

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1381 OF 2019

Praful Mahadev Tawde	]	
Age 47 years, Occ : Service,	]	
Residing at A/201 Gangagiri	]	
CHS Ltd, Bhandup (W) Mumbai 78	]	... <u>APPLICANT</u>
		(Orig. Complainant)

Versus

1. The State of Maharashtra	]	
(At the instance of D.C.B. C.I.D. Unit	]	
No. VII Ghatkopar, Mumbai C.R. No.	]	
110 of 2012.)	]	
2. Vilas Ganpat Kadam	]	
Age 55 years, Indian Inhabitant	]	
Residing at A/105, Gagungiri CHS	]	
Ltd, Janta Market Bhandup (W)	]	
Mumbai 400078	]	
3. Sanjay Shantaram Lad	]	
Age 35 years, Occ : Service,	]	
residing at room no. 3, Ambhule	]	
Chawl, Sanmansingh Road,	]	
Om Saimitramandal, Ganesh Nagar	]	
Bhandup (W) Mumbai 400078.	]	
4. Gurdeepsingh Jaswantsingh Viridi	]	
36 years, Occ : Service,	]	
PitruNiwas, Room no. 15 Shivaji Nagar,	]	
Tembipada Road, Bhandup (W)	]	
Mumbai 400078.	]	... <u>RESPONDENTS</u>
		(Orig. Accused)

Mr. Ram Tahilramani a/w Mr. Prabhakar B. Parse for the Appellant.
Mr. Madhusudan D. Pareek for the Respondent Nos. 2 to 4.
Mr. V. B. Konde - Deshmukh, APP for Respondent – State.

CORAM : S. S. SHINDE &
N. B. SURYAWANSHI, JJ.

DATE : 28th JANUARY 2020

ORAL JUDGMENT (Per N.B. SURYAWANSHI, J)

1. Heard.

2. Admit.

3. On admission, learned APP waives service on behalf of State and learned counsel Mr. M.D. Pareek waives service for Respondent Nos. 2 to 4.

4. With consent of learned counsel appearing for the respective parties, matter is taken up for final hearing as the original record is available and since learned advocate for the appellant has placed on record notes of evidence.

5. This Criminal Appeal challenges the acquittal of the Respondents / original Accused under Section 120-B, 307 read with 120-B read with 34 of the Indian Penal Code (for short 'IPC') in Sessions Case No. 80 of 2014 passed by the learned Additional Sessions Judge, Gr. Bombay.

6. The prosecution case, in nutshell, is as under.

The informant Praful Mahadeo Tawde (PW 1) was returning to

his house on 25th August, 2011 at about 7.15 to 7.30 p.m. through Subhash Road, Janta Market. He noticed three persons standing near the building and one of them rushed towards him and caught hold of his collar and questioned him whether he is Praful Tawde and started abusing him. Other accused was holding iron rod. The other accused persons including one holding iron rod started coming towards him. Therefore he fled away by giving jerk to the person who was holding his collar and started running away. The accused persons followed him. Therefore, he entered in a general store and tried to hide himself near the counter. At that time the person holding iron rod gave blow on his head, when he was giving of second blow, the informant raised his hands to save himself, the blow landed on the wrist of the left hand. The blood started oozing from his head. All the accused persons fled away from the spot. The informant then called at his home and he was rushed to Dr. Pund and thereafter he was taken to Sarathi Hospital. Complaint against the unknown person was lodged by the informant and offence under Section 325, 504 read with 34 of the IPC was registered by Bhandup Police Station. Initially investigation was carried out by the Bhandup Police Station and thereafter further investigation was conducted by DCB, CID. After completion of the investigation, charge-sheet under section 307, read with 34 of the IPC came to be filed. Since offence punishable under Section 307 of IPC is exclusively triable by the Sessions Court, the matter was committed to the Sessions Court.

Charge under Section 120-B read with 34 and Section 307 read with 34 of the IPC was framed.

7. The prosecution in support of its case examined 15 witnesses. The defence of the accused is of total denial and of false implication. After completion of the trial, learned Trial Court after assessing the evidence came to the conclusion that, the prosecution has failed to prove the charges leveled against the accused persons and acquitted them of all the charges hence, the present Criminal Appeal against acquittal.

8. Heard learned counsel appearing for the Appellant, learned counsel appearing for the contesting Respondents and learned APP appearing for the State.

9. We have perused the grounds raised in the Appeal memo, record and proceedings and the notes of evidence.

10. Learned counsel appearing for the Appellant vehemently argued that, learned Trial Court has misread and misconstrued the evidence on record. There was recovery of iron rod and accused were identified in the test identification parade by the informant Praful Tawade (PW 1). The injury certificate (Exh. 72) was brought on record and in this view of the matter there is sufficient material on record to warrant the conviction of the accused

persons in the present case. He therefore assailed the judgment of the trial Court on various grounds raised in the appeal memo and submitted that, Criminal Appeal may be allowed and accused be convicted under Section 120-B, 307 read with 120-B read with 34 of the IPC.

11. Learned Advocate representing the contesting Respondent Nos. 2 to 4 on the other hand by pointing out reasons in the judgment submitted that, that the prosecution case suffers from various infirmities, which are noted by the learned Trial Court in the judgment and the approach of the learned Trial Court in acquitting the accused persons is just, legal and proper and no case is made out by the appellant to warrant interference in the judgment. Learned APP states that as per record appropriate orders be passed.

12. On assessing the evidence we find serious infirmities in the prosecution case. There is absolutely no *iota* of evidence on record to prove the charge under Section 120-B of IPC. Though informant Praful Tawde (PW 1) has tried to allege that there was previous enmity between Vilas Ganpat Kadam (A 1) and him, which was motive for launching assault on him by all the accused persons, except his bare words there is no other evidence. There is no material on record to show that conspiracy was hatched between the accused persons to commit the present crime. The prosecution tried to bring on record the call records i.e. inter se calling between the accused persons on

or about the day of incident. However, it has come in the evidence of Milind Torwadkar (PW 10) working as a nodal officer with Bharti Airtel ltd. that the data for the period 01.07.2011 to 31.09.2011 was not available. Though, the prosecution tried to rely upon the soft copy of the data the same is not sufficient to establish the conspiracy between the accused persons. There is no material as to what was the inter se conversation and whether there was any plan hatched by the accused persons. In the absence of which prosecution theory of conspiracy cannot be believed.

13. Informant Praful Tawade (PW 1) has stated in his evidence that, there was previous quarrel between him and Vilas Kadam (A 1). The child of Vilas Kadam (A 1) was playing cricket with other children in the garden of the society. The ball was repeatedly hitting the window of Sadanand Waze (PW 4). Sadanand Waze (PW 4) called the police to control the children and altercations ensued between Vilas Kadam (A 1) and Sadanand Waze (PW 4). On 01.05.2010 Vilas Kadam (A 1) abused the mother of Praful Tawade (PW 1) whereas, Sadanand Waze (PW 4) claims that Vilas Kadam (A 1) abused him and his wife. Praful Tawade (PW 1) has claimed that his mother lodged complaint against Vilas Kadam (A 1) before ACP. Thus, the incident of 01.05.2010 occurred because of complaint of Sadanand Waze (PW 4). Hence, he should have grudge against Sadanand Waze (PW 4), how he developed

grudge against Praful Tawade (PW 1) is not forthcoming in the prosecution case.

Apart from this, Praful Tawade (PW 1) claims to have lodged various complaints before consumer forum and other authorities so also his mother had lodged complaint against Vilas Kadam (A 1) to the ACP however not a single complaint or proceedings filed by the informant Praful Tawade (PW 1) or his mother are brought on record by the prosecution.

14. So far as the incident of actual assault, narrated by Praful Tawade (PW 1) is concerned, the said incident is not supported by the Ramkumar Bharti (PW 9) shopkeeper and eye witness, in whose shop the informant Praful Tawade (PW 1) entered so as to save himself and where he was actually assaulted. Ramkumar Bharti (PW 9) admitted that none of the accused assaulted the informant Praful Tawade (PW 1). He failed to give the number of assailants and he also did not remember the weapons by which assault was made and on which part of the body.

15. To the extent of evidence of identification parade is concerned, informant Praful Tawade (PW 1) claims to have identified the accused persons during the identification parade however, the same admittedly held after approximately one year of the incident. Coupled with the fact that Arjun Tambe (PW 5) who is Executive Magistrate who conducted the test

identification parade has admitted in his cross-examination that, the dummies were not properly selected and there is no similarity between the persons of 22 years of age and person of 48 years. The identification ought to have been conducted by placing dummy of accused of similar age group and appearance, however, as admitted by him there is variance in the age group of dummies and the accused. Thus, no reliance can be placed on the identification of the accused persons.

16. The informant Praful Tawde (PW 1) claims to have received iron rod blow on head and on wrist however, he is not able to attribute exact role played by each of the accused. He could not point out which accused caught hold of his collar and which accused gave blows to him. Material omissions in the FIR are brought on record by the defence and they go to the root of the matter and create serious doubt about the version of informant Praful Tawade (PW 1). Taking into consideration the evidence of informant Praful Tawade (PW 1) and in view of the fact that, the eye witness Ramkumar Bharti (PW 9) who happens to be an independent witness has not supported the version of informant Praful Tawade (PW 1) or the prosecution case, it is difficult to accept the evidence of Praful Tawade (PW 1).

17. To the extent of recovery of iron rod even that has taken place approximately after one year of the incident. There is discrepancy in respect of

whether it was iron rod or pipe thus, that also does not help the prosecution case.

18. Taking into consideration the aforestated facts and after going through the judgment of the learned Trial Court, we find that the learned Trial Court has properly assessed the evidence and has rightly arrived at the conclusion to acquit the accused persons. The learned Trial Court has taken a possible view which we do not intend to interfere with. The present appeal sans merit is liable to be dismissed. Hence, we pass the following order.

ORDER

- A) Criminal Appeal No. 1381 of 2019 stands dismissed.
- B) Bail bonds of the Respondents / Orig. Accused, if any, stand cancelled.

(N. B. SURYAWANSHI, J.)

(S. S. SHINDE, J.)