

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 6453 OF 2014

The State of Maharashtra
through
Complainant Dnyanoba Rambhau Sawant,
Age 60 years, R/o. Jagji,
Tq. and Dist. Osmanabad.

Applicant/s

Versus

- 1] Balaji @ Nana Kisan Sawant,
Age 22 years.
- 2] Bhimrao Kisan Sawant,
Age 19 years,
- 3] Sau. Bharatbai Kisan Sawant,
Age 65 years.
- 4] Shakubai @ Lalita Madhukar Bhise,
Age 35 years.
- 5] Sau. Rani Balaji Sawant,
Age 19 years.

All R/o. Jagji, Tq. And Dist. Osmanabad.

Respondent/s
[Ori. Accused Nos. 2 to 6]

Mr. S.G. Chincholkar,, APP for the applicant.
Mr. M.B. Kolpe, Advocate for respondent Nos.1 to 5.

CORAM : S.S. SHINDE & A.M. BADAR, JJ.
DATE : 24TH AUGUST, 2015.

ORDER [PER A.M. BADAR, J]:-

1] This is an application by the State seeking leave under Section 378(1)(3) of the Code of Criminal Procedure, 1973, for filing appeal challenging the judgment and order dated 30-9-2014, passed by the learned Sessions Judge, Osmanabad, thereby acquitting accused nos.2 to 6, of the offences punishable under Sections 302, 147, 148, 447, 504, read with Section 149 of the Indian Penal Code.

2] We have heard the learned Additional Public Prosecutor, Mrs. S.G. Chincholkar, appearing for the State. By drawing our attention to the evidence of PW 2 Dnyanoba Sawant and his son PW 16, Rameshwar, she vehemently argued that the prosecution has established that the respondents / accused nos.2 to 6 had committed the offences alleged against them. According to the learned Additional Public Prosecutor, by adducing cogent evidence, the prosecution has established that along with accused no.1 Kisan, respondents / accused nos.2 to 6 had formed an unlawful assembly by getting themselves armed with deadly weapon with an intention of committing murder of Sandipan Sawant and assaulting the members of the prosecution party. It is the contention of the learned Additional Public Prosecutor, that the evidence on record unerringly establish that by forming unlawful assembly, accused persons armed with deadly weapons committed criminal trespass and entered in Gat No. 381 of village Jagji in Osmanabad District, owned by informant Dnyanoba and in prosecution of common object of unlawful assembly, they committed murder

of Sandipan - son of informant.

3] With the assistance of the learned Additional Public Prosecutor, we have carefully perused the entire record & proceedings, including statements of witnesses and the documentary evidence adduced by the prosecution. We have also carefully perused the impugned judgment and order dated 30-9-2014, passed by the learned Sessions Judge, Osmanabad, thereby acquitting respondents / accused nos.2 to 6, of the offences alleged against them and convicting accused no.1 Kisan for the offences punishable under Sections 302 and 447 of the IPC and sentencing him accordingly.

4] Scope of appellate jurisdiction of this Court is no more res integra. In ***Ramesh Babulal Doshi vs. State of Gujarat (1996) 9 SCC 225***, Honourable Supreme Court has taken a view that while considering the 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 (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.

5] In the matter of *State of Punjab vs. Karnail Singh*, (2003) 11 SCC 271, Honourable Supreme Court opined that the paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the

guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to re-appreciate the evidence even where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. The aforesaid principles have been reiterated in ***Jugendra Singh Vs. State of Uttar Pradesh (2012) 6 SCC 297*** and ***Basappa vs. State of Karnataka (2014) 5 SCC 154***.

6] So far as homicidal death of Sandipan is concerned, this fact is established by the prosecution by acceptable evidence of Autopsy Surgeon PW 1 Dr. Gurubas Shete. His evidence is duly corroborated by PW 5 Dr. Papade, Medical Officer of Primary Health Center, Jagji, who referred injured Sandipan to the Civil Hospital, Osmanabad. There, PW 19, Dr. Sajiya Pathan declared Sandipan dead during the course of medical treatment on him. During autopsy, Dr. Gurubas Shete has noticed only one injury i.e. contused lacerated wound over right parietal region of scalp of deceased Sandipan, admeasuring 5 cm. X 1 cm x bone deep. He also found subcutaneous haematoma of size 10 cm. X 6 cm with 200 cc of blood clot. This injury has resulted in linear fracture in both parietal bones with bleeding. Evidence of PW 1 Dr. Gurubas Shete shows that this injury is possible by hard and blunt object, such as, wooden plank used for agricultural purpose known as '*Rumane*' in vernacular. This ante mortem injury caused death of Sandipan Dnyanoba Sawant and, as such, the learned Sessions Judge has rightly concluded that deceased Sandipan died homicidal death.

7] Now, let us examine, whether it is proved by the prosecution that the accused persons being armed with deadly weapon formed unlawful assembly to commit murder of Sandipan Sawant after committing criminal trespass over his field, had indulged in rioting and in the course of pursuing common object of that unlawful assembly, committed murder of Sandipan Dnyanoba Sawant.

8] According to prosecution case, apart from the eye witness account of the incident, the prosecution has also established motive with the accused persons for committing the crime. It is not in dispute that the convicted accused No. 1 Kisan is brother of informant Dnyanoba Sawant and Sandipan - son of the informant had died in the incident. According to prosecution case, there was partition between the three brothers, including accused No.1 Kisan, informant Dnyanoba and their third brother. It is the case of the prosecution that in that partition of ancestral agricultural land, convicted accused No.1 Kisan Sawant got less land and, therefore, there was dispute over the boundary of his field and the field of informant Dnyanoba Sawant. The fact that there was dispute in respect boundary of the fields owned by the prosecution party and the accused persons is proved by the prosecution by adducing cogent and consistent evidence of PW-7 Hanumant, Member of the Gram Panchayat, PW-6 Appasaheb - Sarpanch of the Gram Panchayat, PW-3 Sunita - widow of deceased Sandipan and PW-16 Rameshwar - brother of the deceased. Apart from evidence regarding

motive, we are having eye-witness account of the alleged offence coming on record from the mouth of PW-2 Dnyanoba, the informant and his son PW-16 - Rameshwar.

9] Consistent evidence of PW-2 Dnyanoba and his son PW-16 Rameshwar goes to show that on 19.6.2010 at about 8.00 a.m., PW-16 Rameshwar alongwith his brother Sandipan (since deceased) went to their field for conducting sowing operations. After about half an hour, PW-2 Dnyanoba also went to his field carrying breakfast. As per the version of the informant, Dnyanoba (PW-2), when his sons started sowing operations, convicted accused No.1 Kisan alongwith respondents/accused Nos. 2 to 6 obstructed sowing operations and abused him. It is in evidence of PW-2 Dnyanoba that accused No.3 Bhima was holding a long handle sikle. Accused No.2 Balaji pelted stones towards him. Due to fear he went on back foot. PW-2 Dnyanoba further stated that accused No.5 Shakubai @ Lalita and accused No.6 Rani, held his son Sandipan and convicted accused No.1 gave a blow of "Rumne" (wooden agricultural instrument) on head of Sandipan, causing his fall with bleeding injury. PW-2 Dnyanoba further deposed that thereafter convicted accused No.1 Kisan assaulted his son PW-16 Rameshwar by said "Rumne".

10] So far as mode and manner of assault is concerned, evidence PW-16 Rameshwar is congruous to a large extent with evidence of his father PW-2 Dnyanoba. As per his version, while he and Sandipan were doing

sowing operations all accused entered into their field and started quaralling with them. PW-16 Rameshwar further deposed that accused No.4 Bharatbai and accused No. 2 Balaji pelted stones towards them.

11] At the outset, it needs to be mentioned here that PW-2 Dnyanoba had lodged report with police station on the day of the incident i.e. on 19.6.2010 itself. As such, one can infer that the informant has lodged report with promptitude. This report lodged by PW-2 Dnyanoba at Exh.73, only mentions that because of the dispute over common boundary of the field, accused persons had assaulted his son Sandipan by means of a wooden log called as “Rumne” and caused a big injury on his head. True it is, that the FIR is not an encyclopedia of crime and it is not at all necessary to narrate role of each and every accused in commission of crime in the FIR, but the fact that the medical evidence shows that deceased Sandipan had only one injury on his head makes these recitals in the FIR very relevant. It is seen that because of dispute over the common boundary of the field, relations between the prosecuting party and the accused persons had turned inimical. Though according to prosecution, accused persons had a motive to eliminate deceased Sandipan because of dispute over the common boundary of the agricultural field, one will have keep in mind that enmity is a double edged weapon and there is tendency to implicate as many persons as possible in the offence because of such enmity. Therefore, one will have to examine evidence of both the eye witnesses carefully and minutely.

12] Though PW-2 Dnyanoba and PW-16 Rameshwar had deposed that the accused No.4 Bharatbai and accused No.2 Balaji had pelted stones on them, none of the trio viz. deceased Sandipan, PW-2 Dnyanoba and PW-16 Rameshwar had sustain a single injury by stone. Evidence of PW-2 Dnyanoba that accused No.1 Kisan assaulted his son - PW-16 Rameshwar, has come by way of omission. This version of PW-2 Dnyaneshwar is not even supported by his son PW-16 Rameshwar. PW-16 Rameshwar during the course of his evidence, has went on stating that accused No.3 Bhima had assaulted his brother Sandipan by a long sickle. However, this evidence is coming by way of omission. That apart, there is no injury except one contused lacerated wound on right parietal region of deceased Sandipan. In absence of injury on body of deceased Sandipan which could have been inflicted by a sickle, this discrepant evidence of PW-16 Sandipan cannot be accepted.

13] Considering this nature of evidence adduced by PW-2 Dnyanoba and PW-16 Sandipan in order to rope in other relatives of accused No.1 Kisan in the crime in question and their tendency to make improvement in their version during the trial, we are inclined to record a finding that the learned trial court was perfectly correct in coming to the conclusion that the presence of accused Nos. 2 to 6 on the spot of the incident at the time of alleged incident was doubtful, apart from the fact that the prosecution has not established that they had taken any part in the assault.

14] Learned trial court has recorded a finding that the prosecution

has failed to prove that the accused persons formed an unlawful assembly to commit the offence. In this context, it needs to be mentioned that PW-2 Dnyanoba had not uttered a single word against accused No.4 Bharatbai. Though he and his son PW-16 Rameshwar were attributing a long sickle to accused No.3 Bhima, evidence on record does not show that any one from the prosecuting party had suffered injury because of blow of sickle. Rather, PW-2 Dnyanoba had not attributed any blow of sickle by accused No.3 Bhima.

15] It is stated that two of the accused persons pelted stones on the prosecuting party. None is shown to have been injured by the said pelting of stones. True it is that informant Dnyanoba and his son Rameshwar have consistently stated that accused No.5 Shakubai and accused No.6 Rani had held Sandipan while he was being assaulted, this evidence was rightly found to be unacceptable by the learned Sessions Judge because though accused No.1 Kisan was having 2 major sons, whose presence on the spot is sought to be established by the prosecuting party, those are not stated to have taken part in the alleged assault. In such eventuality, it is hard to believe that two women would come forward and catch hold of an able bodied adult person during assault. Therefore, rejection of this evidence by the learned trial court, cannot be said to be unreasonable or perverse appreciation of the evidence. As such, it cannot be said that the prosecution has proved that the acquitted accused/respondent Nos. 2 to 6 were members of an unlawful assembly, gathered for prosecuting its common object of indulging in riot, assaulting members of the prosecuting party and

committing murder of Sandipan, after trespassing his field.

16] In the result, we find no substance in the application for leave to file appeal against the judgment and order passed by the learned Sessions Judge, Osmanabad, in Sessions Case No. 10 of 2011, decided on 30th September, 2014 and the same is, therefore, rejected.

[A.M. BADAR]
JUDGE

[S.S. SHINDE]
JUDGE.

grt/-