

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

CRIMINAL APPEAL NO.1202 OF 2019

Shevanta Babu Jadhav
Age 44 years, Occ.Household
R/o. Gosavi Vasti, Sangavi (Khurd)
Taluka Akkalkot, Dist.Solapur ... Appellant.

V/s.

1. Baban Gundu Pawar & Ors.
Age 49 years, Occ. Agriculturist ...

2. Neharu Baban Pawar
Age 25 years, Occ.Agriculturist ...

3. Jamunabai Gundu Pawar
Age 27 years, Occ. Nil
All R/o Gosavi Vasti, Sangavi
Taluka Akkalkot, Dist. Solapur ...

4. The State of Maharashtra
Akkalkot North, Police Station
Akkalkot ... Respondents

Mr.S.P. Rajepandhare for the Appellant.

Mrs.M.M.Deshmukh APP for Respondent No.4-State.

**CORAM : S.S.SHINDE &
V.G. BISHT, JJ.**

**DATE OF RESERVE : 4TH FEBRUARY, 2020
DATE OF PRONOUNCEMENT : 10TH FEBRUARY, 2020**

JUDGMENT (PER V.G. BISHT, J.) :

1. This Criminal Appeal has been preferred by the Appellant-Informant (victim) against the judgment dated 15th October, 2016 passed in Sessions Case No.235 of 2014 : whereby the accused-respondents have been acquitted of the charges under section 307, 504, 506 read with 34 of Indian Penal Code.

2. The prosecution case in brief is that on 4th August, 2013 at about 10.30 am the informant was winding pigeon pea (Toor) crop of one Vijay Digge. At about 12 noon accused Baban Gundu Pawar (A-1) Neharu Pawar (A-2) and Jamunabai Pawar (A-3) came in the field. A-1 then said “तुझे मुलाने माझे मुलीचे वाटोळे केले आहे.” and thereafter started abusing the informant. When the informant objected, it is alleged, A-1 uttered “तुला व तुझे घरातील लोकांना जिवंत सोडणार नाही.” At that point of time, it is further alleged, A-3 caught hold of hands of the informant from behind and A-1 gave blow of stick on her head. A-2 also assaulted the informant on her nose by means of an axe. The blood started oozing out from the nose and head of the informant. Seeing that, the accused left the spot. The

informant also fell unconscious. She regained consciousness in the Civil Hospital and narrated the incident to her husband. After treatment at Civil hospital the informant went to Akkalkot police station and lodged the FIR against the accused on the basis of which C.R. No.127 of 2013 came to be registered and after necessary investigation the accused were charge-sheeted. The accused abjured their guilt and pleaded false implication. According to them on account of grudge of conviction of son of the informant in the case of kidnapping and rape of daughter of the accused, they have been falsely implicated.

3. Mr.Rajepandhare, learned counsel for the appellant, contended that the trial Court has not appreciated the evidence properly and by mis-appreciating evidence has wrongly acquitted the accused-respondents. Learned counsel also took us through evidence filed on record and tried to substantiate his submissions.

4. We have carefully perused evidence on record with assistance of learned counsel.

5. The prosecution in order to establish guilt of the accused has in all examined 11 witnesses.

6. P.W.1, Shevanta Babu Jadhav - informant in her substantive evidence (Exhibit-27) reiterated the accusations made against the accused. It is her specific evidence that injury suffered by her on her head was stitched and thereafter she lodged the report. She then proved her FIR at Exhibit-28. From her evidence, it is more than clear that except her, no one else was present at the time of incident.

7. In order to lend support to version of the informant, the prosecution has pressed into service testimonies of P.W.5 and P.W.6. P.W.5 - Mangal Kanoj Jadhav stated in her evidence (Exhibit-38) that on 4th August, 2013 she along with her sister-in-law had been to collect firewood near the bank of Bori river and saw A-1, A-2 and A-3 running towards Vasti. After 5-10 minutes she heard shouts of brother-in-law Babu Jadhav (P.W.6). They rushed there and saw that sister-in-law was lying near a bundh. She was bleeding and had fallen unconscious. In the hospital, she came to know from the informant that she was assaulted by all the accused by axe

and stick.

8. What is to be noted immediately here is that this witness allegedly had seen the accused running (from the spot towards their Vasti). Here it is worth mentioning that the prosecution has come with a case that A-1 and A-2 had assaulted the informant by means of stick and axe respectively. However, this witness has nowhere deposed that A-1 and A-2 were armed with stick and axe respectively. It is also not her evidence that she saw A-1 and A-2 fleeing from the spot after throwing away alleged weapons of offence. Had it been so, those weapons of offence must have been recovered from near or around the place of occurrence but it is not so. Interestingly, according to the prosecution, those weapons of offence came to be seized pursuant to disclosure statement given by A-1 and that too from a toilet. That aspect, we would be dwelling upon at an appropriate stage. Suffice it to say that the testimony of this witness does not inspire confidence in the mind of the Court.

9. There is one more reason to doubt the testimonies of both P.W.1 – informant and P.W.5. As per cross examination

of P.W.5, the FIR was lodged by Babu Jadhav (P.W.6), who is none other than husband of P.W.1 – informant, who admittedly was not where in picture when the alleged incident took place. This piece of evidence impels us to question truthfulness of the FIR as a whole. We say so because according to P.W.1 – informant it was she who had lodged the FIR whereas according to P.W.5, the FIR was lodged by informant's husband (P.W.6).

10. It is also the case of the prosecution that because of alleged injuries the clothes of informant were drenched with blood. In this regard the evidence of P.W.7 assumes significance. P.W.7 - Medical Officer stated in his evidence (Exhibit-41) that after examination of the informant, he found CLW on forehead of size 2.5 X 0.25 X 1 cm and incise wound of size 4 x 1 x 0.5 cm. According to him both the injuries were possible by means of hard and blunt object and sharp object respectively. In his cross examination, he clearly stated that the injuries noted by him in medical legal certificate were simple in nature. He further stated that there is possibility of fracture to nose in an assault by axe. He further stated that it is not possible that patient may become unconscious due to

injuries noted by him.

11. From the evidence of Medical Officer, what is disturbing is that nature of injuries sustained by the informant were simple in nature. Had there been assault by means of an axe, as is claimed by the prosecution, then in all probability the informant must have sustained grievous and serious injuries. Although, the informant claimed that she fell unconscious because of injuries sustained by her but the Medical Officer states that the nature of injury was not of that magnitude which could have made her unconscious on the spot. Having regard to nature of injuries, there was also no question of soaking of her clothes with blood. Even assuming for the sake of argument that she became unconscious, the fact remains that the nature of injuries sustained by her belies the case of attempt to murder spreaded by the prosecution.

12. This brings us to the alleged discovery of weapon. The evidence of P.W.3 Basavraj Prakash Digge (Exhibit-31) shows that on 7th August, 2013 he was called by the police at Akkalkot police station. When he visited the police station another panch witness Achalekar was present there. A-1

gave memorandum. A-1 informed that he had concealed an axe and a stick in toilet and he was ready to discover the same. All of them then accordingly, accompanied him and went to Gosavi Vasti via Wagdari. The accused took out stick and axe from the toilet which came to be seized under the seizure panchnama.

13. First of all, the evidence of this witnesses does not qualify and fulfill requirements of section 27 of the Evidence Act. Even if it does so, then surely in the light of cross examination of P.W.3 nothing of that sort was ever volunteered by A-1. It is also pertinent to note here that the incident took place in the field which was belonging to the relatives of P.W.3 and, therefore, he can be termed as interested witnesses. This belief gets strengthen when he stated in the cross examination that after reaching police station, the police told him that A-1 was going to give memorandum and recovery of articles and that he is required to act as a panch. Then comes the damaging piece of evidence where he stated that after reaching the police station he saw that all persons had already sat in the jeep and thereafter they all proceeded towards Gosavi Vasti. Unquestionably, it implies that no such

disclosure statement was given in presence of this witness as is claimed by him in his examination-in-chief. The cross examination is as simple as it suggests that when he reached the police station, all persons including the accused had already boarded the jeep.

14. His cross examination further shows that who owned the toilet was never ascertained from the neighbors by the police and it appears that it was an abandoned toilet. On this count also discovery becomes doubtful.

15. Having regard to above discussion, in our considered opinion, the learned trial Court committed no error while appreciating and marshaling evidence laid by the prosecution. In absence of any perversity or unreasonableness, it is not possible for this Court to set aside the order of acquittal. Consequently, the Appeal is dismissed.

(V.G. BISHT, J.)

(S.S. SHINDE, J.)