

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL APPEAL NO.279 OF 2000**

The State of Maharashtra,
Through Police Station Bidkin,
Tq-Paithan

...APPELLANT

VERSUS

- 1) Niranjan s/o Shripatrao Jadhav,
Age-28 years, Occu:Business,
R/o-Cidco, Aurangabad,
N-3, Plot No.34,
Opposite to Hotel Ambassador,
- 2) Amarasaha s/o Laljisaha,
Age-35 years, Occu:Business,
R/o-Misarwadi, Backside to
Greaves Co., Cidco,
Aurangabad,
- 3) Pranabkumar s/o Khagindrasingh
Chakrawarti,
Age-50 years, Occu:Service,
R/o-Cidco, Aurangabad,
4-6-01, Milannagar Society,
N-5 Sector, CIDCO Colony,
**(Appeal abated as against Respondent No.3
as per Court's Order dated 1st July,2009),**
- 4) Shaikh Usman s/o Shaikh Kadar,
Age-42 years, Occu:Service,
R/o-Roshangate, Aurangabad,
or At Post-Chouka,
Tq-Phulambri, Dist-Aurangabad,
At Present: Karim Colony
Galli No.5

...RESPONDENTS

...
Mr.R.V. Dasalkar A.P.P. for Appellant - State.
Mr. A.M. Karad Advocate for Respondent No.1.
Mr. S.W. Mundhe Advocate for Respondent Nos.
2 and 4 (**Absent**).
Appeal abated as against Respondent No.3.

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**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE : 21ST JUNE, 2017

JUDGMENT [PER S.S. SHINDE, J.] :

1. This Appeal is directed against the Judgment and Order dated 6th January, 2000 passed by the Additional Sessions Judge, Aurangabad in Sessions Case No.140 of 1999, thereby acquitting all the accused i.e. Respondent Nos.1 to 4 from the offences punishable under Sections 307, 186 and 506 read with 34 of the Indian Penal Code (for short "I.P. Code").

2. The prosecution case, in brief, is as under:-

A) Accused No.1 is the owner of Niranjana

Alloy Pvt. Ltd. situated at Bidkin, Tq-Paithan, Dist-Aurangabad. Accused No.2 to 4 are servants in the company of accused No.1. According to the prosecution, there had been theft of electricity from the said company and therefore Maharashtra State Electricity Board (for short "M.S.E.B.") had installed a check-meter opposite the company and in order to guard the check-meter, they had appointed private security guards from Singh Security Agency, so also two M.S.E.B. workers were also deputed at the spot, at the same time one armed constable was also deputed to that spot.

B) On 31st January, 1998, complainant Dinesh Vairagade, who is Assistant Director, Vigilance Security, M.S.E.B. Department had visited the spot, opposite the company at about 11.00 hours to find out whether security agency persons and other staff were carrying on duties properly.

C) It is the case of prosecution that around 21.45 hours accused No.1 - Niranjan Jadhav came in

a car while accused No.2 to 4 also came along with accused No.1. Accused No.1 - Niranjan Jadhav questioned police constable Gaikwad, "if he had arms", and also threatened him that accused No.1 also possessed his arms. Thereafter accused No.1 - Niranjan Jadhav fired a bullet in the direction of the complainant Dinesh Vairagade. The said bullet passed near from head of complainant and had missed him. Accused No.1 thereafter told other accused persons to take revolver and fill the bullet and return. At this juncture police constable Gaikwad told accused No.1 that if he fired again, then police constable Gaikwad would also fire with his rifle. The accused persons thereafter went away. Accordingly, complainant Dinesh Vairagade went to police station Bidkin and gave his complaint and the same was registered as Crime No.76 of 1998.

D) Thereafter Investigating Officer immediately came to the spot, recorded statement of witnesses and had drawn spot panchnama. The

Investigating Officer arrested accused Nos.1 to 4. He also seized revolver and 25 cartridges. He had seized camera from the house of accused No.4 - Shaikh Usman. So also he had taken search of accused No.1 - Niranjan Jadhav. The seized revolver and cartridges were sent to ballistic expert and after receipt of the report, submitted the charge-sheet against the accused persons. The Magistrate committed the case to the Court of Sessions.

3. A charge was framed by the Additional Sessions Judge, Aurangabad against all the accused persons, to which accused pleaded not guilty and claimed to be tried. The defence of the accused was of total denial.

4. After recording the evidence and conducting full fledged trial, the trial Court acquitted all the accused persons from the offences with which they were charged, as stated herein above in Para-1 of the Judgment. Hence this

Appeal.

5. Heard learned A.P.P. appearing for the State and learned counsel appearing for Respondent No.1 - accused No.1, at length. With their able assistance, we have carefully perused the entire notes of evidence so as to find out whether the findings recorded by the trial Court are in consonance with the evidence brought on record or otherwise.

6. To prove its case, the prosecution examined PW-1 Dinesh s/o Tukaram Vairagade, who is informant in this case. He deposed that on 31st July, 1998, he was working as Assistant Director, Vigilance and Security Department at M.S.E.B. Office, Aurangabad. He deposed that accused No.1 was owner of Niranjana Alloys Pvt. Ltd., situated at Bidkin, Tq-Paithan and accused Nos.2 to 4 were servants in the company of accused No.1. He further deposed that on 31st July, 1998, he had gone to Bidkin, opposite the road near Niranjana

Company. As there was theft of electricity by Niranjani Company, a check-meter was installed, on the four pole electric structure. He deposed that by this check-meter it could be gathered if there was any theft of electricity. To see that the check-meter is not destroyed, they had appointed a private security guard of Singh Security Agency. Four guards were posted at that place. He had also deputed two M.S.E.B. workers, namely Govind Yadav and Sudarshan Chaudhary. He further deposed that they had also sought help of one armed constable for being deputed at that spot, and accordingly constable Trimbak Gaikwad was also posted at that spot.

. PW-1 Dinesh Vairagade further deposed that on 31st July, 1998, at about 11.00 p.m. he had visited the spot, along with his assistant Devidas Umbre, to find out whether the security agency persons and others were on duty or not and if they were properly carrying out their duties. He reached the spot at about 11.30 p.m. As the

workers posted told him that they were thirsty and they did not have any water, PW-1 Dinesh Vairagade had deputed a person with his car to go and bring water from Bidkin. Two workers also told that they would go and take dinner. He further deposed that he himself, his assistant Devidas Umre and police constable Gaikwad were sitting near the spot. Some M.S.E.B. workers were sleeping and some were waiting inside the tent, which was temporarily constructed. He deposed that around 11.45 p.m. accused No.1 came in car and alongwith him accused Nos.2 to 4 also came there. Accused No.1 called police constable and questioned him as to whether P.S.I. was there. Police constable Gaikwad told that P.S.I. was not there. Accused No.1 told one photographer to take photographs of the spot from all directions. Accused No.1 questioned police constable if he had arm, so also accused No.1 told that he himself possessed arm. Accordingly, accused No.1 removed revolver from his pant pocket. Accused No.1 thereafter fired one round in the direction of PW-1 Dinesh Vairagade.

Accused No.1 told other persons who were along with him, to go and fill revolver with bullet and come back. At that time police constable Gaikwad told that if accused No.1 again fires then he would also fire from his rifle. He deposed that all the persons went to company and after 5-10 minutes returned and went away. He further deposed that because of firing every one was tense. Accused No.1 and other persons went away towards Aurangabad. He told his other co-worker that he would go to the police station and lodge the complaint. He further deposed that he himself and Umbre went to police station Bidkin and lodged complaint. He deposed that he cannot identify the revolver if shown to him.

. During the course of cross-examination, PW-1 Dinesh Vairagade admitted that adjoining the check-meter, the tent was installed and in front of the tent, chairs were kept for security guard and others. He admitted that after the alleged incident, M.S.E.B. had disconnected supply to

Niranjan Company. He stated that he had visited the spot for the first time after his posting at Aurangabad and earlier also he had no occasion to meet the accused or to visit the company of accused No.1. He stated that police constable Gaikwad was armed with rifle and he was carrying the rifle with him. He stated that after the sound of fire, about ten persons came out of the tent but he did not narrate about the incident to the said persons. He stated that at the time of incident he was sitting on the chair kept in front of the tent. He further stated that even after the incident he was sitting on the same chair until four persons had returned in his car. He stated that he had visited the police station at about 00.15 to 00.30 hours midnight and immediately lodged the complaint. He denied the suggestion that as they were tampering with the check-meter and accused were taking their photographs, therefore he had lodged false complaint. He stated that he has not mentioned in his complaint that there were 8 to 10 persons inside the tent. He

denied that complaint Exhibit 29 was subsequently prepared in connivance with the police. He further stated that he was not knowing the names of the accused persons at the time of the incident and their names were disclosed to him by the persons of M.S.E.B., who were present in the tent.

7. PW-2 Trimbak s/o Jaiwantrao Gaikwad, a police constable, deposed that on 31st July, 1998 after 10.00 p.m. he was posted in front of Niranjani Company near the check-meter. He deposed that around 11.30 p.m. informant Vairagade had come to the spot and after checking, he had sat on the bench. He deposed that around 11.45 p.m. accused and 10 to 15 workers came to the spot. PW-2 Trimbak Gaikwad was questioned if P.S.I. was posted, to which he had replied in the negative. Accused No.1 questioned to PW-2 Trimbak Gaikwad if he had a gun and he answered in the affirmative. He further deposed that accused No.1 told that he has revolver and thereafter fired one round towards Vairagade. He deposed that thereafter he

told accused No.1 that if he again fires, PW-2 will also fire. Thereafter accused went away. He identified the revolver when the same was shown to him.

. During the course of cross-examination, PW-2 Trimbak Gaikwad stated that he did not arrest accused No.1 on the spot. He stated that earlier he was never posted at Niranjani Company and it was first time he was posted at that spot. He stated that he never had any opportunity to visit Niranjani Alloys Company for official or in personal capacity. He admitted that earlier also he had no occasion of meeting the accused for his official or any personal work. He stated that informant Vairagade had disclosed the names of accused, hence he had stated their names in his statement. He stated that he did not feel it necessary to arrest the accused and take them to police station.

8. Upon careful perusal of the evidence of

PW-1 and PW-2, it is clear that both these witnesses were not at all knowing the accused persons, and they have stated the names of the accused persons on the say of workers of the M.S.E.B.

9. Prosecution examined PW-3 Prabhakar s/o Kisan Hiwale. This witness turned hostile and did not support the prosecution case. He deposed that he was working in M.S.E.B. since 1979. On 31st July, 1998 he was posted in front of Niranjana Company. The check-meter was fitted on the four electric poles. Mr. Vairagade had arrived and was sitting in front of the spot where check-meter was installed. He deposed that he was sitting inside the tent. He further deposed that at about 11.45 p.m. he heard a sound, they got up from the spot. Thus, this witness did not support the case of the prosecution as he deposed that he did not witness the incident. Therefore this witness was cross-examined by the A.P.P. with the permission of the trial Court.

10. The prosecution examined PW-4 Sudarshan s/o Bhaurao Chaudhari. He deposed that at the time incident he was not present on the spot as at the relevant time he had, along with other worker, proceeded to Bidkin to get water and to take their meals. He further deposed that they returned around 00.15 hours when staff members started telling him that there was firing.

11. Prosecution examined PW-5 Kacharu s/o Supadu Gaikwad. This witness also turned hostile and did not support the prosecution case. He deposed that he was working in M.S.E.B. On 31st July, 1998, he was posted in front of Niranjana Alloy Company near check-meter. He deposed that around 10 or 10.30 p.m. Mr. Vairagade had arrived there. Police constable Gaikwad was also posted there. He deposed that he heard sound and immediately got up and sat in the tent. Thus, this witness did not support the case of the prosecution as he deposed that he did not witness

the incident.

12. PW-6 Satishkumar s/o Deorao Tak is the Investigating Officer. He deposed about the manner in which he has carried out the investigation. During his cross-examination, PW-6 Satishkumar Tak denied that complaint was given by Mr. Vairagade on the next day morning. He further denied that the endorsement on Exhibit 29 regarding registration of crime was written by him ante-timed. He admitted that he had seen the spot in minute details but he did not find any marks of firing. He admitted that accused No.3 was arrested on 2nd August 1998 and the camera was attached on 4th August, 1998. He stated that there was no roll in the camera. He stated that he has not mentioned in the panchnama that the camera did not contain the roll.

13. Upon careful perusal of the evidence of the prosecution witnesses, it is clear that the prosecution case rests upon the evidence of PW-1

and PW-2 only, and other prosecution witnesses i.e. PW-3, PW-4 and PW-5 did not support the prosecution case as they have stated that they have not witnessed the incident of firing. PW-1 is the informant. PW-6 Investigating Officer admitted in his cross-examination that he minutely inspected the spot of incident but he did not find any marks of firing. The spot panchnama is at Exhibit-22. Upon careful perusal of the spot panchnama it clearly reveals that nothing objectionable was found on the spot of incident. Therefore, we find considerable force in the argument advanced by the learned counsel appearing for Respondent No.1 that if the incident of firing had really been taken place, then the bullet or the cap of the bullet should have been found on the spot of incident. We further find considerable force in the argument of learned counsel appearing for Respondent No.1 that when it is the case of the prosecution that bullet was fired at the direction of tent, then there should have been hole to the tent. But the prosecution has not

brought any evidence on record to show that there was hole to the tent on the spot of incident.

14. The trial Court has observed that, in the present case the conduct of the witnesses is very material. According to the prosecution witnesses after they heard the sound, they came out of the tent, still the informant has not narrated the incident to them. The trial Court further observed that, even after the accused No.1 had fired at the informant, the informant did not move from his place, thereby further casting doubts regarding truthfulness of the prosecution story. The trial Court has further observed that accused No.1 had license to carry 25 cartridges and when police had attached the cartridges in the absence of accused No.1 from his house, all 25 cartridges were found. The trial Court has further observed that the said fact clearly discloses that bullet must not have been fired or there would have been one less cartridge which is also circumstance disproving the case of the prosecution. The trial Court,

after considering the evidence on record, rightly observed that, if accused and informant never met each other at any time earlier to the incident nor they had any altercation or quarrel before the incident, then there was no necessity or reason for the accused to fire at the person of the informant. After considering the entire evidence brought on record by the prosecution, the trial Court has observed that, it becomes substantially doubtful whether accused had really fired bullet or not and hence they deserve to be given benefit of doubt and hence entitled to be acquitted for the offence punishable under Section 307 of the I.P. Code. Accordingly the trial Court has acquitted the accused persons from the offences with which they were charged.

15. After considering the entire evidence brought on record by the prosecution, we are convinced that the finding recorded by the trial Court are in consonance with the evidence brought on record. There is no perversity as such. The

view taken by the trial Court is plausible. On independent scrutiny of the evidence also, we find that the evidence of the prosecution witnesses i.e. PW-1 Vairagade and PW-2 Gaikwad is not reliable, as they have stated that before the incident in question, they never met with accused persons and prior to the incident they were not even knowing the names of the accused, and they have stated the names of the accused after getting information from the M.S.E.B. workers. PW-3 Prabhakar, and PW-5 Kacharu Gaikwad had not at all supported the prosecution case as they have stated that they have not witnessed the incident. PW-4 Sudarshan Chaudhari has also not supported the prosecution case and stated in clear terms that at the time of incident, he was not present on the spot of incident. PW-6 Satishkumar Tak, Investigating Officer, admitted during the course of his cross-examination that he had inspected the spot of incident minutely but he did not find any marks of firing on the spot of incident. Therefore considering the evidence of the

prosecution witnesses, it is doubtful whether the incident in question had really taken place or not. In that view of the matter, we are unable to persuade ourselves to cause interference in the order of acquittal.

16. The Supreme Court in the case of ***Muralidhar alias Gidda and another Vs. State of Karnataka***¹ in para 12 held thus:-

12. *The approach of the appellate Court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu Vs.State, AIR 1954 SC 1, Madan Mohan Singh Vs. State of U.P., AIR 1954 SC 637, Atley Vs. State of U.P., AIR 1955 SC 807, Aher Raja Khima Vs. State of Saurashtra, AIR 1956 SC 217, Balbir Singh Vs. State of Punjab, AIR 1957 SC 216, M.G.Agarwal Vs. State of Maharashtra, AIR 1963 SC 200, Noor Khan Vs. State of Rajasthan, AIR 1964 SC 286, Khedu Mohton Vs. State of Bihar, [1970] 2 SCC 450, Shivaji Sahabrao Bobade Vs. State of Maharashtra, [1973] 2 SCC 793, Lekha Yadav Vs. State of Bihar, [1973] 2 SCC 424, Khem Karan Vs. State of*

1. 2014 [4] Mh.L.J.[Cri.] 353

U.P., [1974] 4 SCC 603, Bishan Singh Vs. State of Punjab, [1974] 3 SCC 288, Umedbhai Jadavbhai Vs. State of Gujarat, [1978] 1 SCC 228, K.Gopal Reddy Vs. State of A.P., [1979] 1 SCC 355, Tota Singh Vs. State of Punjab, [1987] 2 SCC 529, Ram Kumar Vs. State of Haryana, 1995 Supp [1] SCC 248, Madan Lal Vs. State of J & K, [1997] 7 SCC 677, Sambasivan Vs. State of Kerala, [1998] 5 SCC 412, Bhagwan Singh Vs. State of M.P. [2002] 4 SCC 85, Harijana Thirupala Vs. Public Prosecutor, High Court of A.P., [2002] 6 SCC 470, C. Antony Vs. K.G.Raghavan Nair, [2003] 1 SCC 1, State of Karnataka Vs. K.Gopalakrishna, [2005] 9 SCC 291, State of Goa Vs. Sanjay Thakran, [2007] 3 SCC 755 and Chandrappa Vs. State of Karnataka, [2007] 4 SCC 415. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate Court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal,

(iii) Though, the powers of the appellate Court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate Court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial Court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate Court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate Court in interfering with such conclusions is fully justified; and
(iv) Merely because the appellate Court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial Court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate Court in the judgment of the trial Court.

17. In the light of discussion herein above, we are of the opinion that there is no merit in the Appeal filed by the State. The Criminal Appeal stands dismissed. Bail Bonds, if any, of Respondent Nos.1, 2 and 4, stand cancelled.

[S.M. GAVHANE, J.]

asb/JUN17

[S.S. SHINDE, J.]