

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.161 of 2008

The State of Maharashtra
through Koregaon Police Station,
Taluka Koregaon, District: Satara)

...Appellant

Versus

1. Mahendra Shivaji Gadekar,
Age 21 years.

2. Prashant Krishna Javal,
Age 18 years.

3. Pandharinath Dadu Yadav,
Age 43 years.

4. Shankar Dadu Yadav,
Age 46 years.

5. Sambhaji Dadu Yadav,
Age 20 years.

All resident of Durgalwadi, Taluka-
Koregaon, District-Satara.

...Respondents
(Original accused Nos.1 to 5)

.....

Mr. H.J. Dedia, APP for the Appellant -State.

Mr. Dhananjay Rananaware for Respondent Nos.1 to 5.

Coram :SMT. V.K. TAHILRAMANI &

SMT. ANUJA PRABHUDESSAI, JJ.

JUDGMENT RESERVED ON : 30th March, 2016.

JUDGMENT PRONOUNCED ON: 25th July, 2016.

JUDGMENT [PER SMT. ANUJA PRABHUDESSAI, J.]:

This appeal arises from judgment dated 29.12.2006 whereby the learned Additional Sessions Judge, Satara, acquitted the respondents (hereinafter referred to as accused) in Sessions Case No.66 of 2002 of offences punishable under sections 143, 147, 148, 323, 324, 307, 504 and 506 r/w. 149 of the IPC.

2. The case of the prosecution in short is as under:

The complainant-Mohan Sathe and the other injured persons are the residents of Durgalwadi. The accused no. 1 is alleged to have made some indecent comments on seeing the sister of PW5 Rajendra. The accused no. 1 had also called her to the house of one Vijay. PW5 had told the mother of the accused no.1 to persuade him not to interfere with his sister. Irked by this, on 18.11.1997 at about 8 to 8.15 p.m. the accused Nos.1 and 2 assaulted PW-5 Rajendra Chavan and Sambhaji Sathe. Again on 19.11.1997 at about 9 to 9.30 p.m. while PW-5 Rajendra and Sambhaji Sathe were having a wash in the paddy field, the accused Nos.1 and 5 assaulted them with a cycle chain and sticks. The accused No.3

Pandharinath Yadav, accused No.4 Shankar Yadav and accused No.5 Sambhaji Yadav and Manik (deceased) also came to the paddy field. PW5-Rajendra Chavan and Sambhaji Sathe ran towards the house of Hanmant Desai. It is alleged that all the accused followed them and assaulted them with sticks, cycle chain, gupti, etc. On hearing their shouts PW4-Mohan Sathe came to the place of the incident with a loaded gun. It is alleged that the accused Nos.3 Pandharinath Yadav and accused No.4-Shankar Yadav assaulted PW-4 Mohan Sathe and as a result, he fell down with the gun. The accused No.4-Shankar Yadav tried to snatch the gun from his hand and in the course of a scuffle, the gun discharged accidentally. The accused No.4 Shankar Yadav thereafter left the gun and all the other accused went away from the place of the incident.

3. PW4-Mohan Sathe went to Rahimatpur police station and lodged the FIR at Exh.71-A, pursuant to which PW9-ASI Maruti Ghadhge, registered C.R. No.54 of 1997. The injured were referred to the civil hospital for medical examination. PW-3 Dr.Suresh Shinde examined the injured and issued injury certificate at Exhs.46 to 50. In the meantime, Having learnt about the incident from the police patil, PW7- Ishwar Sutar,

API at Rahimatpur police station, visited the scene of offence. He learnt that some of the injured persons were already taken to the hospital. He deputed some constables to guard the scene of offence and proceeded to the civil hospital at Satara. He recorded the FIR lodged by Sambhaji Yadav and registered C.R. No.55 of 1997 for offences punishable under sections 143, 147, 148, 302, 307, 326, r/w. 149 of the IPC and section 30 of the Indian Arms Act against PW4-Mohan Sathe, PW5-Rajendra Chavan, PW6-Shivprasad Sathe and others. PW7-Ishawar Sutar, API also took over the investigation of the present crime (C.R. No.54 of 1997) from PW9-Maruti Ghadge, ASI. He conducted the scene of offence panchnama and recorded statements of some of the witnesses. He handed over further investigation to PW8-Anil Sandobhor. Upon completion of the investigation, PW8 filed the charge-sheet against the aforesaid accused.

4. The case being sessions triable, the same was committed to the court of Session, Satara. The learned Additional Sessions Judge, Satara, framed and explained the charge to the accused. The accused pleaded not guilty and claimed to be tried. The prosecution examined 9 witnesses including the injured witnesses viz. PW4-Mohan Sathe, PW5-Rajendra

Chavan and PW6-Shivprasad Sathe. The statements of the accused came to be recorded under section 313 of the Cr.PC. The defence of the accused was that on 17.11.1997 PW5-Rajendra Chavan and Sambhaji Sathe had assaulted the accused No.1-Mahendra and accused No.2 Prashant Javal for teasing his sister. The accused No.1 had told PW5-Rajendra Chavan that he was not involved in such an incident and apologized for preconceived misunderstanding, if any. The accused have denied having assaulted any of the prosecution witnesses and have claimed that PW4-Mohan Sathe, PW5-Rajendra Chavan, and PW6-Shivprasad Sathe and others formed an unlawful assembly with a common object of assaulting Mahendra Gadekar (accused No.1) and Sambhaji Yadav (accused No. 5) and in furtherance of this object, they assaulted them and caused death of Manik. Accused No.5 had lodged a report at Rahamatpur police station relating to the same incident, pursuant to which a charge sheet has been registered against PW4-Mohan Sathe, PW5-Rajendra Chavan, PW6-Shivprasad Sathe and others for forming unlawful assembly, rioting, assaulting them and causing death of Manik.

5. By the impugned judgment dated 29.12.2006 the learned Additional Sessions Judge acquitted the accused of all the offences. Being aggrieved by the same the State has preferred the present appeal.

6. Heard Mr. Dedia, the learned APP for the Appellant -State. He has submitted that the evidence of PW4-Mohan Sathe, PW5-Rajendra Chavan and PW6-Shivprasad Sathe sufficiently proves that the accused had formed an unlawful assembly and had voluntarily caused hurt to the aforesaid witnesses. He has further stated that the learned Judge has not appreciated the evidence in the correct perspective and has erred in acquitting the accused.

7. The learned counsel for the respondents has submitted that the the accused had sustained serious injuries. The prosecution has failed to explain the injuries and has thus suppressed the genesis of the incident. He has further submitted that the learned Judge has considered the fact that there are discrepancies in the evidence of the prosecution witnesses. He has further submitted that this being an appeal against an order of acquittal, the Court cannot lightly interfere with an order of acquittal merely because another view is possible.

8. At the outset it may be mentioned that while acquitting the accused, the learned Judge has held that the prosecution has failed to prove that the accused had assembled at the place of the incident with a common object of causing injuries to PW4-Mohan Sathe or the other injured witnesses or that there was prior meeting of mind. The learned Judge therefore, held that the prosecution has failed to establish charges under sections 143, 147, 148 of the IPC. The learned trial Judge has further held that there are material discrepancies in the evidence of the injured witnesses. The learned Judge also took notice of the fact that the accused had themselves sustained injuries and had filed FIR against Sambhaji Sathe and the other injured prosecution witnesses viz. PW4-Mohan Sathe PW5-Rajendra Chavan, PW6-Shivprasad Sathe and others. The learned Judge held that the prosecution has failed to prove that the accused were aggressors and has thus, failed to prove the guilt of the accused beyond reasonable doubt and thus ordered their acquittal.

9. The State has filed this appeal against the order of acquittal. It is a well settled principle that an order of acquittal cannot be interfered with only because another view is plausible. In **Ghurey Lal Vs. State of**

U.P. 2008 (2) UJ SC 0991, the Apex Court after considering the previous decisions, crystallized the legal position as regards the scope of the powers of the Appellate Court in dealing with the appeal against acquittal as under:

“73. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

i) The trial court's conclusion with regard to the facts is palpably wrong;

ii) The trial court's decision was based on an erroneous view of law;

iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

v) The trial court's judgment was manifestly unjust and unreasonable;

vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.

vii) *This list is intended to be illustrative, not exhaustive.*

2. *The Appellate Court must always give proper weight and consideration to the findings of the trial court.*

3. *If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused."*

10. In **Mrinal Das vs State of Tripura, 2011(9) SCC 479**, the Apex Court has reiterated that:-

"It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is

available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. 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. 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.”

11. We have scrutinised the evidence and analysed the reasoning and the conclusion arrived at by the learned Judge, keeping in view the above well settled principles laid down by the Apex Court. The case of the prosecution rests mainly on the ocular evidence of PW4-Mohan Sathe, PW5-Rajendra Chavan and PW6-Shivprasad Sathe. The testimony of these witnesses indicates that the accused No.1 had made some lewd comments against the sister of PW5-Rajendra Chavan. On 17.11.1997 the sister of PW5-Rajendra Chavan had complained to her parents as well as to PW5-Rajendra Chavan that accused No.1-Mahendra Gadekar had sent a message to her to come to the house of Vijay. PW5-Rajendra Chavan brought these facts to the notice of the mother of accused No.1-Mahendra Gadekar and requested her to prevail upon the accused No.1 not to indulge in such acts. Irked by this, on 18.11.1997, accused No.1-Mahendra Gadekar and accused No.5 Sambhaji Yadav assaulted PW5-Rajendra Chavan and Sambhaji Sathe, son of PW4-Mohan Sathe.

12. PW5-Rajendra Chavan has deposed that on 19.11.1997, he painted his house throughout the day. At about 8.00 p.m he and Sambhaji had gone to the Canal in the paddy field of PW4-Sambhaji Sathe to have a wash. The accused No.1-Mahendra Gadekar and accused No.5 Sambhaji Yadav came to field and assaulted them with a bicycle chain and stick. In the meanwhile Manik (deceased), Pandharinath (accused No.3), Shankar Yadav (accused No.4) and Prashant Jawal (accused No.5) also came to the place of the incident armed with sticks and gupti. On seeing them, he and Sambhaji Sathe ran towards the house of Hanmant Desai. All the accused caught them and assaulted him and Sambhaji Sathe with gupti, sticks, etc. He has deposed that on hearing their shouts his maternal uncle PW4-Mohan Sathe came to the place of the incident with a gun. The accused assaulted PW4- Mohan Sathe and in the course of a scuffle, the gun got accidentally fired. The accused thereafter fled away from the place of the incident.

13. PW5-Rajendra Chavan has denied that he had assaulted accused No.1 alleging that the accused No.1 had teased his sister. He has

also denied that on 19.11.1997 he and Sambhaji Sathe had assaulted accused No.1-Mahendra Gadekar and accused No.5-Sambhaji Yadav and his family members, who had arrived at the scene of offence on hearing their cries. PW5-Rajendra Chavan has also denied that PW4-Mohan Sathe had fired a gun at Manik Yadav and thereby caused his death.

14. PW4-Mohan Sathe is the maternal uncle of PW5-Rajendra Chavan. PW6-Shivprasad Sathe is the son of PW4 Mohan Sathe. The evidence of PW4 and PW6 reveals that the accused no.1 had made some lewd comments against the sister of PW5-Rajendra Chavan. PW5-Rajendra Chavan had questioned the Mahendra Gadekar (accused No. 1) about the same, which resulted in a quarrel between the Mahendra Gadekar (accused no. 1) and PW5-Rajendra Chavan. These witnesses have further deposed that on 19.11.1997 at about 9 to 9.30 p.m. while they were at their residence, they heard some clamor towards the house of Hanmant Desai. They went towards the house of Hanmant Desai and saw the accused, who were armed with weapons such as gupti, cycle chain, sticks, etc, assaulting PW5-Rajendra Chavan and Sambhaji Sathe. Shankar Yadav (accused No.4) tried to snatch the gun from his hand, the gun got

accidentally discharged. He has stated that thereafter all the accused went away from the scene of offence. Later at night, the police arrived at the spot and took them to hospital.

15. These witnesses were examined by PW3-Dr. Suresh Machindra Shinde, The evidence of PW3-Dr. Suresh Shinde, vis-a-vis the medical certificates at Exh.46, Exh.50 and Exh.48 indicates that PW4-Mohan Sathe, PW5-Rajendra Chavan and PW6-Shivprasad Sathe had sustained following injuries:-

Injuries of PW4-Mohan Sathe:-

(1) Contused lacerated wound left over left hand ring finger middle phalanx on frontal aspect. 2X1x1 cm. Bone deep.

(2) Abrasion over right index finger, proximal inter phalangeal joint./Transverse 1.1/2 cm x ½ cm X-rays were taken and the x-rays showed fracture of middle index phalanx of left ring finger.

He has opined that cause of the injury was hard and blunt object and the age of injuries was within 24 hours.

Injuries of PW5-Rajendra Chavan:-

- (1) Contused lacerated wound over right index finger proximal phalanx, on lateral aspect 1.1/2 x 1/2 cm. Skin deep.
- (2) Contusion over left scapular region, transverse with chain marks.
- (3) Contusion medial to right scapular region.
- (4) Contusion over left temporal area 2x2 cms. Tenderness present.

He has opined that the said injuries would have been caused by hard and blunt object within 24 hours.

Injuries of PW6-Shivprasad Sathe:-

- (1) Contusion with abrasion over dorsum of left hand

He has opined that cause of injury is hard and blunt object and age of injury was within 24 hours.

16. The ocular evidence, corroborated by medical evidence indicates that these prosecution witnesses had sustained injuries in the incident that occurred on 19.11.1997. As already stated A5 had also lodged a complaint against these prosecution witnesses in respect of the same incident. It is pertinent to note that though the injured witnesses have

denied having inflicted injuries on the accused, the evidence of PW.. vis-à-vis the Postmortem report and the injury certificates at Ex.59 reveals that Manik had expired as a result of gunshot injury sustained in the same incident. Furthermore, the accused had sustained serious injuries in the same incident. The prosecution has neither explained the injuries sustained by the accused nor proved that the accused were aggressors. It is thus, evident that the prosecution witnesses have suppressed the genesis of the incident.

17. Be that as it may, the evidence on record indicates that the said incident occurred against the backdrop of a quarrel between Mahendra Gadekar (accused No.1) and PW5-Rajendra Chavan due to an alleged incident of indecent comments and the proposal made by the Mahendra Gadekar (accused No.1) to the sister of PW-5 Rajendra Chavan. The fact that the members of both groups had sustained injuries indicates that both groups were involved in inflicting injuries against each other. There is no evidence of prior meeting of mind. Furthermore there is no clarity as to who had caused which injury. Under the circumstances, the view taken by

the trial court is probable and a reasonable view. We do not find any substantial and compelling reasons to disturb the decision.

18. Under the circumstances, and in view of discussion supra the appeal has no merit and is hereby dismissed.

(SMT. ANUJA PRABHUDESSAI, J.) (SMT. V.K. TAHILRAMANI, J.)