

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.706 OF 2016
WITH CRIMINAL APPLICATION NO. 495 OF 2018

The State of Maharashtra,
through Police Station, Mukhed,
District Nanded

..Appellant

Versus

1. Shyam Vitthal Lohabande,
Age 28 years, Occu. Agri.,
R/o Phule Nagar, Mukhed,
Taluka Mukhed, Dist. Nanded
2. Majid Maheboobsab Choudhary,
Age 21 years, Occu. Agri.,
3. Shaikh Jilani Shaikh Ahemad,
Age 28 years, Occu. Agri.,
4. Suresh Shankar Lohabande,
Age 26 years, Occu. Agri.,

All r/o Phulenagar, Mukhed
5. Shaikh Pasha Maheboobsab,
Age 25 years, Occu. Agri.,
R/o Samta Nagar, Mukhed
6. Shaikh Ahmed Sk. Gaffar,
Age 25 years, Occu. Agri.,
7. Gautam Sopan Gavale,
Age 30 years, Occu. Agri.,
8. Pradip Bhivaji Bhalerao,
Age 25 years, Occu. Agri.,
9. Shaikh Mainoddin Sh. Chandsab,
Age 25 years, Occu. Agri.,
10. Shaikh Maqdoom Shaikh Maheboob,
Age 28 years, Occu. Agri.,
11. Santosh Shankar Kamble,
Age 20 years, Occu. Agri.,

12. Madhav Ramchandra Yerewad,
Age 20 years, Occu. Agri.,
13. Shaikh Majid Shaikh Nawab,
Age 20 years, occu. Agri.,
14. Shaikh Sajid Sk. Nawab,
Age 25 years, Occu. Agri.,

All r/o Phune Nagar, Mukhed
15. Manohar Narayan Shrirame,
Age 30 years, Occu. Agri.,
16. Namdeo Bhujanga Shrirame,
Age 25 years, Occu. Agri.,
17. Babu Gangaram Shrirame,
Age 30 years, Occu. Agri.,
18. Ratnakar Venkatrao Suryawanshi,
Age 30 years, Occu. Agri.,
19. Sunil @ Gautam Vithalrao Lohabande,
Age 30 years, Occu. Agri.,

All R/o Pandurni, Taluka Mukhed
20. Devanand Bajirao Meshram
Age 30 years, Occu. Agri.,
R/o Pimpalzenda, Taluka Kinwat
21. Punjab Kondiba Suryawanshi,
Age 25 years, Occu. Agri.,
22. Stayawan @ Satish Anandrao Patil,
Age 19 years, Occu. Agri.,
Both r/o Pandurni
23. Ashok Manikrao Umate,
Age 35 years, Occu. Agri.,
R/o Bijur
24. Sk. Nawab Sk. Ismail,
Age 52 years, Occu. Agri.,
25. Rahul Wamanrao Kamble,
Age 22 years, Occu. Agri.,

Both R/o Phulenagar, Mukhed

26. Bapurao Sambhaji Kamble,
Age 37 years, Occu. Agri.,
R/o Junna
27. Sk. Hasan Sk. Osman,
Age 24 years, Occu. Agri.,
R/o Beli
28. Kalyan Arjun Kamble,
Age 45 years, Occu. Agri.,
R/o Akharga, Mukhed
29. Madhav Vithal Lavate,
Age 35 years, Occu. Agri.,
R/o Gadgebaba Nagar,
Mukhed
30. Tajoddin Sk. Osmansab,
Age 23 years, Occu. Agri.,
R/o Beli
31. Govind Hashna Mane,
Age 35 years, Occu. Agri.,
R/o Venkateshnagar, Mukhed
32. Rahul Digambar Pandurnikar,
Age 20 years, Occu. Agri.,
R/o Pandurni
33. Pradip Rahul Gavale,
Age 20 years, Occu. Agri.,
R/o Methi, Taluka Mukhed
34. Aninash Ganpat Waghmare
Age 28 years, Occu. Agri.,
R/o Rahul Nagar, Mukhed
35. Rahul Dashrath Lohabande,
Age 24 years, Occu. Agri.,
R/o Phulenagar, Mukhed
36. Shivaji Babarao Patil,
Age 25 years, Occu. Agri.,
R/o Dhobi Galli, Mukhed
37. Shaikh Muktar Sk. Maulsab,
Age 22 years, Occu. Agri.,
R/o Beli

38. Husen Wamanrao Kamble,
Age 25 years, Occu. Agri.,
R/o Phulengar, Mukhed
39. Madhav Babarao Potphale,
Age 20 years, Occu. Agri.,
R/o Phulenagar, Mukhed
40. Prakash Shankarrao Lohabande,
Age 25 years, Occu. Agri.,
R/o Phulenagar, Mukhed
41. Sandip Yeshwantrao Kamble,
Age 22 years, Occu. Agri.,
R/o Ashok Nagar, Mukhed
42. Gautam Wamanrao Kamble,
Age 22 years, Occu. Agri.,
43. Hanmant Eknath Lohabande,
Age 24 years, Occu. Agri.,
R/o Pandurni
44. Goutam Laxman Limbekar,
Age 26 years, Occu. Agri.,
R/o Prabudhnagar, Mukhed
45. Raju Vishambhar Honwadajkar,
Age 26 years, Occu. Agri.,
R/o Honwadaj
46. Anil Tejerao Sirse,
Age 27 years, Occu. Agri.,
R/o Rahulnagar, Mukhed
47. Jayawant Motiram Mamilwad,
Age 24 years, Occu. Agri.,
R/o Mukhed
48. Sandip Jagdishsingh Bhangi,
Age 24 years, Occu. Agri.,
R/o Mukhed
49. Shivaji Hanmantrao Waghmare,
Age major, Occu. Agri.,
R/o Methi
50. Gous Bahauddin Pathan,
Age 25 years, Occu. Agri.,
R/o Phulengar, Mukhed

..Respondents

Mr Shashibhushan P. Deshmukh, A.P.P. for appellant
Mr U.B. Bilolikar, Advocate for respondents

**CORAM : V.K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 6th September 2021

ORAL JUDGMENT (Per Shrikant D. Kulkarni, J.)

1. The learned Counsel Mr Bilolikar for the respondents/original accused submits that he has also instructions to appear for respondents no.13 and 24.

2. Feeling aggrieved by the impugned judgment and order of acquittal, passed by the Additional Sessions Judge, Kandhar, camp at Mukhed in Sessions Case No.69/2006, acquitting all the accused, the State has preferred this appeal on various grounds, by taking aid of Section 378 (1) (3) of the Criminal Procedure Code.

3. The prosecution case in narrow compass is as under :

(i) The incident alleged to have taken place on 16.5.2006 during night hours at about 8.30 to 9.00 pm at Mukhed. On that day, police officials, on receiving reliable information had been to one hotel for conducting raid. After conducting the raid, the police party arrested certain accused persons and seized gambling material. When they were coming back to the police station, on the way, accused no.35 Rahul Lohbande along with five to six persons came across in front of police jeep and obstructed their way. The said Rahul Lohbande alleged to have questioned the police officials as to how they have arrested his workers. But police officials did not pay any attention and came to the police station and lodged the F.I.R. vide C.R.No.67/2006 under the Prevention of Gambling Act.

(ii) Afterwards, accused no.35 Rahul Lohbande along with 100 to 150 persons assembled in front of police chowki armed with sticks and sword. They alleged to have blocked the road. The information was given to S.D.P.O. The S.D.P.O. instructed to the police officials to handle the situation and he is rushing the spot very soon. The first informant/P.S.I. Bhandarwar, A.P.I. Nagargoje, P.S.I. Gaikwad and other police officials went to Mukhed police chowki and saw that a mob of 100 to 150 persons assembled in front of police chowki and they were pelting stones. The first informant and other police officials tried to pacify them, but those persons were not ready to listen and they were raising slogans. They were insisting that arrested persons shall be released.

(iii) The first informant and other police officials, upon receiving information about certain persons are going to commit riot and there would be law and order problem, they rushed to Ambedkar statue, however, the mob blocked the road by parking private vehicles. It is alleged that accused no.35 Rahul Lohbande used threatening language, *"Tumhi Amchya Karyakartyawar Karyawahi Karta Kai, Tumche Mudade Padto"*. By saying so, accused no.35 Rahul Lohbande alleged to have given blow of sword on the head of Police Naik Wadje and caused injuries. He was immediately taken to Sub-District Hospital, Mukhed. The other police officials also sustained injuries including P.S.I. Gaikwad, Head Constable Bugdalwar and Police Constable Pawar. Accordingly, F.I.R. came to be lodged with police station vide Crime No.67/2006.

(iv) A.P.I. Nagargoje investigated the case and prepared the panchnama of scene of offence. He seized sword, sticks etc. and recorded the statements of

witnesses. He has collected injury certificates of the injured persons. After transfer of A.P.I. Nagargoje, P.I. M.G. Pathan was entrusted the remaining part of investigation. It was transpired during course of investigation that accused have committed offences punishable under Sections 147, 148, 353, 333, 186, 504, 506 and 307 read with Sec.149 of the Indian Penal Code and offence under Section 135 of the Maharashtra Police Act and offence punishable under Section 4/25, 27(2) of the Arms Act. Accordingly, charge-sheet came to be filed against in all fifty accused persons.

4. The learned Judicial Magistrate, First Class, Mukhed committed the case to the Sessions Court for trial in view of offence punishable under Section 307 of the Indian Penal Code, which is exclusively triable by the Court of Sessions.

5. The learned Sessions Judge has framed the charge against the accused vide Exh.113 for the abovesaid offences. The trial was commenced.

6. The prosecution machinery examined in all 15 witnesses including injured witnesses and the Medical Officers.

7. The learned trial Judge, after appreciating the evidence on record and considering the arguments advanced by the learned A.P.P. and defence Counsel was pleased to acquit all the accused persons of all the charges levelled against them by impugned judgment and order of acquittal dated 2.7.2015.

8. The State has preferred this appeal and assailed the impugned judgment and order of acquittal.

9. We have heard Mr Deshmukh, learned A.P.P. for the appellant/State and Mr Bilolikar, learned Counsel for the respondents/original accused at

length. We have also gone through the evidence and record and proceedings with the able assistance of both the sides.

10. Mr Deshmukh, learned A.P.P. for the State strenuously contended that the impugned judgment and order of acquittal rendered by the learned Additional Sessions Judge is perverse. Though there were injured eye witnesses to the incident, the learned Judge of the trial Court has discarded that important piece of evidence. The learned trial Judge has not considered the medical evidence in a proper perspective. Mr Deshmukh, learned A.P.P. has also invited our attention to the evidence of relevant witnesses which falls in the category of injured/eye witnesses and submitted that all of them have categorically stated about the role played by accused no.35 Rahul Lohbande. These important witnesses have categorically stated that accused no.35 Rahul Lohbande had assaulted Police Head Naik Wadje by means of sword and caused injuries. It was an unlawful assembly with common object to make attack on the police officials and staff. The prosecution agency has produced sufficient evidence. The evidence of prosecution witnesses cannot be discarded only because they are interested witnesses and no independent witness is supporting to corroborate their version. Mr Deshmukh submitted that when the role of accused no.35 Rahul Lohbande has been specifically disclosed by the material witnesses, the trial Court ought to have considered that piece of evidence and should have held him guilty under Section 307 of the Indian Penal Code, in view of the weapon used in the commission of offence. He submitted that impugned judgment and order of acquittal passed by the learned Additional Sessions Judge needs to be set aside and accused need to be convicted for the charges levelled against them in view of cogent evidence produced by the prosecution agency.

11. Per contra, learned Counsel Mr Bilolikar for the respondents/original accused submitted that the trial Judge has considered the evidence produced by the prosecution witnesses in a proper perspective. It is rightly held by the learned trial Judge that there is material inconsistency in the evidence of injured witnesses. It is brought on record through the evidence of Medical Officer that injuries caused to the Police Naik Wadje are not possible due to use of sword. The injuries caused to police officials may be possible due to use of sticks by the police officials while disbursing the mob. He submitted that the alleged weapon sword has been recovered at the instance of accused no.35 Rahul Lohbande after causing delay of one month and that piece of evidence cannot be taken into consideration in view of inordinate delay in recovery. Apart from that, the PW-10 Kishan Shrirame panch witness has turned hostile and not supported the prosecution case. The alleged incident had taken place between 9.00 pm and 10.00 pm and there was dark on the road and as such, it was practically difficult for the police officials to identify the assailants. The names disclosed by the concerned police officials are not verified by conducting identification parade, as contemplated under the law. Mr Bilolikar submitted that the findings recorded by the learned trial Judge are well reasoned and on the basis of evidence produced by the prosecution agency. There is no need to disturb the impugned judgment and order of acquittal rendered by the learned Additional Sessions Judge. He submitted that the powers of appellate Court are very much clear. He has placed his reliance in case of **Golbar Hussain and Ors., Vs. State of Assam and Ors.**, reported in **2015 (6) SCJ 748** and submitted that if two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the findings of acquittal recorded by the trial Court.

12. We have considered the submissions advanced by the learned A.P.P. for the State and Mr Bilolikar, learned Counsel for respondents/accused. We have also carefully gone through the evidence of prosecution witnesses as well as evidence of P.W. 12 Dr. Manish Deshpande and P.W.13 Dr.Ravindra Mandumle. Perused record and proceedings and impugned judgment and order of acquittal.

13. It is an admitted position that the incident had taken place on 16.5.2006 at about 8.30 to 9.00 pm. On account of load-shedding there was dark. So far as main incident of making attack on Police Naik Wadje as well as causing injuries to other police officials are concerned, we have gone through the evidence of following witnesses :

- i) P.W.1 - eye witness Police Head Constable Gangadhar Pupulwad,
- ii) P.W.2 - Dr. Keshav Kolte, Private Doctor, Yashoda Hospital,
- iii) P.W.3 - Dhondiram Gaikwad, then P.S.I., one of the injured who sustained injury to his right hand elbow in the incident of pelting of stones.
- iv) P.W.4 - Jagdish Bhandarwar, first informant and injured in the incident of pelting of stones.
- v) P.W.5 - Narsing Kolnoore, eye witness injured Police Constable - turned hostile.
- vi) P.W.6 - Sk. Aman Sk. Kalaji, injured Police Constable.
- vii) P.W.7 - Bhanudas Wadje, Police Naik injured witness.
- viii) P.W.8 - Jagannath Pawar, injured Police Constable.
- ix) P.W.9 - Laxman Bugdalwar, injured Police Constable.

- x) P.W. 10 - Kishan Shrirame, panch witness on recovery of sword - turned hostile.
- xi) P.W.11 - H.V. Parande - P.I. who partly investigated the case.
- xii) P.W.12 - Dr. Manish Deshpande, Plastic Surgeon attached to Yashoda Hospital, Nanded.
- xiii) P.W. 13 -Dr. Ravindra Mandumle, Medical Officer attached to Primary Health Center, Mukhed.
- xiv) P.W.14 - Uttam Waghmare, panch witness - turned hostile.
- xv) P.W.15 - Mohd. Gulabsab Pathan - then P.I./Investigating Officer.

14. The injured police/eye witnesses have stated about the role allegedly played by accused no.35 Rahul in assaulting Police Constable Wadje by using sword. According to them, accused no.35 Rahul along with five to six workers assaulted on the left forehead of Police Naik Wadje by means of sword and caused injuries and thereafter Police Naik Wadje became unconscious and thereafter he was taken to Primary Health Center, Mukhed. In this context, the first question is about scene of offence. According to the prosecution witnesses, the incident had taken place near Gate no.1, whereas some of the injured witnesses have stated that the said incident had taken place near the Ambedkar statue. It is brought on record by way of cross-examination of P.W. 7 Bhanudas Wadje that there is distance of about 50 feet between Ambedkar statue and Gate no.1 of Tahsil office. Even though the prosecution agency has attempted to prove the place of offence, no cogent evidence is forthcoming to throw light as to where the incident had occurred.

15. It is also brought on record through cross-examination of Police Constable Wadje that on the date of incident, he was not in the uniform. He has stated that his shirt was seized under panchnama. However, it is noticed by us that the alleged incident occurred on 16.5.2006 and shirt of the injured came to be seized on 21.6.2006 after causing much delay. No plausible explanation is coming forth in respect of delay in seizure of shirt of injured Police Naik Wadje.

16. So far as using of weapon i.e. sword at the instance of accused no.35 Rahul Lohbande is concerned, it is stated by the material witnesses that the sword has been recovered at his instance under memorandum panchnama. On perusal of the memorandum panchnama and seizure thereof, it is evident that the sword came to be seized from the field of Laxman Limbekar of Kamlewadi shivar. The alleged incident had taken place on 16.5.2006 and the sword came to be seized on 13.6.2006, practically after one month. The important witness, the land owner Laxman Limbekar is also not examined by the prosecution regarding recovery of sword from his field. It is also material to note that said recovered sword was also not sent to Chemical Analyser for its examination and report thereof. The weapon seized in this case and allegedly used in commission of the offence appears to be doubtful exercise. The concerned prosecution witnesses examined by the prosecution have not supported the prosecution case. In view of delay in discovery of the weapon allegedly used in commission of offence itself put question mark to the attempt made by the Investigating Officer, for use of weapon i.e. sword at the hands of accused no.35 Rahul Lohbande.

17. We have also perused injury certificates. Injury certificate of Police Constable Wadje is produced vide Exh. 206. On perusing the same, it is

noticed that he had sustained one C.L.W., one contused and one bleeding injury. These three injuries were simple in nature. In this context, we have carefully gone through the evidence of P.W.13 Dr. Ravindra Mandumle, Exh.207 who has examined the injured witnesses, including Police Constable Wadje. Dr. Ravindra Mandumle has admitted that if injury is caused by sword, then it must be a cut injury or incised wound. Weapon sword was shown to him during course of examination. Dr. Ravindra Mandumle has further clarified that the sword is a sharp weapon and hence, injury preauricular region and tragus of pinna cannot be inflicted by sword. He raised serious question mark on injuries caused to Police Constable Wadje. Remaining prosecution witnesses seem to have received simple injuries due to pelting of stones. Dr. Ravindra Mandumle has further clarified that if the police officers/the police persons made a lathi charge for disbursing the mob, then injuries can be possible by their sticks.

18. Having regard to the medical evidence discussed hereinabove, it is very much clear that testimony of injured witnesses is not corroborated by Dr. Ravindra Mandumle. The injuries found on the person of Police Constable Wadje are not possible due to use of sword, as clarified by P.W. 13 Dr. Ravindra Mandumle.

19. Thus, the weapon allegedly used in the commission of offence and recovered at the instance of accused no.35 Rahul Lohbande is not duly proved in the eye of law. Secondly, the injuries allegedly caused by the said weapon at the hands of accused no.35 Rahul Lohbande are also not proved by way of medical evidence.

20. None of independent witnesses has stated about the attack made by accused Rahul Lohbande on Police Naik Wadje by using weapon sword. Thus, no corroboration at the hands of independent witnesses.

21. On perusing the impugned judgment and order of acquittal rendered by the learned Additional Sessions Judge, it is noticed by us that the learned trial Judge has considered the evidence of prosecution witnesses as well as legal position. The learned trial Judge, after careful scrutiny of the evidence of prosecution witnesses coupled with medical evidence and ocular evidence arrived at conclusion that prosecution has failed to prove none of the alleged offences against the accused. The view taken by the learned trial Judge seems to be based on the evidence produced by the prosecution agency with well reasons. In this context, it is necessary to see what are the principles regarding powers of the appellate Court while dealing with appeal against the order of acquittal.

22. In case of Golbar **Hussain and Ors., Vs. State of Assam and Ors.** (supra), the Honourable Supreme Court has reiterated the view taken earlier in case of **Chandrappa and Ors. Vs. State of Karnataka**, reported in **(2007) 4 SCC 415**, wherein following five legal principles have been laid down regarding powers of the appellate Court while dealing with the appeal against an order of acquittal.

“ (1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

23. It is held by the Honourable Supreme Court that if two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.

24. In the light of the above, the view taken by the learned Additional Sessions Judge appears to be reasonable and probable on the facts and evidence of the case in hand. We are, therefore of the opinion that it is not a fit

case to interfere with the impugned judgment and order of acquittal, rendered by the trial Judge. We do not find any merit in the appeal. It needs to be dismissed.

ORDER

- (i) The Criminal Appeal stands dismissed.
- (ii) The impugned judgment and order of acquittal dated 2.7.2015, passed by the Additional Sessions Judge, Kandhar, camp at Mukhed in Sessions Case No.69/2006 is hereby confirmed.
- (iv) Criminal Application No.495 of 2018 also stands disposed of.

(SHRIKANT D. KULKARNI, J.)

(V.K. JADHAV, J.)

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