

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.297 OF 2002

The State of Maharashtra		Appellant
V/s.		
Maruti Bharmana Patil & Ors.		Respondents

Mrs. V.R. Bhonsale for the Appellant-State.

None for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 4TH FEBRUARY 2016.

P.C. :

1. This Appeal is preferred by the State challenging acquittal of the Respondents for the offences punishable under Sections 324, 323, 336 and 337 r/w. 34 of IPC, as recorded by the Judicial Magistrate, First Class, Chandgad, vide his Judgment and Order dated 30th January 2002 in R.C.C. No.34 of 1999.

2. Brief facts of the Appeal can be stated as follows :-

On 24th November 1999, at about 10 pm, PW-2 Jotiba's grand-son was dancing in the house in front of T.V. Respondent Nos.1 and 2 became annoyed with the volume of the T.V. and requested PW-2 Jotiba to reduce the said volume. Thereupon PW-2 Jotiba and his wife PW-3 Rukmini

came out of the house. The quarrel ensued between them. In the said quarrel, the Respondents assaulted PW-2 Jotiba with stick. When Jotiba's wife PW-3 Rukmini, his daughter PW-4 Renuka came to intervene and rescue Jotiba, they were also assaulted with the stick and pelting of stones. All the three of them sustained injuries in the incident.

3. On the next day, the complaint of this incident was lodged by PW-2 Jotiba at Chandgad Police Station. On his complaint, C.R. No.50 of 1999 came to be registered against the Respondents. During the course of investigation, Spot Panchanama was made. The injured were referred for medical examination. The sticks came to be seized and further to completion of investigation, Charge-Sheet was filed in the Court.

4. The Trial Court framed charge against the Respondents vide Exhibit-17. Respondents pleaded not guilty and claimed trial, raising the defence of denial and false implication on account of political rivalry.

5. In support of its case, the prosecution examined in all seven witnesses and on appreciation of their evidence, the Trial Court was pleased to acquit the Respondents, giving them benefit of reasonable doubt.

6. This Judgment of the Trial Court is challenged in this Appeal by learned A.P.P. by submitting that there is consistent evidence of three eye-witnesses, who were injured in the incident. Their evidence is also supported and corroborated by the medical evidence of the Doctor PW-5 Dr. Babasaheb Thorat. However, the Trial Court has disbelieved this evidence simply on the ground that all the three eye-witnesses are the interested witnesses and no independent witness is examined by the prosecution. According to learned A.P.P., the Trial Court has committed an error in rejecting the case of the prosecution merely on the ground that there are some discrepancies in their testimonies. These discrepancies, according to learned A.P.P., are of a minor nature and not sufficient to discard the prosecution case altogether.

7. With the assistance of learned A.P.P., I have perused the evidence of the eye-witnesses and also the medical evidence. At the same time, I have also perused the impugned Judgment and Order of the Trial Court.

8. It is true that, in this case, there is evidence of three injured eye-witnesses, namely, PW-2 Jotiba, PW-3 Rukmini, his wife, and PW-4 Renuka, his daughter. All the three of them have deposed about the

incident and the assault at the hands of the Respondents. There is also the evidence of PW-5 Dr. Babasaheb Thorat, who has examined them on the next day and found injuries on their person. The said Injury Certificates are also produced on record, proved properly through his evidence.

9. The Trial Court, however, on appreciation of evidence of these three eye-witnesses, found that there is material discrepancy as to the actual spot of incident, because the evidence of PW-2 Jotiba and his wife PW-3 Rukmini shows that the incident has taken place in front of their house in the court-yard, whereas, the evidence of PW-4 Renuka reveals that the incident has taken place in the T.V. Room. According to PW-4 Renuka, her father was beaten by the Respondents in the T.V. Room.

10. The Trial Court, on appreciation of evidence, also found that there is major discrepancy as to which of the Respondent assaulted which of the witness. According to the evidence of PW-3 Rukmini, Respondent No.1 Maruti and Respondent No.2 Vyankanna pulled her and her husband out of the house and beat her and her husband by stick. However, this fact has not been stated by PW-2 Jotiba himself in his evidence before the Trial Court. According to him, some stones were pelted and stick blows

were given due to which he lost his sense and, therefore, he does not know what has happened.

11. Further, as per evidence of PW-4 Renuka, Respondent No.2 Vyankanna and Respondent No.4 Shivali beat her mother PW-3 Rukmini, whereas, according to the evidence of her mother PW-3 Rukmini, all the four Respondents beat and assaulted her. Further, as per evidence of PW-3 Rukmini, all the Respondents assaulted her daughter PW-4 Renuka on her head, whereas, according to PW-4 Renuka, Respondent No.3 Raju alone assaulted her with stones and stick blows. In the cross-examination, she has again changed the version by stating that Respondent No.1 Maruti beat her on her head by stick.

12. Thus, the Trial Court, on appreciation of the oral evidence of all the three injured eye-witnesses, found that there was no consistency and, as a result, their evidence fails to inspire confidence in judicial mind. In view thereof, the non examination of independent witnesses, though admittedly the crowd of about 100 persons was gathered at the time of incident, was found to be fatal by the Trial Court to place implicit reliance on the evidence of these three interested eye-witnesses.

13. While sitting and deciding the Appeal against the acquittal, the scope of interference in the impugned Judgment of the acquittal of the Trial Court is very limited in a sense that, unless the appreciation of evidence, which is mainly the prerogative of the Trial Court, being the Court of first instance, which has the advantage of observing the demeanor of the witnesses when they are giving evidence in the Court, is found to be perverse, this Court cannot interfere in the arena of the appreciation of evidence and the finding that has been arrived at by the Trial Court. When on appreciation of entire evidence on record, if two views are possible and the view taken by the Trial Court is found to be the plausible and possible view, the law is well settled that this Court should restrain itself from substituting its own view in the view taken by the Trial Court; especially when the presumption of innocence, which lies in favour of the accused, is already strengthened by the Judgment of acquittal of the Trial Court.

14. As a result of the above discussion, the Appeal stands dismissed, confirming acquittal of the Respondents for the offences punishable under Sections 324, 323, 336 and 337 r/w. 34 of IPC.

15. Bail Bonds of the Respondents stand cancelled.

[DR. SHALINI PHANSALKAR-JOSHI, J.]