

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 108 OF 2015**

Tejashree Vitthal Shirsat,
Age : 24 years, Occ.: Service,
Resident of BAIF, Kamdhenunagar,
Uruli Kanchan, Pune 412 202

...Applicant/Appellant
Orig.Complainant

Versus

1. Abhijit @ Baltya Vitthal Shirsat,
Age: 23 years, Occ.: Business,
R/o Uruli Kanchan, New Tambe Vasti,
Tal:Haveli, Dist: Pune
2. Dipak Gajanan Dhankude,
Age: 23 years, Occ.: Business,
R/o Irrigation Colony,
Uruli Kanchan, Tal:Haveli, Dist: Pune
3. Sunil Balasaheb Londhe,
Age: 25 Years, Occp.: Business,
R/o: Dhawle Mala, Uruli Kanchan,
Tal:Haveli, Dist: Pune
4. Raju Kundlik Dhawale,
Age: 23 Years, Occp.: Business,
R/o : Dhawle Mala,
Uruli Kanchan, Tal:Haveli,
District : Pune
5. The State of Maharashtra
(at the instance of Lonikalbor Police
Station,Tal:Haveli, District : Pune

...Respondents
(Respondent Nos. 1 to 4-
Ori.Accused Nos.1 to 4)

Mr. Bhalchandra Shinde for the Appellant

Mrs. G. P. Mulekar, A.P.P for the Respondents-State

**CORAM : SMT. V. K. TAHILRAMANI &
REVATI MOHITE DERE, JJ.
MONDAY, 13th FEBRUARY, 2017**

ORAL JUDGMENT (Per Smt. V. K. Tahiramani, J.) :

1. This appeal has been preferred by the appellant (original complainant) against the judgment and order dated 30th September, 2014 passed by the learned Additional Sessions Judge, Thane in Sessions Case No. 511 of 2012. By the said judgment and order, the learned Sessions Judge acquitted the respondent Nos. 1 to 4 i.e. original accused Nos. 1 to 4 of the offences under Section 302, 120B and 212 of Indian Penal Code ('IPC') as well as under Sections 3, 5 r/w 25 of the Arms Act.

2. The prosecution case briefly stated is as under :

Respondent No. 1 was the step brother of deceased Sachin. Respondent No. 2 was the friend of respondent No.1. It is the prosecution case that on the night of 11th January, 2012, respondent Nos. 1 to 4 fired at Sachin near Zilla Parishad Primary

School, Uruli Kanchan. It is the prosecutions case that respondent No. 1 fired at Sachin and the rest of the respondents assisted respondent No. 1. Only one firearm injury was found on Sachin on the head. PW 1 i.e. the appellant Tejashree Shirsat, who is the sister of deceased Sachin, lodged the FIR.

3. We have heard the learned Counsel for the appellant. We have perused the judgment and order passed by the learned Sessions Judge as well as the evidence in this case.

4. The learned Counsel for the appellant submitted that PW 2, PW 3 and PW 8 have last seen the respondent with Sachin. It is noticed that these three witnesses have turned hostile and have not supported the prosecution. As far as the complainant-PW 1 Tejashree is concerned, there is nothing in her evidence which directly connects any of the respondents with the incident.

5. There is no eye-witness in the present case and the case is based only on circumstantial evidence. The learned Counsel for the appellant submitted that as far as respondent

No. 1 is concerned, there is recovery of blood stained clothes at his instance and the CA report shows that there were stains of blood group 'B' on his clothes. The clothes of the deceased also had blood stains of 'B' group. He submitted that this shows that blood of the deceased was found on the clothes of the respondent No. 1. As far as respondent No. 2 is concerned, there is recovery of firearm at his instance. The learned Counsel for the appellant further submitted that the CA report Exhibit 89 shows that the pistol seized from respondent No. 2 was found in working condition and the deformed bullet received from the B. J. Medical College, Pune tallies with the test fired bullet from the said pistol. He submitted that this clearly shows that respondent Nos. 1 and 2 were involved in the said incident. As far as this aspect is concerned, it is seen that though 6 packets were sent to the CA, they were not initially accepted by the Forensic Science Laboratory and they were returned. Out of the six packets, one contained the bullet received from B. J. Medical College and the blood stained clothes of respondent No. 1 were in the other packet. The evidence shows that the reason for not accepting the six packets by the Forensic Science Laboratory is

that they were not properly sealed. Thereafter, these six packets were again sent to the Laboratory. There is no evidence on record to show as to where the six packets were kept after they were not accepted by the Forensic Science Laboratory. The evidence of PW 6 shows that again the said six packets were taken to the Laboratory and they were accepted. There is a missing link for the period after the six packets were returned back by the Laboratory and they were again sent to the Laboratory. In such circumstances, the opinion given in the CA report loses its significance and cannot be relied upon to establish the charge against the respondents.

6. Thereafter, reliance was placed by the learned Counsel for the appellant on the fact that there was motive for the respondent Nos. 1 to 4 to do away with Sachin. However, the evidence of PW 5, who is the father of respondent No. 1 as well as of the deceased shows that for the first time in his evidence he has stated that respondent No. 1 wanted a share in the ancestral property. This shows that the motive attributed to the respondent No. 1 was not disclosed by this witness during

investigation, hence, we are not inclined to give much importance to this aspect of motive. As far as respondent Nos. 2, 3 and 4 are concerned, they had no motive to commit the act. Respondent No. 2 was the friend of respondent No. 1 and it is the prosecution case that respondent Nos. 3 and 4 assisted respondent Nos. 1 and 2 to do away with Sachin, however, there is no evidence to support the same.

7. There is no other cogent and clinching evidence on record to connect any of the respondents to the crime. After carefully considering the matter, we are of the opinion that the view taken by the learned Sessions Judge is a reasonable and possible view and hence, calls for no interference.

8. The plenitude of power available to the Court hearing an appeal against acquittal is the same as that available to a court hearing an appeal against an order of conviction, however, there are a plethora of decisions of the Supreme Court which hold that the court hearing an appeal against acquittal, will not interfere solely because a different possible view may arise on

the basis of the evidence. The Supreme Court in the case of **C. Anthony Vs. K.G. Raghavan Nair**¹ has observed that while hearing an appeal against an order of acquittal, if two reasonable conclusions can be reached on the basis of evidence on record, the appellate court should not disturb the finding of the trial court. We have already observed that the view taken by the learned Sessions Judge is a reasonable and possible view. In this view of the matter, we are not inclined to interfere in the judgment and order of acquittal.

9. In view of the above, the appeal is dismissed.

(REVATI MOHITE DERE, J.)

(V. K. TAHILRAMANI, J.)

¹ (2003) 1 SCC 1