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

CRIMINAL APPEAL NO. 618 OF 1997

The State of Maharashtra

.. Appellant

Vs.

1. Satappa Keshav Patil, Age-27 yrs.
2. Keshav Bala Patil, Age-60 yrs.
3. Sou. Savitribai Keshav Patil, Age-55 yrs.
All R/o. Chandre, Tal.- Ratnagiri,
Dist. Kolhapur.

.. Respondents

**WITH
CRIMINAL REVISION APPLICATION NO. 147 OF 1997**

Tukaram Vithal Patil

.. Applicant

Vs.

1. Satappa Keshav Patil, Age-27 yrs.
2. Keshav Bala Patil, Age-60 yrs.
3. Sou. Savitribai Keshav Patil, Age-55 yrs.
All R/o. Chandre, Tal.- Ratnagiri,
Dist. Kolhapur.

.. Respondents

Mrs. M. M. Deshmukh, APP for the Appellant.

Mr. Prashant Badole for Respondent Nos.1 to 3.

Mr. Shekhar Ingawale for the Applicant in Cri. Revision Application.

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

Judgment reserved on : **26th NOVEMBER, 2018.**

Judgment pronounced on : **30th NOVEMBER, 2018.**

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

1. This is an Appeal preferred by the State against the Judgment and

Order of acquittal dated 07.05.1997 passed by the Additional Sessions Judge, Kolhapur in Sessions Case No. 128 of 1996. The original Complainant has also preferred Criminal Revision Application No. 147 of 1997 against the said Judgment and order of acquittal passed by the Additional Sessions Judge, Kolhapur in the aforesaid Sessions trial.

2. Brief facts giving rise to the present Appeal are as follows:

Shri Tukaram Vitthal Patil and Shri Pandurang Vitthal Patil are the real brothers *inter se*. They have purchased the land known as “Mola” from one Shri Joti Patil and Bhairu Patil three months prior to the incident. However, the accused started claiming their share in the said land. Even accused No.2-Keshav Patil had instituted civil suit against the Complainant and others. Moreover, the Complainant has also instituted civil suit against the accused for a decree of perpetual injunction. On 27.02.1996 Complainant Tukaram, his son Arjun, nephew Dnyaneshwar had been to another land “Kondar” for watering the crops. In the evening time their brother Pandurang came to the land. All of them thereafter started proceeding towards the said newly purchased land Mola. Thus, when they reached to the said land, all the accused came in the land at about 6.00 p.m. The accused persons restrained the Complainant from entering into the land. Thus, altercation took place between them. Accused No.1 was holding an Axe. He gave a blow of Axe on the abdomen of PW Pandurang.

Accused Nos.2 and 3 were armed with sticks and they assaulted the Complainant with the same. In consequence of which, Pandurang fell down on the ground and all the accused ran away from the spot. On the basis of complaint lodged by Tukaram, Crime No. 12 of 1996 for the offence punishable under Sections 307, 324, 323 read with 34 of the Indian Penal Code came to be registered in the concerned Police Station. On completion of investigation, concerned Investigating Officer submitted charge-sheet against all the accused persons.

3. The learned Judge of the trial Court has framed charge against the accused persons and all the accused persons pleaded not guilty to the charge and claimed to be tried.

4. The prosecution has examined in all nine witnesses to substantiate the charges levelled against the accused. The accused have taken a defence that on the day of incident, in fact, the Complainant and PW Pandurang have assaulted accused No.1. PW Pandurang caused injury on the head and ear of accused No.1 with the help of the Axe. Thus, the Complaint came to be lodged against PW 3-Complainant and seven others. Accused Nos. 2 and 3 of this case are witnesses of the said incident. It is their specific defence that in order to counter blast the said complaint, this false complaint has been filed against them. The learned Additional Sessions

Judge, Kolhapur vide Judgment and order dated 07.05.1997 in Sessions Case No. 128 of 1996 acquitted the accused for the offences punishable under Sections 307, 324, 323 read with 34 of the Indian Penal Code. Hence, this Criminal Appeal preferred by the State against the said Judgment and order of acquittal and also the Criminal Revision Application preferred by the Complainant against the said Judgment and order of acquittal.

5. The learned APP submits that the prosecution has examined PW 2 injured Pandurang, PW 3-Complainant Tukaram who is also injured person. The prosecution has also examined Pws 4 and 6 who are eye witnesses to the incident. FIR, Exhibit 19 fully corroborates the version of PW 3-Tukaram. The learned APP submits that the evidence of PW 2-Pandurang, PW 3-Tukaram, PW 4-Amar and PW 6-Satappa is consistent, reliable and trustworthy. Their evidence is fully corroborated by the medical evidence. Medical Certificates at Exhibits 25 and 26 are duly proved by the prosecution through PW 5-Dr. Godbole. As per prosecution story, accused No.1 gave a blow of Axe on the abdomen of PW 2-Pandurang. The Medical Certificate indicates that PW-Pandurang has sustained perforation of stomach transverse in direction and also some damage to the internal organs. PW 5-Medical Officer has also opined that the said injury is grievous in nature. PW-Tukaram also sustained contusion

lacerated wound (c.l.w.) over the right occipital region. The learned PP submits that the trial Court has ignored all this evidence. The learned Judge of the trial Court had unnecessarily given importance to the spot of incident when the said disputed land Mola and the other land where the Complainant and his associates were giving water to the crops are situated within a walkable distance. The learned APP submits that even though the another criminal case in respect of the incident which has occurred on the same date, time and place was not tried by the same Court as being a counter case, the learned Judge in the present case has recorded the finding as to who was the aggressive party. The learned APP submitted the entire approach of the trial Court is erroneous. The learned APP submits that, thus, the Judgment and order passed by the Additional Sessions Judge, Kolhapur is liable to be quashed and set aside and all the accused are liable to be convicted for the offences punishable under Sections 307, 324, 323 read with 34 of the Indian Penal Code.

6. Learned Counsel appearing for the Applicant in Criminal Revision Application has adopted the submission made by the learned App in the present Appeal.

7. The learned Counsel for the Respondent-accused Nos.1 to 3 submits that the evidence of PW 2-Pandurang, PW 3-Tukaram, PW 4-Amar and PW

6-Satappa is not consistent, reliable and trustworthy. They have contradicted each others on material aspects including the spot of incident. The conduct of PW 2-Pandurang prior to the incident and after the incident is also doubtful. The learned Counsel submits that PW 2-Pandurang went to the land in the evening time for the reason that the accused persons abused his wife. However, there is no reference of the said abusing in the so called incident as alleged by the prosecution witnesses. The learned Counsel submits that the prosecution witnesses have exaggerated the story. Admittedly, there was an enmity between both the groups in respect of newly purchased land. In respect of same incident, on the basis of complaint lodged by accused No.1, a separate crime came to be registered against the present Complainant, PW Pandurang and sever others. Even the accused Nos.2 and 3 are the witnesses in the said complaint. The learned Counsel submits that in order to counter-blast the said complaint, the false complaint has been filed against the Respondent-accused persons. The learned Additional Sessions Judge has rightly appreciated the evidence and also considered the possibility that the Complainant-group might be aggressive party, given the benefit of doubt to the Respondent-accused. There is no substance in the Appeal and the Appeal is, thus, liable to be dismissed.

8. It is well settled that the interference with the order of acquittal

passed by the trial Court is limited only to the exceptional cases which can be summarised below:

- (a) In an Appeal against acquittal, if the other view is possible, then also the Appellate Court cannot substantiate its own view by reversing the acquittal into conviction unless the finding of the trial Court are perverse, wrong, manifestly, erroneous or demonstrably unsustainable.
- (b) Appellate Court should be slow to interfere in the decision of the trial Court and acquittal by trial Court should not be interfered with, unless it is totally perverse or wholly unsustainable.
- (c) Interference against the order of acquittal is permissible only when there are convincing and substantial reasons for doing so.
- (d) If the trial Court has illegally shut the evidence which has ought to have been considered.
- (e) Where the material evidence which clinches the issue has been overlooked.
- (f) Where the admissible evidence is wrongly brushed aside as inadmissible.

9. In the instant case, the evidence of PW 2-Pandurang, PW 3-Tukaram, PW 4-Amar and PW 6-Satappa is not consistent, reliable and trustworthy. They have contradicted each other on material aspects and the evidence of

each of them suffers from major omissions and contradictions.

10. According to PW 2-Pandurang on the date of incident i.e. on 27.01.1996 he went to attend his duty and returned to house at about 3.00 p.m. After returning to house, his wife told him that the accused abused her. He then went to their land Kondar where the other prosecution witnesses were present. It appears that PW 2-Pandurang went to his land Kondar, as his wife reported to him the abuses given to her by the accused. However, PW 3-Complainant, PWs 4 and 6 have not deposed anything about it. PW 2-Pandurang has deposed that they started proceeding towards their disputed land Mole and went to the land of Bhau Patil where the incident has taken place. PW 4-Amar has not given the details where the incident has taken place. PW 6-Satappa has brought altogether a different story. According to him, on the date of incident at about 5.30 p.m. the daughter of PW Pandurang had been to him and requested him to go to the land of PW Pandurang. He did not witness the incident because on way to the land, he saw the accused returning to the village. Further, PW Pandurang has exaggerated the prosecution story like anything. PW Pandurang has deposed that accused No.1 was having an Axe in the right hand and sickle in the left hand. The accused caught the Axe by both the hands and inflicted to blow over his abdomen. He has stated so in his cross-examination. None of the so called eye witnesses has deposed about

the weapon sickle allegedly used in the assault. The said exaggeration by PW Pandurang in his cross-examination has been made for the reason that surprisingly during the course of investigation the sickle at the instance of accused No.1 shown to have been recovered. There is only one injury on the abdomen of Pandurang and there are no other injuries on his person though it has been alleged by PW Pandurang that all the accused were armed with weapons such as sticks etc. It is also pertinent to note that PW Pandurang has not disclosed to other witnesses the abuses given by the accused to his wife in the village nor he has referred the said incident of abusing when the accused met them in the field or during the course of incident. The FIR also does not corroborate the evidence of the prosecution witnesses including the Complainant. The spot panchnama shows that the incident has taken place on the bandh of agricultural land known as Kondar. Admittedly, the land Kondar is situated far away from the disputed land Mola. Though the prosecution has examined PW 4 as witness to the incident, his name is not mentioned in the FIR. Evidence of PW 4 is so brief. He appears to be a got up witness. He has simply deposed about the incident to the extent that accused No.1 beat Pandurang with an Axe over the abdomen. He further deposed that he do not remember as to what happened thereafter. He has materially improved the story even though no sticks and sickle came to be used in the alleged incident, surprisingly, the recovery of the same has been shown at the

instance of the accused. PW Pandurang has deposed that accused No.1 at the time of incident was armed with stick and grubbing hoe. However, further deposed that accused No.1 inflicted the blow of Axe on his abdomen. In the cross-examination he has further deposed that the accused No.1 was having Axe in his right hand and sickle in his left hand. It has come in his evidence that accused No.1 caught the Axe with both the hands and inflicted its blow on the abdomen. However, PW Pandurang is silent as to what happened to weapon sickle. Furthermore, PW Tukaram-Complainant in his cross-examination stated that he do not remember as to whether he signed the complaint or not and during the cross-examination he denied the contents of the complaint and signature over the complaint. The FIR is also not duly proved.

11. PW 8 IO Deelip Jadhav has admitted in para 5 of his cross-examination that accused No.1 has filed complaint against PW Pandurang, Complainant, PW 6 Satappa and 4 others and he has investigated into the said complaint. He has filed the charge-sheet in connection with the said complaint. He has further admitted in his cross-examination that the present accused No.1 was injured in the incident took place on 27.02.1996 itself and was admitted in C. P. R. Hospital for two days and Axe and sickle was attached from the accused in the said complaint filed by the present accused No.1. In the backdrop of this, it appears that the prosecution

witnesses have suppressed the material facts. The prosecution has also failed to explain the injuries on the person of accused persons. The learned Judge of the trial Court has observed that the possibility of sustaining the injury by PW Pandurang in the said incident cannot be ruled out. The learned Judge of the trial Court has also observed that PW 2 Pandurang and his associates was aggressive party and there was no reason at all for the accused to mount assault on the Complainant and others. The learned Judge of the trial Court has observed about the same for the reason that PW Pandurang went to the land to inform PW Tukaram and others about the incident that his wife was subjected to abuses by the accused. The learned Judge of the trial Court has rightly observed that the Complainant party in the present case appears to be an aggressive party.

12. It is well settled that the interference against the order of acquittal is permissible only when there are convincing and substantial reasons for doing so. In the instant case, the evidence of the prosecution witnesses is full with inconsistencies, infirmities and no implicit reliance can be placed on the testimony of the Complainant and his witnesses. We find no perversity in the findings of the lower Court. Order of acquittal is not perverse or unreasonable. Accordingly, we proceed to pass the following order:

O R D E R

Criminal Appeal No. 618 of 1997 is hereby dismissed.

Criminal Revision Application No. 147 of 1997 is also hereby dismissed.

[V. K. JADHAV, J.]

[INDRAJIT MAHANTY, J.]