

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 308 OF 2004

The State of Maharashtra
Through Police Station
Jalkot, Tal. Jalkot, Dist. Latur.

.. Appellant
(Original Complainant)

Versus

1. Ashok Venkatrao Potdar,
Age 30 years, Occu. Nil,
2. Subhash Madhavrao Panchal,
Age 39 years, Occu. Nil,
3. Vasant Madhavrao Panchal,
Age 45 years,
4. Gopinath Madhav Panchal,
Age 50 years
All r/o. Sayyedpur, Tq. Ahmedpur,
District Latur.

.. Respondents
(Original Accused)

...
Mr. B. V. Virdhe, APP for appellant.

Mr. V. G. Sakolkar, Advocate for respondents No. 1 to 4 (Absent).

...
CORAM : K.K. SONAWANE, J.

DATED : 20th JANUARY, 2018.

JUDGMENT :-

This appeal is directed against impugned judgment and order of acquittal of the respondent-accused for the offence punishable under Sections 324, 323, 504 and 506 read with Section 34 of the Indian Penal Code (for short, IPC) passed by the learned Judicial Magistrate, First Class, Udgir, in Regular Criminal Case No. 432 of 2002 dated 24-12-2003. The appellant- State of Maharashtra preferred present appeal under Section 378 of the Code of Criminal Procedure (for short, Cr.P.C.) to redress its grievances.

2. Heard learned APP for the appellant- State of Maharashtra.

The learned counsel for respondent-accused remained absent. The

proceeding of appeal is pending since year 2004. Hence, it would justifiable to proceed further for adjudication of present appeal on merit in absence of respondent-accused.

3. The prosecution story in brief is that- the first informant Shri Uttam Digambar Potdar, resident of Chera, Taluka Jalkot, District Latur, on 21-11-2001 approached to the police of Jalkot Police Station and ventilated the grievances that, in the noon at about 12.00 hours, he had called accused Ashok Potdar r/o. Jalkot at home and reprimanded him on account of allegations of theft of a blouse piece kept in the shop. There were hot exchange of words in between them. However, in the evening at about 5.00 p.m. the first informant Uttam Digambar Potdar, his brother-in-law Yadav Vitthal Panchal, Waman Venkati Panchal and one Chandsab Mominsab Sayyed, all were returning to village after attaining the funeral of grandmother of the complainant. When they reached near water hand pump in the field of Shri. Venkatrao More near the village river, that time respondent-accused arrived there and picked up quarrel with the first informant Uttam. Then, respondent-accused Ashok Potdar and his maternal cousin accused Gopinath Panchal, Vasant Panchal and Subhash Panchal, all caught hold the first informant Uttam and started beating to him with fists and kicks. The brother-in-law of the complainant namely Yadav Panchal attempted to intervene in the scuffle, but accused Gopinath attacked him with stone and inflicted bleeding injury at his head. The accused hurled the abuses filthily and gave threats of life to the complainant. The persons Waman Panchal and Chandsab Sayyad and others intervened in the fight and extricated the

complainant from clutches of the accused. Thereafter, first informant Shri. Uttam Potdar and others rushed to the police station and filed the report.

4. Pursuant to FIR of Uttam Potdar, the Police of Jalkot Police Station registered the crime No. 8 of 2001 and set the penal law in motion against the respondent-accused. The Investigating Officer visited to the spot of incident and drawn panchnama of scene of occurrence. The injured – first informant Uttam and his brother-in-law both were referred to the Government Hospital for medical treatment. I.O. recorded statement of witnesses acquainted with the facts of the case. He collected relevant documents of medical certificate, etc. and after completion of investigation, I.O. preferred the chargesheet against respondent-accused.

5. The learned Magistrate, after completion of procedural formalities, framed the charge against the accused for the allegations levelled against them. The accused pleaded not guilty and claimed for trial. The prosecution examined in all seven witnesses in this case to bring home guilt of the accused. Learned Magistrate recorded the statement of each of the accused prescribed under section 313 of the Cr.P.C. After appreciation of arguments and entire evidence adduced on record, learned Magistrate arrived at the conclusion that the prosecution failed to prove the charges against each of the accused beyond reasonable doubt. Therefore, the learned Magistrate exonerated the respondent-accused in this case and passed the impugned judgment and order of acquittal, which is the subject matter of present appeal.

6. The learned APP vehemently argued that the learned trial Court has grossly erred in law for not accepting the theory of prosecution propounded against the respondent-accused. The learned trial Court did not appreciate evidence on record in its proper perspective and committed error for acquittal of the accused in this case. The learned APP submitted that P.W.No.1 Uttam and P.W.3 Yadav were the victims of the crime. The respondent-accused assaulted them with deadly weapon like stone. The P.W.No.3 Yadav received bleeding injury at his head. The P.W.No.4 Chandsab and P.W.No.5 Waman were the eye-witnesses of the incident. They described the incident of assault by the accused in detail before learned trial court. The medical certificate of P.W.No.3 Yadav (Exhibit-31) and P.W.No.1 Uttam (Exhibit-32) corroborated the oral evidence of prosecution witnesses. According to learned APP, the impugned judgment and order of acquittal passed by the learned trial Court is perverse and not within the ambit of law. Hence, he prayed to up-set the findings of acquittal passed by the learned trial Court by allowing appeal and respondent-accused be convicted for the offence levelled against them.

7. I have given anxious consideration to the arguments advanced on behalf of learned APP. I have also delved into the entire oral and circumstantial evidence adduced on record, I do not find substance in the contentions propounded on behalf of learned APP for any adverse inference against the accused.

8. P.W.No.1 Uttam Potdar stepped into the witness box and deposed that on the day of incident at about 5.00 p.m., they attended

the funeral of grand-mother Sonabai at village Chera. When they were returning to village, they came up to the water hand pump. But, the respondent-accused Ashok instigated his accomplice by saying "*Maro-Mar*". Thereafter, all other accused started assaulting the complainant Uttam by means of stones. The complainant sustained injuries on his shoulder and ear. Meanwhile, persons namely Waman Panchal and Yadav Panchal attempted to intervene in the fight, but the accused Gopinath attacked Yadav Panchal by stone and inflicted serious injuries at his head. Thereafter, the first informant accompanied with injured Yadav rushed to the Jalkot Police Station and filed report.

9. The P.W.No.3 injured Yadav testified that after attaining the funeral of Sonabai, they came to water hand pump and at that time respondent-accused attacked the complainant Uttam on account of making inquiry about the blouse piece. They assaulted the complainant by means of stone on his backside as well as shoulder. Thereafter, he himself and one Chandsab as well as Waman tried to rescue the complainant, but, accused Gopinath and Vasant dealt a blow of stone on his head and caused bleeding injury to him. Thereafter, he was taken to village and later-on proceeded to police station by auto. The first informant- Uttam filed the report in the police station.

10. The P.W.No.4 Chandsab was examined by the prosecution being one of the eye-witness of the incident. He stated that when they all were at water hand pump for washing the hands that time accused made inquiry towards Uttam about blouse piece. Thereafter, accused Vasant and Gopinath started assaulting the complainant by stones. The person Yadav tried to rescue Uttam, but accused Vasant gave blow

of stone and caused injuries at his head. The witness Chandsab also tried to intervene in the quarrel, but he was also abused and slapped by the accused. Thereafter, they all went to the police station and filed the report.

11. The P.W.No.5 Waman stated the similar facts before the learned trial court in his evidence. He stated that when they were at the hand pump for washing hand that time quarrel was going on in between accused and Uttam on account of blouse piece. Accused Vasant and Gopinath assaulted Uttam by means of stone over his shoulder and back side of ear. At the same time, accused Gopinath and Vasant assaulted Yadav by means of stone and caused grievous injury to his head. Thereafter, onlookers thronged at the spot intervened in the fight and rescued the complainant from the clutches of accused. P.W.No.5 Waman further added that he was also beaten by accused- Gopinath during the scuffle.

12. The intense scrutiny of the evidence of star witnesses of the prosecution reflects that there are material discrepancies in their evidence recorded before trial court. The P.W.No.1 Uttam stated that he was attacked by accused with kicks and fists, whereas, other eye witnesses stated that Uttam was being assaulted by means of stone. The P.W.No.1 Uttam further disclosed that the accused Gopinath alone assaulted the P.W.No.3 Yadav with stone at his head and inflicted bleeding injury. However, P.W.No.3 Yadav, P.W.No.4 Chandsab and P.W.No.5 Waman divulged that P.W.No.3 Yadav was attacked by accused Gopinath and Vasant by means of stones. It has brought on record that the accused also attacked P.W.No.4 Chandsab and

P.W.No.5 Waman during the scuffle. But, the complainant P.W.No.1 Uttam and P.W.No.3 Yadav did not mention in their evidence about the assault by the accused to P.W.No.4 Chandsab and P.W.No.5 Waman. It is strange to appreciate that when P.W.No.1 Uttam was attacked by the assailants all four in number with deadly weapon like stone, in such situation, he should have received multiple fatal injuries. But, the medical certificate of P.W.No.1 Uttam (Exhibit-32) produced on record in the evidence of P.W.No.6 Dr. Sontakke demonstrates only single injury like contusion and it was simple in nature. There were no other injury noticed from the person of P.W.No.1 Uttam. Moreover, P.W.No.3 Yadav was attacked by accused Gopinath and Vasant by means of stone and naturally there would have been more number of injuries to him. But, P.W.No.6 Dr. Sontakke observed only simple nature of contusion with abrasion on the left side of his head. The medical certificates (Exhibits- 31 and 32) produced on record totally belies the story of prosecution witnesses that the P.W.No.1 Uttam and P.W.No.3 Yadav were attacked by the accused, who were four in number by means of stones.

13. In cross-examination it has brought on record that the respondent-accused Ashok Potdar and the complainant P.W.No.1 Uttam were on inimical terms following their rented premises of shops at village Jalkot. The P.W.No.1 Uttam was doing the business as a goldsmith and his shop was abutting to the shop of accused Ashok in same premise having temporary wooden partition in between them. The P.W.No.1 Uttam closed his business in Jalkot village, but his articles of the shop were retained by the landlord for recovery of rent

arrears. It has been alleged that the accused Ashok did not allow the complainant Uttam to take away his articles from the shop without permission of the landlord and on this count their relation became strained. It has been alleged on behalf of accused that the present complaint is fall out of strained relations in between them.

14. Admittedly, the inimical terms in between complainant and the accused impelled to scrutinize the evidence of related and interested witnesses with reasonable care and caution. The P.W.No.3 Yadav and P.W.No.5 Waman are the relatives of P.W.No.1 Uttam. P.W.No.4 Chandsab was the resident of same village of the complainant. The prosecution did not examine any other independent witness in this case. The improvements made by the prosecution witnesses in their deposition before the learned trial Court devastated the gravity of allegation nurtured on behalf of prosecution. The P.W.No.1 Uttam did not mention in his FIR as well as deposition before the learned trial Court about any conversation in between himself and the accused at the spot of incident. But, the P.W.No.4 Chandsab disclosed that accused made inquiry with Uttam about blouse piece. The improvement in his evidence in regard to hurling abuses and giving slap to him by accused found detrimental to prosecution case. It would cause dent in credibility of the evidence of P.W.No.4 Chandsab.

15. The over all scrutiny of the evidence of prosecution witnesses demonstrate that the oral evidence of the prosecution witnesses do not inspire confidence and not free from blemish. There are material discrepancy and improvement in their evidence before the learned trial Court. The prosecution witnesses did not take care to

elucidate overact of each of the assailants while assailing P.W.No.1 complainant Uttam and P.W.No.3 Yadav. In such backdrop, it would unsafe to draw adverse inference against the accused for the charges pitted against them.

16. Undoubtedly, in present appeal against acquittal of the respondent-accused, this court is empower to review and re-appreciate entire evidence adduced on record on behalf of prosecution and to come its own conclusion, keeping in view the well established principle of presumption of innocence of the accused. But, while reassessment and re-appreciating the evidence of prosecution, if it is found that there was no any perversity in the reasoning expressed by the learned trial Court while acquitting the respondent-accused, there would not be any interference in it. The view taken by the learned trial Court is a possible and plausible view to be taken on the basis of evidence on record. The findings of acquittal passed by the trial Court does not warrant any interference. There are no good reason available to cause interference in the conclusion drawn by learned trial Court. In such circumstances, there is no alternative but to dismiss the appeal. The findings of acquittal expressed by learned trial Court liable to be made absolute and confirmed. In the result, the appeal deserves to be dismissed.

17. Accordingly, the appeal stands dismissed. No order as to the costs.

Sd./-

[K. K. SONAWANE]
JUDGE

rrd.