

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APPA) NO. 124 OF 2018

AND

CRIMINAL APPEAL NO. _____ OF 2020

(STATE OF MAH.TH.R.PSO PS MURTIZAPUR, AKOLA..VS..RAJESH GANGACHARAN TRIVEDI &
OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri T.A.Mirza, A.P.P. for Appellant/State.
Shri R.M.Daga, Advocate for Respondent-Accused.

CORAM : Z.A.HAQ & AMIT B. BORKAR, JJ.

DATED : DECEMBER 07, 2020.

Heard.

2. This is an appeal by the State Government under Section 378 of the Code of Criminal Procedure, challenging the judgment passed by the learned Sessions Judge in Sessions Trial No.136 of 2010 on 15th November 2017 acquitting all the five accused of the charge of committing offence punishable under Sections 302, 427, 504 read with Sections 143 and 149 of the Indian Penal Code.

3. The case of the prosecution is based mainly on the evidence of P.W. No.5-Mohd.Irfan, alleged to be the eye-witness of the incident. Undoubtedly, P.W.-5 Mohd. Irfan was a chance witness. The learned Sessions Judge has examined the evidence on record and the evidence of P.W.5-Mohd. Irfan is scrutinized vide paragraph No.17 of the impugned judgment, which reads as follows:

“17. Prosecution has come with the specific case that, on the date of occurrence in the night three persons viz. Bhatti Master (cook)-Vilas Gaikwad, waiter-Raju Telgote and witness Mohd. Irfan (PW-5) were present beside Jitesh Gupta in the Dhaba, however, prosecution has only examined

Mohd. Irfan (PW-5). As stated earlier the defence has challenged the testimony of Mohd. Irfan (PW-5). Shri M.G.Mohta, learned advocate for accused Nos. 1 & 2, as well as Shri Dildar Khan, learned advocate for accused No.3 have vehemently argued before me that no implicit reliance can be placed upon the testimony of Mohd. Irfan (P.W.-5), since he is merely a chance witness and was also an interested witness. On this aspect Shri M.G. Mohta, learned advocate for accused Nos. 1 & 2 has drawn my attention to the cross-examination of Mohd. Irfan (PW-5). No-doubt, Mohd. Irfan (PW-5) had narrated sequence of events and has spoken about the role of the accused persons, but during cross-examination to which I have already referred Mohd. Irfan (PW-5) has admitted that he was a friend of Jitesh Gupta since his childhood and was residing in the same Mohalla. During cross-examination Mohd. Irfan (PW-5) has accepted that when the incident took place he was sitting outside and did not pay attention to the conversation which took place between Jitesh Gupta and the accused persons. He was also unable to tell on what subject the dispute had started. During further cross-examination Mohd. Irfan has categorically admitted that though he had seen the entire incident regarding assault on Jitesh Gupta, he did not inform the Police Station from his cell phone. Similarly, he did not try to intervene in the dispute. According to Shri M.G.Mohta, learned advocate the conduct of Mohd. Irfan (PW-5) was most un-natural as Jitesh Gupta was his friend of childhood. Not only this, but Mohd. Irfan has further admitted in his cross-examination that he did not inform about the incident to the brothers and relatives of deceased Jitesh Gupta, though he was very much acquainted with them. On the contrary during the cross-examination by Shri Dildar Khan, learned advocate for accused No.3, Mohd. Irfan has gone further to admit that he did not even go to the house of Jitu @ Jitesh Gupta and he went to sleep. During the course of cross-examination Shri

M.G.Mohta, learned advocate for accused Nos.1 & 2 have also brought on record certain omissions in the testimony of this witness Mohd. Irfan, who claims to be the sole eye-witness to the incident. During the cross-examination Mohd. Irfan has admitted that, he had not stated to the Police that the person wearing black jerkin took out the knife and two persons were telling then, 'Maro Saleko' and this was clearly an omission which had been duly proved during the examination of Investigating Officer. Apart from this during examination-in-chief Mohd. Irfan (PW-5) has stated that he had seen the accused persons who were in the black Indigo car, but during cross-examination he was unable to tell as to which persons were sitting on the back and who was the driver of the car. Shri M.G. Mohta, learned advocate has submitted before me that the incident had taken place late in the night at 2.00 a.m. when it was completely dark and it was not possible to identify the accused persons or the car in which accused traveled. During the course of arguments, it is submitted by Shri M.G. Mohta, learned advocate that the conduct of Mohd. Irfan was not only un-natural, but his testimony was also full of inconsistency and omissions and so no reliance can be placed upon the sole testimony of Mohd. Irfan. On this aspect Shri M.G. Mohta, learned advocate has relied upon the case of Deochand Sukte .v. State of Maharashtra, [reported in 2010 ALL MR (Cri) 80] and the case of Murlidhar Dongardive .v. State of Maharashtra, [reported in 2008 ALL MR (Cri) 110]. I have gone through both these judgments which were delivered by Division bench of Hon'ble Bombay High Court. In both these cases prosecution had examined only one eye witness and the same was not found to be reliable. It was observed by the Hon'ble Bombay High Court that there was need for corroboration. Further he has also relied upon another judgment in the case of State of Maharashtra v. Mohan Ranjwan, [reported

in 2017 (3) Bom.C.R. (Cri) 459]. In that case also the witness does not go to the house of uncle and did not tell anybody till he reached hom. It was observed that his conduct puts question mark about his awareness and reality of incident. In the present case also as stated earlier though there were three witnesses present at the scene of occurrence at the Dhaba when incident took place prosecution has chosen to examine only Mohd. Irfan [PW-5]. Oral testimony of Mohd. Irfan [PW-5] shows that he was plying auto-rickshaw daily from Railway Station to Murtizapur town and had to go to fill up petrol from the petrol pump which was close to Dhaba where incident took place. As such the contention of the defence that Mohd. Irfan [PW-5] was a chance witness assumes much significance.”

4. With the assistance of the learned A.P.P. and the learned Advocate appearing for the accused, we have gone through the evidence of the witnesses including that of P.W.5- Mohd. Irfan. The learned A.P.P. has not been able to point out any perversity in the conclusions of the learned Sessions Judge. It is well settled that due weightage should be given to the findings recorded by the trial Court in the judgment acquitting the accused inasmuch as the trial Court had advantage of witnessing the demeanour of the witnesses. Keeping in mind the established principle and the scope of appeal against acquittal, we find that the impugned judgment cannot be said to be illegal or perverse which necessitates interference by this Court in appeal.

Hence, leave to file appeal is rejected and consequently the Criminal Appeal is **dismissed**.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J.)