

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

CRIMINAL APPEAL NO. 680 OF 1999

The State of Maharashtra
(Through Karvir Police Station, Kolhapur)

... Appellant
(Orig. Complainant)

V/s.

- 1 Raghu Sitaram Pendurkar,
age 28 years
 - 2 Sitaram Sakharam Pendurkar,
age 50 yrs.
 - 3 Bhagwan Sitaram Pendurkar,
age 30 yrs.
 - 4 Maruti Sakharam Pendurkar,
age 40 yrs.
- All R/o. Pendurkar Wadi, Tal. Karvir.

... Respondents
(Orig. Accused Nos.1 to 4)

Ms. M.H. Mhatre, A.P.P. for the State-Appellant.
Mr. Sushan Mhatre appointed amicus curiae for Respondents.

**CORAM : INDRAJIT MAHANTY AND
V.K. JADHAV, JJ.**

DATED : 14th DECEMBER, 2018.

JUDGMENT (Per V.K. Jadhav, J.):

1 The State has preferred this Appeal against the judgment and order of acquittal dated 06.07.1999 passed by the Judicial Magistrate, First Class, Court No.1, Kolhapur in Regular Criminal Case No.481 of 1993.

2 Brief facts of the prosecution case are as follows :-

On 20.09.1993 at about 8.00 a.m. in the field of the complainant situated at Village Pendurkar wadi, the accused in furtherance of their common intention voluntarily caused grievous hurt to the complainant and his son Dagadu by means of dangerous weapon such as spear and an axe and also gave threats to kill them. On the report of the complainant Tukaram, a crime came to be registered in the concerned police station. After due investigation, the Investigating Officer submitted the chargesheet under Sections 326, 504 r/w 34 of I.P.C. Learned Magistrate has framed the charge against the accused to which all the accused pleaded not guilty and claimed to be tried. The prosecution has examined nine witnesses to substantiate the charges levelled against the accused. The defence of the accused is of total denial and false implication due to the dispute in respect of the agricultural land. Learned Magistrate has acquitted all the accused for the charges levelled against them. Hence, this Appeal.

3 Learned A.P.P. submits that the evidence of PW1 complainant Tukaram is reliable, trustworthy and consistent. His evidence is fully corroborated by PW2 Dagdu, PW3 Bhagwan and PW5 Sushatai. All are

eye witnesses to the incident. The evidence of PW1 complainant Tukaram is also corroborated by the medical evidence. The weapon used in the assault seized in the panchnama Exh.50 however, the learned Judge of the trial Court has discarded the entire evidence and acquitted the accused with the perverse findings. Thus, the impugned judgment and order of acquittal is liable to be quashed and set aside and the Respondent-accused are liable to be convicted for the offences punishable under Sections 326, 504 r/w. 34 of I.P.C.

4 The learned Counsel for the Respondent-accused has supported the judgment and order of acquittal. The learned Counsel submits that the evidence of PW1 Tukaram is not reliable, trustworthy and consistent. There are no eye witnesses to the incident. There is a long standing enmity and thus the possibility of false implications cannot be ruled out. The medical evidence does not support the evidence of PW1 Tukaram. The prosecution witnesses have contradicted each other and their evidence is full with omissions and contradictions. The learned Judge of the trial Court has, therefore, rightly discarded the prosecution evidence and acquitted the accused. There is no substance in the Appeal and the Appeal is liable to be dismissed.

5 Admittedly, the sister of the complainant viz. Hausabai had instituted the suit for partition against him in the Civil Court and the said Suit is still pending. In the said Suit, Respondent-accused Raghu had raised the contention that the complainant got more amount of compensation. Even though, the parties tried to settle their dispute amicably, the said Civil Suit was still pending. In the backdrop of this inimical terms, the careful scrutiny of evidence PW1 complainant Tukaram is necessary.

6 PW1 Tukaram has deposed that accused No.1 Raghu questioned at him as to why he was grazing the buffaloes and, thereafter, gave blow of spear below his knee joint of right leg. Accused No.3 gave a blow of an axe on his left leg and accused No.2 gave a blow of stick on his right knee. He had fallen down on the ground. His son PW2 Dagdu rushed to the spot and caught hold accused No.2 from his backside. Accused No.1 Raghu also gave a blow on his left hand and due to that, his left hand was fractured. PW1 Tukaram in para 4 of his cross-examination has stated that the witnesses came on the spot after assault by the accused. Even there is a material omission to the extent that his son PW2

Dagadu came on the spot and caught hold accused No.1 Raghu from his backside. However, contrary to his evidence, PW2 Dagadu has deposed in the manner that he was present on the spot right from the beginning. He has ascribed the role to accused No.1 Raghu about giving blow of below knee of the right leg and accused Bhagwan gave a blow on the hand of his father. It is further the prosecution case that when PW2 Dagadu took his injured father to the house, at that time, accused Raghu came from backside and gave a blow of an axe on his head and due to the same he had sustained bleeding injury on his head. He has admitted in his cross-examination that his father's sister Housabai had instituted one Civil Suit for partition against his father and the accused persons and it is the contention of the accused that they got the less land in the partition compared to his father. He has further admitted in cross-examination that at the time of alleged assault nobody was present in the field and after five minutes, the witnesses came there. He further admitted that he himself rushed towards the spot after five minutes when he heard the noise and further explained that when he reached to the spot, he saw his father was lying on the spot. The learned Judge of the trial Court has thus rightly inferred that PW2 Dagadu and the other witnesses posing themselves as eye witnesses, are not the eye witnesses to the incident.

PW3 Bhagwan and PW5 Sushatai have given the different version of the incident and they also deposed in the manner as if they were present on the spot right from the beginning.

7 PW2 Dagadu has deposed that accused Raghu came from his backside and gave a blow on his head however, the injury on his person as described in medical certificate Exh.55 indicates that he has sustained inside wound on right frontal region. Though PW1 Tukaram has deposed that accused Raghu gave a blow of spear below the right knee joint, PW9 Dr. Harischandra Patil has deposed that the injuries mentioned in Exh.54 of PW1 Tukaram cannot be caused due to spear. PW9 Dr. Harischandra Patil has further explained that the injuries mentioned in Exh.55 of the examination of PW2 Dagadu, can be caused if the head came in contact with sharp edged frame of the door. So far as the recovery of the weapons are concerned, there is no panchnama under Section 27 of the Evidence Act and the panchnama Exh.50 was drawn with the contention that the accused had produced the said weapons and accordingly seized under the panchnama. Thus, said contents of Exh.50 cannot be read in the evidence. Panchnama Exh.50 has no evidential value. Learned Judge of the trial Court has rightly inferred that due to previous enmity possibility of false implications in the crime cannot be ruled out.

8 In the instant case the reasons adduced by the trial Court for discarding the testimony of the eye witnesses are sound and the evaluation of the evidence made by the trial Court is proper and correct. The trial Court had advantage of watching the demeanor of the witnesses. The learned Judge of the trial Court has recorded the convincing and substantial reasons. The evidence of the prosecution witness is replete with inconsistency, infirmities and no implicit reliance can be placed on testimony of complainant and his witnesses. We find no perversity in finding of the trial Court. Accordingly we proceed to pass the following order :-

ORDER

Criminal Appeal is hereby dismissed and accordingly disposed of. Fees of the appointed amicus curie for the Respondents, be paid as per rules.

(V.K. JADHAV, J.)

(INDRAJIT MAHANTY, J.)