

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

Criminal Appeal No. 68 of 2004

The State of Maharashtra,
through Police Station, Deoni.

.. Appellant
(Original complainant)

versus

1. Maruti Limbaji Randive,
Age : 50 years,
2. Bhausahab Maruti Randive,
Age : 19 years,
3. Mohan Bhagwan Shinde,
Age : 26 years,
4. Kewalbai w/o. Maruti Randive,
Age : 40 years,

Accused no.3 R/o. Hali
And accused nos.1, 2 & R/o.
Vilegaon, Taluka : Udgir,
District : Latur.

.. Respondents
(Original accused)

.....

*Mr. A.G. Magare, Additional Public Prosecutor, for
the appellant.*

Mr. S.S. Manale, Advocate, for respondent nos.1 to 4.

.....

CORAM : A.M. BADAR, J.

DATE : 26TH OCTOBER 2015

ORAL JUDGMENT :

1. By this appeal under Section 378 of the Code of Criminal Procedure, 1973, the appellant - State has challenged the judgment and order dated 18-10-2003, passed by the learned Judicial Magistrate (F.C.), Udgir, thereby acquitting the respondents / original accused of the offences punishable under Sections 326, 323 read with Section 34 of the Indian Penal Code.

2. Briefly stated, it is the prosecution case, that on 13-7-1996 at about 7 to 7.30 a.m., informant Sanjay Randive and his father Baburao Randive were sitting in front of courtyard of their house. At that time, respondents / accused came in front of their house and abused them on account of previous enmity. After questioning informant Sanjay (PW 3) as to why he had gone to Digras, they started assaulting the informant as well as his father Baburao (PW 1). According to the prosecution, accused no.3 Mohan had assaulted informant Sanjay Randive on back by means of stick. Accused no.2 Bhausahab attempted to assault Baburao (PW 1) by means of knife and when informant Sanjay (PW 3) accosted him, accused no.2 Bhausahab gave a blow of that knife which landed near right thumb of informant Sanjay (PW 3). Accused no.1 Maruti assaulted Baburao (PW 1) by means of iron rod and accused no.4 Kewalbai indulged in scuffle with Subhadrabai (PW 2) - mother of informant Sanjay. It is case of the prosecution, that in this incident of assault on the prosecuting party, *Mangalsutra* of Subhadrabai (PW 2) was lost. Kishan Vilegaonkar, Vyankat Randive, Udhav Randive and others were eye witnesses to the incident in question.

3. After assault, injured Baburao (PW 1), Subhadrabai (PW 2) and Sanjay (PW 3) were taken to the Rural Hospital at Deoni where Dr. Mallikarjun Mithare (PW 4) examined and treated them. Report of the incident came to be lodged by Sanjay (PW 3) on 13-7-1996 itself and accordingly crime in question was registered. After investigation, charge sheet came to be filed against accused persons, in the Court of Judicial Magistrate (F.C.), Udgir. Charges for the offences punishable under Sections 323, 326 read with Section 34 of the IPC were framed and explained. Accused persons pleaded not guilty and claimed to be tried. In order to bring home the guilt against the accused persons, the prosecution has examined in all six witnesses and placed reliance on documentary evidence. Defence of accused persons is that of total denial.

4. After conclusion of the trial and after hearing the parties, by the impugned judgment and order, the learned Judicial Magistrate (F.C.), Udgir, was pleased to acquit accused persons by holding that the prosecution has failed to prove the charges by adducing cogent evidence.

5. Heard the learned Additional Public Prosecutor appearing for the State. He vehemently argued that the evidence of injured Baburao (PW 1) is duly corroborated by evidence of other injured witnesses, namely, Subhadrabai (PW 2) and Sanjay (PW 3). In his submission, the prosecution has proved injury certificates of informant and other injured witnesses by examining Dr. Mallikarjun Mithare (PW 4), Medical Officer attached to Deoni Hospital. Apart from that, according to the learned Additional Public Prosecutor, the prosecution has also adduced evidence of independent witness Rangrao Randive (PW 6) and, therefore, the

learned trial Court erred in acquitting accused persons.

6. Per contra, the learned Counsel appearing for the respondents / accused vehemently argued that the entire prosecution case is totally untruthful and untrustworthy. In his submission, informant Sanjay (PW 3) was resident of village Deoni and the incident in question is alleged to have occurred at village Vilegaon. The evidence of Sanjay (PW 3), in submission of the learned Counsel for the respondents, goes to show that he was not at all present at village Vilegaon where the incident in question had allegedly occurred. The learned Counsel for the respondents / accused further argued that Baburao (PW 1) had left the village Vilegaon at about 6.00 a.m. on the date of incident and, therefore, his presence on the spot of the incident is not free from doubt. He further pointed out that the evidence of all injured witnesses is totally inconsistent and, therefore, unworthy of reliance. According to the learned Counsel for the respondents / accused, real sister of the informant was working as Nurse at Rural Hospital at Deoni and under her influence, Dr. Mallikarjun Mithare (PW 4) had issued incorrect injury certificates to her relatives and in this way, accused persons were implicated in false case due to old enmity of the parties.

7. With the assistance of the learned Counsel appearing for the parties, we have perused the record & proceedings, including evidence of witnesses as well as documentary evidence adduced on record. We have also carefully perused the impugned judgment and order of acquittal passed by the learned Judicial Magistrate (F.C.), Udgir.

8. At the outset, it needs to mention here, that we are dealing with the appeal challenging acquittal of the respondents. In the case of ***Ramesh Babulal Doshi Vs. State of Gujarat***, reported in (1996) 9 SCC 225, Hon'ble Supreme Court has taken a view that while considering appeal against 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 and if the court answers the above question in the negative, the acquittal cannot be disturbed. In ***Ganpat Vs. State of Haryana***, reported in (2010) 12 SCC 59, after referring to earlier authorities certain principles have been culled out. They read as follows :

15. The following principles have to be kept in mind by the appellate court while dealing with appeals, particularly, against an order of acquittal :

(i) There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is founded and to come to its own conclusion.

(ii) The appellate court can also review the trial court's conclusion with respect to both facts and law.

(iii) While dealing with the appeal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and by giving cogent and adequate reasons may set aside the judgment of acquittal.

(iv) An order of acquittal is to be interfered with only when there are 'compelling and

substantial reasons' for doing so. If the order is 'clearly unreasonable', it is a compelling reason for interference.

(v) When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration report of ballistic experts, etc. the appellate court is competent to reverse the decision of the trial court depending on the materials placed.

9. Keeping in mind, this law laid down by the Hon'ble Apex Court, let us examine whether the findings of the learned trial Court recorded while acquitting respondents / accused are palpably wrong, manifestly erroneous or demonstrably unsustainable. As this is an appeal filed by the State, it becomes duty of this Court to marshal the entire evidence on record and order of acquittal can be interfered only if there are compelling and substantial reasons for doing so.

10. At the outset, it needs to be kept in mind, that accused persons and the prosecuting party are relatives. As seen from the evidence of Subhadrabai (PW 2), accused no.1 Maruti is son of step-brother of her husband Baburao (PW 1). Sanjay (PW 3) is her own son. Accused no.1 Maruti is father of accused no.2 Bhausahab and accused no.4 Kewalbai is his wife. Accused no.3 Mohan is son-in-law of accused no.1 Maruti. It is not at all in dispute, that the prosecuting party as well as accused persons were on inimical terms as the FIR at Exhibit 43 lodged by Sanjay (PW 3) gives a reason for assault as previous enmity between the parties. As the prosecuting party and accused persons though are relatives but are having enmity, evidence of the prosecution witnesses will have to be scrutinized

with great care and caution as there is general tendency to exaggerate the facts and to implicate as many as persons as possible in such cases.

11. In this backdrop, it would be relevant to consider evidence of Sanjay (PW 3) first as he is the informant. This witness is working as Teacher and at the relevant time, was posted at village Deoni. The evidence coming on record from his cross examination goes to show that he used to reside at the house of one Abhang Garad at village Deoni at the time of incident in question. On 12-7-1996, he was on duty and his version goes to show that day of 13-7-1996 when the incident had allegedly occurred, was a working day for his school. He claims to have sought leave for that day by submitting an application stating that he sustained injuries. As per his version, he sought oral permission to leave headquarters on 12-7-1996.

12. So far as the incident in question is concerned, Sanjay (PW 3) has stated that all accused persons had come to his house at village Vilegaon where apart from him, his mother Subhadrabai (PW 2), his father Baburao (PW 1) and his elder brothers were present. He further stated that initially all accused persons abused them and then started assaulting them. Sanjay (PW 3) attributed specific role to each of the accused persons. As per his version, accused no.3 Mohan had assaulted him on his back by means of stick. Accused no.2 Bhausahab armed with knife, rushed on person of his father Baburao, but he intervened and in that process, sustained injury to his right hand palm near the thumb. Sanjay (PW 3) further deposed, that accused no.1 Maruti assaulted him by means of iron rod on shoulder, stomach and thigh and accused no.4 Kewalbai assaulted

his mother Subhadrabai (PW 2) by fist and kick blows. As per version of Sanjay (PW 3), accused no.2 Bhausahab also assaulted his mother Subhadrabai by means of stone on her chest, stomach and thigh. By and large, this version of Sanjay (PW 3) is in consonance with his FIR Exhibit 43.

13. In the case in hand, evidence against accused persons is coming from the mouth of prosecution witnesses who are near relatives constituting one family. As such, strict scrutiny is required to be applied for testing veracity of their evidence because of their past enmity with accused. As virtually there is no independent evidence on record, in order to ascertain truthfulness of these witnesses, one will have to compare their evidence *inter se* in order to ascertain whether Sanjay (PW 3) and his parents Baburao (PW 1) and Subhadrabai (PW 2) are witnesses of truth and their evidence can be relied on for recording a finding that the charge is proved by the prosecution. Applying this test, if evidence of Baburao (PW 1) is perused, then it is seen that he has come with totally different version than version of his son Sanjay (PW 3). It is in the evidence of Baburao (PW 1), that on 13-7-1996, after abusing them, accused persons assaulted him as well as his family members by means of stone. As per version of Baburao (PW 1), accused nos.1 and 2 had assaulted him by stone. He further deposed that accused persons assaulted his son Sanjay by knife on right palm. Baburao (PW 1) further deposed that accused persons assaulted his wife and in that process, her *Mangalsutra* was lost. Baburao (PW 1) went on stating that accused no.3 Mohan had assaulted his son Sanjay by kick on back and chest. It is thus clear, that Baburao (PW 1) is not attributing assault to him by any of accused persons by means of iron

road. He is not attributing stick to any of accused persons. Though he has stated that main weapon of assault were stones, evidence of Sanjay (PW 3) as well as FIR lodged by him with promptitude is conspicuously silent about use of stone as main weapon of offence by accused persons.

14. As against this, Subhadrabai (PW 2) has come up with other version about the incident in question. She stated that it was accused no.1 Maruti who assaulted her husband Baburao by means of iron rod. Such claim was not made by Baburao (PW 1) nor there is any such evidence by Sanjay (PW 3). Subhadrabai (PW 2) deposed that all accused persons assaulted her by means of kick and fist blows. This is not the version of the incident either by informant Sanjay (PW 3) or that of Baburao (PW 1).

15. It is thus seen, that all the three witnesses, who claim to be injured in the same incident, are attributing different role to accused persons so also different weapons. Their evidence is not at all consistent on the point of assault on them by accused persons. Now let us consider whether entire evidence of all these three witnesses needs to be discarded or if any of them can be relied upon to upset the acquittal of accused persons.

16. The prosecution claims to have adduced evidence of independent witness Rangrao Randive (PW 6). However, he is not a person who is named as eye witness in the FIR lodged by Sanjay (PW 3) on the day of incident. Rangrao Randive (PW 6) does not appear to be an independent witness. Rather he appears to be an interested witness being brother of Baburao (PW 1). By claiming to be an eye witness to the

incident, Rangrao Randive (PW 6) has stated that he has seen both the parties assaulting each other near house of Baburao (PW 1) and weapons used for assault were stones. Thus, PW 6 Rangrao's evidence shows that there was free fight between the parties. The evidence of Rangrao Randive (PW 6), who is near relative of prosecuting party, goes to show that what is being stated by Baburao (PW 1), Subhadrabai (PW 2) and Sanjay (PW 3) is not the correct version of the incident in question. As such, these three witnesses cannot be said to be witnesses of truth in order to place reliance on their version about the incident in question. The genesis of the prosecution case appears to have been suppressed by the witnesses.

17. True it is, that the prosecution by examining Dr. Mallikarjun Mithare (PW 4) has proved injury certificates reflecting injuries on Baburao (PW 1), Subhadrabai (PW 2) and Sanjay (PW 3). However, Dr. Mallikarjun Mithare (PW 4) does not appear to be a witness of truth as he straightway denied the fact that the sister of informant Sanjay was serving as Nurse at his hospital at Deoni. The informant as well as his parents are candidly accepting the fact that the sister of informant Sanjay i.e. daughter of Baburao (PW 1) and Subhadrabai (PW 2), at the relevant time, was working as Nurse with Primary Health Centre at Deoni. His evidence as such was rightly rejected by the learned trial Court.

18. Evidence of Subhadrabai (PW 2) shows that her son Sanjay (PW 3), who was serving as Teacher at village Deoni (Khurd) used to leave at 6.00 p.m. The evidence of Sanjay (PW 3) coming on record from his cross examination goes to show that he used to reside at the place of

his posting i.e. Deoni. Evidence of Sanjay (PW 3) does not show any reason as to why after attending duty on 12-7-1996, he came to village Vilegaon when he was resident of Deoni. Cross examination of Baburao (PW 1) reveals that on the day of incident, at about 6.00 a.m., he left the house for Deoni in order to meet his daughter who was serving as Nurse at that place. Thus, this evidence creates reasonable doubt in the prosecution case, as to whether Baburao (PW 1) and Sanjay (PW 3) were really present on the spot of incident at the time of incident in question. This is particularly so, because as per version of Sanjay (PW 3), apart from them, his elder brothers were also present in the house. It is not the case of the prosecution, that elder brothers of Sanjay (PW 3), who were very much present in the house, had suffered any injuries in the incident in question. They are not even examined as witnesses by the prosecution. As evidence of the prosecution was discrepant, it was incumbent on the part of the prosecution to examine independent witnesses in order to prove the charges levelled against accused persons, particularly when the FIR at Exhibit 43 shows that independent witnesses were very much available. The FIR at Exhibit 43 shows that Kisan Vilegaonkar, Vyankat Randive, Udhav Randive and other persons were present on the spot at the time of the incident. No reason is forthcoming as to why these persons were not examined as witnesses by the prosecution.

19. The learned trial Court, after scrutinizing evidence of the prosecution, was pleased to acquit accused persons by holding that evidence of injured witnesses is not reliable and presence of Baburao (PW 1) and Sanjay (PW 3) on the spot at the time of incident appears to be doubtful. This reasoning of the learned trial Court, for reasons recorded

by us in foregoing paras, cannot be said to be perverse. Plausible view appears to have been taken by the learned trial Court while acquitting accused persons and, therefore, it cannot be said that there are compelling and substantial reasons for interfering with the well reasoned judgment of acquittal of accused persons.

20. Hence, the Appeal is devoid of merits and, therefore, the following order :-

ORDER

The Appeal is dismissed.

(A.M. BADAR)
JUDGE

.....