAL REVISION APPLICATION NO. 36 OF 1996

Sk. Karim Sk. Mehatab,
Age Major, Occu. Agri.,
R/o. Khoroda, Tal. Raver,
Dist. Jalgaon

.. PETITIONER

VERSUS

- 1] The State of Maharashtra,
Copy to be served on Govt.
Pleader, High Court A'bad.
- 2] Arman Gulzar Tadvī,
Age 43 Years, Occu.
- 3] Supdu Manue Nabab Tadvī,
Age 28 Years, Occu.
R/o. Rasalpur, Tal. Raver,
District Jalgaon.
- 4] Raju Arman Tadvī,
Age 27 years
- 5] Rashid Gani Nathu Tadvī,
Age 29 Years
- 6] Samsheer Yuvraj Nathu Tadvī,
Age 27 Years.
- 7] Latif alias Mula Nathu Tadvī,
Age 27 Years
- 8] Ahemed Subhan, Age 35 Years,
Accused No.2, 4 to 8
R/o. Khoroda, Tal. Raver,
District Jalgaon

.. RESPONDENTS

...

Mr. Ankush Rathod, Advocate holding for
Mrs. Surekha Mahajan, Advocate for Petitioners
Mr. Faiz Khan, Advocate holding for
Mr. P.R.Katneshwarkar, Advocate for Respondent Nos.2 to 8
Mrs.S.G.Chincholkar, APP for Respondent – State

**CORAM : S.S. SHINDE &
A.M.BADAR, JJ.**

**RESERVED ON : 24.02.2015
PRONOUNCED ON: 12.03.2015**

JUDGMENT [Per S.S.Shinde, J.] :

1] This Appeal is filed by the State, challenging the Judgment and Order of acquittal dated 08.12.1995 passed by 5th Additional Sessions Judge, Jalgaon in Sessions Case Nos. 237/1992 and 153/1994, thereby acquitting the Respondents – Accused for the offence punishable under Section 143, 147, 302 r.w. 149 of Indian Penal Code, as well as under Section 135 r/w. 37 of Bombay Police Act and also acquitting the accused No.5 Rashid and accused No.6 Samsher for the offence punishable under Section 148 of Indian Penal Code. The original complainant has also filed the Revision Application taking exception to the Judgment and Order in Sessions Case Nos.237/1992 and 153/1994, dated 08.12.1995.

The case of the prosecution, in brief, is as under:

2] It is the case of the prosecution that, the deceased Ramjan @ Rangya was dealing in the business of

purchasing and selling cattle. There was some dispute between Rangya, and accused persons on account of certain bullocks. Rangya had tried to settle the dispute by paying an amount of Rs,1,000/-. However, the accused were not satisfied, and threatened him that they would kill Rangya.

It is the further case of the prosecution that, on 17.06.1991 at 8.00 p.m. all the accused formed an unlawful assembly in furtherance of common object of killing Rangya. Accused No.5 Rashid was armed with sickle, and accused No. 6 Samsher was armed with *dagger*. All the accused caught hold Rangya near Vithal temple at village Khiroda and assaulted him. Accused Samsher stabbed knife in the back of Rangya, and accused Rashid gave blow of sickle on his head. All other accused gave him fist and kick blows. Rangya fell down on the spot, and died at the spot itself. Some of the persons, who saw the incident, called Police Patil. The local Police Patil came on the spot, and then gave message on telephone to Raver Police Station about the incident. The concerned Police Officer reached to the spot, and obtained written report from the

Police Patil, and thereafter, an offence came to be registered against the accused persons. Two of the accused namely; Ahemed Subhan and Lukaman @ Balu Beldar could not be traced, and they were declared as absconding. Rest of the accused were arrested in due course of time. The Investigation Officer carried out investigation, charge sheet was filed, and after full-fledged trial, the respondents are acquitted. Hence this Appeal by the State of Maharashtra against the order of acquittal.

3] It appears that, in all 8 accused persons were charged under Section 143, 147 and 302 r/w. 149 of Indian Penal Code. The accused No.6 Samsher and accused No. 5 Rashid were also charged under Section 148 of Indian Penal Code for possessing deadly weapons at the time of committing alleged riot and murder. All the accused were also charged under Section 135 r.w. 37 [1 & 3] of the Bombay Police Act.

4] In all prosecution examined 10 witnesses. As already observed, the Police Patil of the concerned village informed the Police, and accordingly, First Information

Report came to be registered against the accused persons. If the evidence of PW-1 Narayan Kalu Patil is considered in its entirety, is no assistance to the prosecution inasmuch as he has not witnessed the incident. He has not named any accused or no overt act is attributed to them. On the contrary, some portion from his police statement has been denied by him. On the whole except informing the concerned Police Station about incident, his evidence on all other aspects is not useful to the prosecution.

5] The prosecution has proved spot of occurrence through Investigating Officer and PW-3. The spot of incident is not in dispute. The prosecution has also proved inquest panchanama through Investigating Officer. The medical report shows that, Rangya died due to shock due to massive blood loss due to punctured left lung due to penetrating wound. Therefore, the prosecution has proved that, death of Rangya was homicidal. However, the main question for consideration is, who was author of injuries on Rangya, which resulted into his death. The prosecution did examine PW-6 Sk. Rafik Sk. Subhan, and also PW-5, PW-7 and PW-8 so as to prove motive behind commission of

crime, however, if evidence of these witnesses is considered carefully, they have not stated specific names of the accused, who had enmity with the deceased Rangya. If the evidence of these witnesses is considered minutely, there are material omissions, contradictions and improvements. At the highest motive for commission of offence stated by the PW-6 is that, accused used to demand money to Rangya. They had threatened Rangya about 4-5 months before the incident that, they would kill him. They had threatened Rangya in the presence of PW-6 Sk. Rafik Sk. Subhan. In his evidence, he stated that, Sarpanch had intervened at that time, and thereafter, Rangya had given an amount of Rs.1000/- to Sarpanch in the presence of panchas for being given to the accused. However, PW-9 Sk. Gafur Sk. Wajir, in his evidence stated that, there was some dispute between Rangya and accused on account of cattle. He had intervened in their dispute. Accused Yuvraj used to tell that, he will kill Rangya. Rangya had paid an amount of Rs.1000/- to Yuvraj. However, this witness has not stated that, Sarpanch intervened in the dispute, and tried to settle the dispute as stated by the PW-6. PW-8-Suresh Puna Dhanake, in his evidence stated that, about 7-8 months prior to the

murder, some altercations were going on between Ramjan and accused No.3 Supadu in front of his house. He had intervened between them, and thereafter, he did not know anything more. PW-7 Sk. Nazir Sk. Wajir stated that, the accused had stolen three bullocks of Rangya about 15 days prior to *Urus*. Rangya had come to PW-7, and requested him to intervene. Sk. Gafur Sk. Wajir and Syd.Tukadu Syd. Supdu of Savda were with him, and they were also asked to intervene. These persons went to the accused, they told them that, they should not chase Ramjan. Ramjan gave an amount of Rs.1000/- to the accused Arman and Baldar. This witness has stated different story than PW-6. This witness has stated in his cross examination that, Sarpanch was not present when Ramjan paid Rs.1000/- to the accused about 15 days prior to his murder. Therefore, version of PW-6 to PW-9 about motive is different. At the highest, it can be said that, there was some dispute between Rangya on one side and accused persons on other side, on account of bullocks. However, the prosecution has not convincingly established motive for commission of offence.

6] The crucial question is, who is author of the injuries inflicted on Rangya, as a result of which he died. The prosecution examined Sk. Kalim Sk. Mehtab as PW-5. The prosecution claims that, PW-5 is eye witness to the incident. In his deposition he stated that, on 17.06.1991 at about 8.00 to 8.30 p.m., he had gone to the house of his uncle Sk. Bashir Sk. Wajir at Rasalpur. All the accused, who are present in the Court, brought Ramjan while beating and they took him to Vithal Temple. In all 9 persons were beating Ramjan. Seven of them are present in the Court. PW-5 went near Vithal Temple. He requested all the accused not to beat Rangya, but, they did not pay any heed. Accused No.6 Yuvraj took out a *dagger* and stabbed the same in the back of Rangya. The accused No.5 Rashid @ Gana gave a blow of sickle near ear of Rangya. Rangya fell down on the ground. His injuries were bleeding. The accused, thereafter, ran away, then he went to the village and said that, the Tadvies had killed Rangya. After sometime, he came back on the spot, and at that time Police had arrived there. He stated the Police that, the accused had killed Rangya. However, in his examination in cross, he stated that, he cannot tell the name of the person, who informed him that, Rangya was being beaten.

He further stated that, Rangya was son of his father's cousin brother. He did not ask anyone to accompany him before going to Vithal Temple. There is locality near Vithal Mandir. There are some small shops [*Taparies*] near the temple. He did not call any one for help when Rangya was being beaten by the accused. Many persons were seeing the incident from the distance. He know the Police Patil of Khiroda. He did not go to any one's house at Khiroda for requesting to save Rangya. He did not go near Rangya to offer water etc. Even he did not touch him. There is a Grampanchayat office near the temple. He was not aware whether on that day the counting of Parliamentary election was going on, and Police Constables were deputed in the village. He further stated that, he shouted in the village that Rangya was killed. However, he did not tell this particular to anyone. He had seen the Police Patil of Khiroda near the spot when Rangya was being assaulted.

If the evidence of this witness is considered in its totality, he has not stated name of the person, who informed him that, accused persons are beating Rangya. The said person, who informed PW-5, is not examined by

the prosecution. It has come on record that, spot of incident is 2 & ½ kilo meters away from the house of uncle of this witness. It has not been brought on record by the prosecution that, how this witness went to the spot of incident. It is also difficult to believe that, he did not offer any help to Rangya. Even he did not call anybody to save Rangya. The conduct of this witness appears to be highly doubtful. If the evidence of this witness is considered in its totality, it creates serious doubt in mind, whether really he had seen accused beating Rangya. The prosecution has not examined any independent witness, though according to the PW-5, many persons were watching the incident. In the first place evidence of PW-5 is totally unbelievable, and even if for a moment it is assumed that, his evidence can be considered, there is no corroboration forthcoming to his version. It is highly unsafe to rely upon the evidence of this witness, and therefore, the trial Court has rightly disbelieved him. Since there is no substantive evidence on record, recovery of weapons is of no consequences.

7] Though the prosecution has proved through PW-10 Vilas Jadhav, who acted as Investigating Officer, spot

panchanama, inquest panchanama and seizure panchanama etc., however, the prosecution has utterly failed to connect the accused persons with the commission of offence. The Investigating Officer has not stated in his evidence that, PW-5 was present on the spot. The Police Patil has also not stated that, this witness was present on the spot. If the evidence of the prosecution case is considered in its entirety, the prosecution was not able to connect the accused with actual commission of crime, and therefore, the trial Court has rightly given benefit of doubt to the respondent accused.

8] The Supreme Court in the case of **Nepal Singh V/s State of Haryana** in Criminal Appeal No. 383 of 2002 decided on 24.04.2009, held that, in case of acquittal, there is a double presumption in favour of the accused-firstly, the presumption of innocence is available to him-secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial Court.

Yet in another judgment in the case of **State of**

A.P. V/s M. Madhusudhan Rao¹ the Supreme Court in para 13 held thus :-

“13. There is no embargo on the appellate court to review, reappreciate or reconsider the evidence upon which the order of acquittal is founded. Yet, generally, the order of acquittal is not interfered with because the presumption of innocence, which is otherwise available to an accused under the fundamental principles of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a court of law, gets further reinforced and strengthened by his acquittal. It is also trite that if two views are possible on the evidence adduced in the case and the one favourable to the accused has been taken by the trial court, it should not be disturbed. Nevertheless, where the approach of the lower court in considering the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse, then, to prevent miscarriage of justice, the appellate court is obliged to interfere.”

Yet in another judgment in the case of

¹. 2009 All MR(Cri) 547 (S.C.)

Muralidhar alias Gidda and another Vs. State of Karnataka² the Supreme Court in para 12 held thus:-

12. *The approach of the appellate Court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu Vs.State, AIR 1954 SC 1, Madan Mohan Singh Vs. Stte of U.P., AIR 1954 SC 637, Atley Vs. State of U.P., AIR 1955 SC 807, Aher Raja Khima Vs. State of Saurashtra, AIR 1956 SC 217, Balbir Singh Vs. State of Punjab, AIR 1957 SC 216, M.G.Agarwal Vs. State of Maharashtra, AIR 1963 SC 200, Noor Khan Vs. State of Rajasthan, AIR 1964 SC 286, Khedu Mohton Vs. State of Bihar, [1970] 2 SCC 450, Shivaji Sahabrao Bobade Vs. State of Maharashtra, [1973] 2 SCC 793, Lekha Yadav Vs. State of Bihar, [1973] 2 SCC 424, Khem Karan Vs. State of U.P., [1974] 4 SCC 603, Bishan Singh Vs. State of Punjab, [1974] 3 SCC 288, Umedbhai Jadavbhai Vs. Sate of Gujarat, [1978] 1 SCC 228, K.Gopal Reddy Vs. State of A.P., [1979] 1 SCC 355, Tota Singh Vs. State of Punjab, [1987] 2 SCC 529, Ram Kumar Vs. State of Haryana, 1995 Supp [1] SCC 248, Madan Lal Vs. State of J & K, [1997] 7 SCC 677, Sambasivan Vs. State of Kerala, [1998] 5 SCC 412, Bhagwan Singh Vs. State of M.P. [2002] 4 SCC 85, Harijana Thirupala Vs. Public Prosecutor, High Court of A.P., [2002] 6 SCC*

2. 2014 [4] Mh.L.J.[Cri.] 353

470, C. Antony Vs. K.G.Raghavan Nair, [2003] 1 SCC 1, State of Karnataka Vs. K.Gopalakrishna, [2005] 9 SCC 291, State of Goa Vs. Sanjay Thakran, [2007] 3 SCC 755 and Chandrappa, Chandrappa Vs. State of Karnataka, [2007] 4 SCC 415. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate Court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate Court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate Court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial Court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate Court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are

likely to result in grave injustice, the reluctance on the part of the appellate Court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate Court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial Court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate Court in the judgment of the trial Court.

[Underlines supplied]

9] The view taken by the trial Court is plausible, therefore, no interference is called for in the impugned Judgment and Order. Appeal sans merit, and hence dismissed. Criminal Revision Application No.36/1996 filed by the complainant also stands dismissed.

Sd/-

[A.M.BADAR, J.]

Sd/-

[S.S. SHINDE, J.]

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DDC