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

CRIMINAL APPEAL NO. 743 OF 1999

The State of Maharashtra	.. Appellant
Vs.	
Sharad Ramchandra Mahatra,	
Age-34 years, R/o. Waghbil, Thane	.. Respondent

Mrs. M. M. Deshmukh, APP for the Appellant.
Mr. S. A. Joshi I/b Shri S. M. Oak for the Respondent.

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

Judgment reserved on : **3rd DECEMBER, 2018.**
Judgment pronounced on : **4th DECEMBER, 2018.**

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

1. This is an Appeal preferred by the State against the Judgment and Order of acquittal dated 27.08.1999 passed by the 2nd Additional Sessions Judge, Thane in Sessions Case No. 418 of 1995.

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

There was some dispute in respect of land belonging to the uncle of the Complainant as the accused was also claiming his right in the said land. On 29.04.1995 the work of erection of compound wall was going on the said land. His brother Sadashiv, his uncle Yashwant were present at that place. Complainant Vishnu had started proceeding towards the said land

on his scooter. The accused was coming in his Jeep Tata Sumo from the opposite direction. As per the prosecution story, the accused gave dash to the scooter from front side with an intention to cause death of Complainant Vishnu. In consequence of the same, Complainant Vishnu fell down on the ground. It has been alleged that the accused took his jeep in reverse direction and tried to crush Complainant Vishnu under the wheels of the jeep. Complainant Vishnu had sustained injuries on head and abdomen. The said scooter was also damaged. PW Yashwant Patil and PW Arun Gharat have witnessed the incident. PW/Complainant Vishnu was taken to one hospital where he narrated the incident to police. His complaint is marked as Exhibit 18. On the basis of his complaint, Crime No. I-41 of 1995 came to be registered in the concerned police station and after due investigation, charge-sheet came to be submitted against the Respondent-accused. The learned Judge of the trial Court has framed charge against the accused under Section 307 of the Indian Penal Code. The accused pleaded not guilty to the said charge and claimed to be tried. The prosecution has examined in all nine witnesses to substantiate the charge levelled against the accused. After recording the statement under Section 313 of the Code of Criminal Procedure and after hearing both the sides, the learned 2nd Additional Sessions Judge, Thane vide Judgment and order dated 27.08.1999 acquitted the Respondent-accused for the offence punishable under Section 307 of the Indian Penal Code. Hence, the State

has preferred this Appeal against the said Judgment and order of acquittal.

3. The learned APP submits that the prosecution has proved its case beyond reasonable doubt. PW 3 Vishnu Gharat is an injured witness. His complaint Exhibit 15 was recorded when he was admitted in the hospital. His complaint Exhibit 15 duly corroborates his evidence before the Court. There is nothing in the cross-examination to disbelieve his version. The prosecution has relied upon the evidence of two eye witnesses i.e. PW 2 Arun Gharat and PW 5 Yashwant Patil. PW 5 Yashwant is an independent eye witness. His evidence is consistent, reliable and trustworthy. He has fully corroborated the version of PW 3-Complainant Vishnu. Further the evidence of PW Vishnu is fully corroborated by the medical evidence. The prosecution has examined PW 6-Dr. Milind Patil to prove Medical Certificate at Exhibit 25. PW 3-Complainant Vishnu has sustained injuries on chest, abdomen, fracture of ribs, fracture of scapula, multiple abrasions and lacerations. The prosecution has also examined PW 8-Dr. Pradip Mule who has examined initially Complainant-Vishnu in Maruti Hospital, Manpada and noted 11 injuries on his person. However, the learned Judge of the trial Court has ignored all his evidence and acquitted the accused. The learned APP submits that the Judgment and order of acquittal is, thus, liable to be quashed and set aside and the accused be convicted for the offence punishable under Section 307 of the Indian Penal Code.

4. Learned Counsel for the Respondent-accused submits that as per the evidence of PW 3-Complainant Vishnu immediately after the incident, he was taken to Maruti Hospital at Manpada and there he narrated the incident to police. As per the evidence of PW 8-Dr. Pradip Mule, Complainant-Vishnu was brought to the hospital and after giving necessary treatment, he was referred to Singhania Hospital on the same day at about 2.30 p.m. The learned Counsel submits that as per the admission given by PW 3-Complainant Vishun that he was unconscious when he was taken to Singhania Hospital and he regained conscious after 2-3 days thereafter. In the backdrop of this PW 1-Pandharinath, who is panch witness on the seizure of jeep, has deposed that on 29.04.1995 he himself and Complainant vishnu were in the police station till 8.00 p.m. The learned Counsel submits that in all the circumstances the recording of statement-Exhibit 15 of Complainant Vishnu in Maruti Hospital was not at all possible. The evidence of Complainant Vishnu and PW 5-Yashwant Patil is not consistent. PW 5-Yashwant Patil is not reliable witness. He has exaggerated the story. The learned Judge of the trial Court is, thus, rightly given the benefit of doubt to the accused. No interference is required.

5. 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.

6. PW 3-Complainant Vishnu has deposed that the accused gave dash to his scooter from the front side with intent to cause his death. He fell down due to the dash and again the accused took his jeep in reverse direction and tried to crush him under the wheels of the jeep. However, he was

saved due to the scooter which was lying between him and jeep. According to him, PW 5-Yashwant Patil and PW 2-Arun Gharat were present on the spot and they have witnessed the incident. PW 2-Arun Gharat has not supported the prosecution case in any manner and he was subjected to cross-examination at length by the learned APP. PW 5-Yashwant Patil has exaggerated the story by saying that the accused took his jeep by two times in reverse direction and rushed on the person of PW 3-Complainant Vishnu. His conduct before and after the incident is also doubtful.

7. According to prosecution story, PW 3-Complainant Vishnu was taken to Maruti Hospital where his complaint, Exhibit 15 was recorded. One PSI of Police Station Kapurbavadi has recorded the statement/complaint of PW Vishnu after taking the opinion from the concerned doctor as to the conscious state of mind and ability of the Complainant Vishnu to give statement. PW 8-Dr. Pradip Mule has deposed that Complainant-Vishnu was brought into the hospital with a history of vehicular accident. He has noted near about 11 injuries on the person of Complainant-Vishnu and further referred to Singhania Hospital on the same day at about 2.30 p.m. The case papers are marked at Exhibit 30 where the history of vehicular accident is recorded. In cross-examination, PW 8-Dr. Pradip Mule has stated that he does not know as to when the statement of injured was recorded. He was in consulting room. Police took the statement of the

injured and he put his endorsement in the consulting room. Even he could not state as to whether the statement has been given by the injured to the police. On the backdrop of this, it would be quite interesting to look into the cross-examination of PW 3-Complainant Vishnu. PW 3-Complainant Vishnu has stated in his cross-examination that he was admitted in Maruti Hospital within half hour of the incident and he was in Maruti Hospital for about 2-3 hours. He was unconscious when he was taken to Singhania Hospital. He regain his consciousness after 2-3 days. It would not be out of place to mention here that the PSI of Kapurbavadi Police Station who has recorded the statement of PW 3-Complainant Vishnu is not examined by the prosecution. Further PW 8-Dr. Pradip Mule has shown his ignorance as to the statement of the Complainant recorded by police in his hospital. Furthermore, he has noted the history as given by the patient and it indicates that the Complainant-Vishnu met with a vehicular accident. Furthermore, after going through the papers and record, we noticed that the police constable of another police station also went there in Maruti Hospital for recording the statement of Complainant-Vishnu and further reported to his superior officer that Complainant-Vishnu was unconscious and thus he could not record his statement. It is also pertinent to note that even though the Complainant had not come below the wheels of the jeep, even then in the evidence of PW 8-Dr. Pradip Mule, there is reference to the wheel marks on the right shoulder and the chest of the Complainant.

However, the said injury is absent in the Certificate-Exhibit 25 issued by PW 6-Dr. Milind Patil who is attached to Singhania Hospital. PW 6- Dr. Milind Patil has stated in his cross-examination that there is no record as to who has referred the patient. However, he was sure that the patient was not sent by police. It is also not clear as to who has referred Complainant-Vishnu to Singhania Hospital.

8. It further appears from the prosecution evidence that nobody has lodged complaint except so called statement of Complainant-Vishnu recorded in Maruti Hospital. It appears from the evidence of PW 1 that Complainant-Vishnu was with him in the police station till 8.00 p.m. Prosecution has not explained that despite the presence of Complainant in the police station, how his statement-Exhibit 15 came to be recorded in Maruti Hospital. However, if Complainant-Vishnu was unconscious for a long period after he was taken from Maruti Hospital and if his statement was not recorded in presence of doctor, it is difficult to believe his evidence before the Court. The learned Judge of the trial Court has, thus, rightly discarded his evidence. Thus, considering the entire evidence on record and after considering the previous enmity between the parties, the learned Judge of the trial Court has given benefit of doubt to the accused. We maintain the same.

9. 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:

ORDER

The Criminal Appeal is hereby dismissed.

[V. K. JADHAV, J.]

[INDRAJIT MAHANTY, J.]