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Being aggrieved by the judgment and order dated 25th

April, 2006 passed by learned Additional Sessions Judge Gadchiroli in Sessions Trial No.57/1999 whereby the respondent no.1/accused-Anandrao and his wife respondent no.2-Pramila were acquitted of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, the State of Maharashtra has preferred the instant Appeal.

2. In support of the Appeal, Mr. D.B. Patel, learned Addl. Public Prosecutor, vehemently submitted that the learned trial Judge has for no good reasons rejected the ocular testimony of the eye witnesses PW 3-Sau.Shashikala, who is in close relations of both the deceased as well as the accused. He further argued that the evidence of Shashikala though was consistent, in the cross-examination, on the material particulars about the assault by Pramila on head of deceased Gajajan by spade, the trial Court rejected her evidence for no good reasons. He submitted that there is perversity on the part of the learned trial Judge in not believing the testimony of Shashikala (PW 3), the sole eye witness. The crowbar, which was used by accused no.2-

Pramila, was having bloodstains as well as spade were seized from the field where the murder took place. He therefore, submitted that the learned trial Judge committed an error in recording order of acquittal and, as such, prayed for reversal thereof.

3. *Per contra*, Mr. V.N. Morande, learned counsel for respondents supported the impugned judgment and order and submitted that the trial Court has taken a possible view of the matter on the basis of evidence and there is no perversity at all on the part of the learned trial Judge in recording the order of acquittal. He submitted that the prosecution took a somersault in narrating its case before the trial Court, inasmuch as PW 3 Shashikala put the entire burden of commission of murder on accused no.2- Pramila and eventually she admitted in paragraph 6 of his deposition that she was not in talking terms with accused persons. He therefore submits that the evidence of PW 3 is required to be appreciated with full caution, care and circumspection since PW 3-Shashikala seems to be on inimical

terms with Pramila whom she has involved. He therefore prayed for dismissal of the Appeal.

CONSIDERATION:

4. We have heard the learned counsel for rival parties at length. We have perused the reasons recorded by the learned trial Judge while acquitting the accused. We have carefully perused the evidence of PW 3-Shashikala, who is a common and close relative of both the deceased as well as accused persons inasmuch as she is the eldest female member in the family amongst all the brothers, namely, wife of the eldest brother. Her evidence in paragraph 6 of her cross-examination reads thus :

“.....I am not on talking terms with accused persons. On the point of land, myself and accused persons are not on talking terms with each other.”

From the above, it is clear that PW 3-Shahikala is not on talking terms with the accused persons because there is a dispute about the land. Looking to the above position, we think we will have to approach her evidence cautiously, more

particularly because the prosecution case hinges on her sole testimony. The law is trite while appreciating the evidence of sole eye witness and it is in this background we have decided to find the nature of her evidence. Upon perusal of the FIR (Exh. 27) which was lodged by accused no.1-Anandrao, he states that deceased-Gajanan had come on his person along with a stick caused obstruction in his work and stated that Anandrao have no right to do the work. After saying so he by holding the stick in his hand, rushed on his person, as a result, a scuffle took place between the two brothers, namely accused no.1 Anandrao and deceased Gajanan. FIR goes on to say that Anandrao took the crowbar and hit on the head of deceased. Gajanan fell down and blood started oozing out on the ground. After administering water to him, Anandrao lodged the report about the incident with the Police Station. This is the initiation of the prosecution case, namely, lodgment of the FIR by Anandrao. Nevertheless the beginning of the prosecution case is from the said FIR (Exh.27). We, therefore, find that the evidence of PW 3-Shashikala will have to be assessed independently. Looking to

her evidence, we find that she stated in her examination-in-chief that Pramila assaulted Gajanan by spade on his head. As a result Gajanan fell down and thereafter presuming that Gajanan died, both the accused went away for some distance. Accused persons saw towards back side. At that time Gajanan sat on the ground. Again accused no.1 Anandrao and accused no.2 Pramila returned back and came near Gajanan. Accused No.2 Pramila beat Gajanan by crowbar, below the neck. Gajanan then fell down again on the ground. Thereafter, accused persons proceeded towards Gadchiroli. To our mind, looking to the prosecution evidence there appears to be a somersault taken by PW 3-Shashikala, while narrating the incident that the attack by spade as well as by crowbar on the first occasion as well as on the second occasion was made by accused no.2-Pramila and interestingly enough she has not attributed any role to Anandrao (accused no.1). She has not even attributed any role about stick in the hands of the deceased-Gajanan and, on the contrary, has stated that it was Pramila who assaulted on the neck by means of spade and crowbar. The learned trial Judge has taken a

overall view and, in our opinion, he was entitled to do so, looking to enmity between PW 3 Shashikala and accused persons, namely, the property dispute amongst the brothers and their wives. In that view of the matter, we think that the reasons given by the trial Judge for finding out the probability of the defence and the infirmity in the prosecution case seems to be possible. The reasons given by the trial Judge for recording the order of acquittal do not appear to be perverse and, on the contrary, appears to be probable and possible in the light of the evidence of PW 3-Shashikala. We quote following paragraph nos. 37 and 38 from the judgment of the learned trial Judge in the matter of appreciation of evidence :-

“37. In the cross-examination, the material omission as regards the assault by the accused no.2 by crowbar on the deceased below his neck, has been brought. She has admitted that, she stated to police while recording her statement that, the accused no.2 assaulted the deceased by crowbar, by giving blows below the neck of the deceased, after she returned to the deceased while leaving the field. But, the above

fact does not find place in her police statement. Thus, the evidence of PW 3 Shashikala that the accused no.2, while the field turned back and went to the deceased and then gave blows by crow bar to the deceased, below his neck, is exaggerated version, which needs to be discarded. After discarding her version as regards the giving of blows by crowbar by the accused no.2 to the deceased, what remains in her testimony, is that, the scuffle between the accused no.2 and deceased was going on, during which the accused no.2 gave a blow by spade to the deceased on his head. Except above fact, nothing more can be borne out from her testimony. If the above testimony is accepted as it is, then one would find that, she attributed no act of assault on the deceased, to the accused no.1. It is the prosecution case that it is the accused no.1 who assaulted the deceased by means of crowbar and, further the bloodstains were found on the crowbar, which was then found on the spot. It is nowhere the prosecution case that, the spade was used either by the accused no.1 or the accused no.2 for causing injuries to the deceased or for assaulting the deceased. The crowbar stained with blood was sent to the office of C.A., Nagpur. Though the spade came to be seized from the spot, it was not sent to C.A. Nagpur, in order to find out, whether it

stained with blood. Secondly, the said spade was never referred to the Autopsy Doctor for his opinion, whether it could cause the injuries, sustained by the deceased. Suffice it to say that, it is nowhere the prosecution case that, the spade was used by either accused nos.1 and 2 for assaulting the deceased. Despite this, the sole eye witness has stated that the accused no.2 during scuffle between the accused no.1 and deceased, gave blows by the spade to the deceased on his head. Furthermore, The testimony of sole eye witness that, the accused no. 2 assaulted the deceased by means of crowbar has been found exaggerated, which needs to be discarded. Thus, the evidence of sole eye witness as regards the user of crowbar by the accused no.2 while launching the alleged assault on the deceased is exaggerated one, and, secondly, her evidence that, the accused no.2 assaulted the deceased by spade is inconsistent with the prosecution story. As such, her evidence cannot be said to be reliable.

38. The sole eye witness before the police in her statement disclosed that it was the accused no.1 who assaulted the deceased by crowbar. But she before the court did not state that the accused no.1 assaulted the deceased by crowbar and attributed to the accused no.2,

that the accused no.2 assaulted the deceased by crowbar. The then A.P.P did not confront her with the portion of her statement regarding the assault by the accused no.1, by crowbar on the deceased, for the purpose of contradicting her. Suffice it to say that the sole eye witness has exonerated the accused no.1 and implicated the accused no.2 by giving evidence that she assaulted the deceased on the second occasion by giving blows by crowbar.”

5. We agree with the above reasons given by the learned trial Judge for not accepting the testimony of the prosecution.

6. An useful reference can be made to the parameters laid down by the Hon’ble Apex Court, as regards appeal against acquittal, in the case of State of Rajasthan vs, Darshan singh , {AIR 2012 SC 1973}, which reads thus:

“24. We are fully aware of our limitation to interfere with an order against acquittal. In exceptional cases where there are compelling circumstances and the judgment under appeal is

found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.

7. That being so, we make the following order ;

ORDER

Criminal Appeal No..409/2006 is dismissed. Bail bonds of the accused shall stand cancelled.

JUDGE

JUDGE

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