

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

CRIMINAL APPEAL NO. 438 of 2003

The State of Maharashtra ... Appellant
V/s.

1. Shri Darasing Bandu Jadhav,
R/o. Mangaon, Tal. Hatkanangale,
District Kolhapur.

2. Shri Shripati Bandu Jadhav
R/o. Mangaon, Tal. Hatkanangale,
District Kolhapur.

... Respondent

Mr. H.J.Dedhia, APP for the Appellant-State.

Mr. Kanhaiya S. Yadav i/b. Mr. Neel Helekar for respondents 1 & 2.

**CORAM : PRASANNA B. VARALE
& S.M. MODAK, JJ.**

13th January 2021.

JUDGMENT (PER S.M.MODAK, J)

This is one of the case wherein the prosecuting agency went on examining witnesses after witness and fell in their own trap (in fact which they want to lay for the accused persons). We find that the

prosecuting agency failed to consider the age old accepted principle “It is not the quantity but the quality of evidence” that matter. There is also reason to believe that the Trial Court has not made any endeavour to caution the prosecuting agency from examining so many witnesses (though not justified). And when the final stage of appreciation of evidence came, the Trial Court pointed out the inconsistencies in between various kinds of evidence and ultimately gave benefit to the accused person.

2. The correctness of the judgment of acquittal dt.5.10.2002 passed by the Court of JMFC, Ichalkaranji is challenged before us on behalf of the State. Both the respondents/accused were acquitted of the offence punishable under Sections 326,324 r/w Section 34 of IPC. The Criminal Law was set in motion on the complaint of PW No.8 Dattatraya Khot (though he claim to be assaulted – no injury certificate was tendered in evidence). The incident took place on 29th June 1999 after 7.00 a.m. and the first informant Dattatraya approached Hatkanagale Police Station, Dist. Kolhapur on the same day and FIR was registered under Section 326 r/w Section 34 IPC at 11.40 a.m. The Trial Court tried both the respondents.

3. The first informant Dattatraya and his colleague Shrikant Khot were assaulted on the relevant date i.e. 26.6.1999 by two respondents.

They have used sticks for the purpose of assault. It was in front of the house of PW No.7 Devu Narasu Sangale. As said earlier the prosecution has now examined 15 witnesses mainly they are on the point of spot panchnama clothes, seizure panchnama, recovery of weapon at the instance of respondent no.1. The injured Shrikant Khot and his companion/first informant Dattatraya were also examined. The persons residing in the vicinity have witnessed the assault. Some of them have taken the injured and the first informant to KEM hospital, Icchalkaranji and then to hospital of Dr.Lande. Investigating Officer was also examined.

4. We have heard learned APP. Through his assistance, we have gone through the record and the impugned judgment. As said earlier the prosecution has damaged their own case by examining one more witness on the same point. Once PW No.1 Salim Abbas Attar who is a spot pancha was examined (and when he has supported) there was no need to examine another pancha i.e.PW No.3 Ravindra Shankar Hawle. Even on the point of shifting the injured to the hospital, prosecution has examined three witnesses PW No.5 – Sudarshan Devappa Sangale, PW No.6 – Mahavir Sangale and PW No.7 – Devu Sangale. Though not on above aspects, the Trial Court has led more emphasis on other inconsistencies in different types of evidence. The

above aspects were noted by us while reading the papers.

5. It is true that FIR was registered on 29th June 1999 at about 11.40 a.m. and it bears the signature of the first informant Dattatraya. Whereas during cross-examination he failed to answer about recording of the statement by the police. The learned trial Judge has rightly opined about two contradictory answers, one by the injured PW No.4 Shrikant and another is by Investigating Officer PW No.15 because the injured Shrikant does not remember whether he had given statement to the police. He was unconscious and gained consciousness after 4-5 hours. So Court should believe whom? If the police are to be believed then whatever stated by Shrikant before the Court is on the background of not recording statement under Section 161 of Code of Criminal Procedure. If Shrikant is to be believed then why police should be disbelieved? In fact he has candidly stated that police has not recorded his statement and he is giving statement for the first time.

6. The so called eye witness Sudarshan – PW No.5 during cross-examination has admitted that he has not seen the incident. PW No.6 Mahavir also admits about making attempts for losing by accused no.1 in the election. Even the another so called eye witness PW No.7 Devu

has admitted that his information about the incident is hearsay.

7. First Informant Dattatraya – PW No.8 was examined in the dispensary of Dr.Lande and X-ray of hand was also taken. His hand was also plastered. He was unable to use hand for eating. On this background the Trial Court has observed that how he was in a position to sign on the complaint. His clothes were also not seized. PW No.9 Uday Khot is nephew of injured Shrikant. Through his Maruti car injured Shrikant was shifted to KEM hospital, Icchalkaranji. Initially, Shrikant was brought in auto rickshaw. He is not aware about the incident. The pancha witness PW No.10 – Raju about the seizure of the clothes of the accused no.1 admits that the accused no.1 has not removed the clothes in his presence. According to him police have only shown him the clothes and obtained signatures.

8. Shaukat Attar – PW No.11 is also the witness who arranged for shifting of Dattatraya and Shrikant to the hospital in the auto-rickshaw of his brother. Learned trial Judge was right in concluding that the evidence on the point of hurt does not suggest that it is grievous hurt. None of the parameters of grievous hurt are satisfied. Dr.Babasaheb Lande deposed that patient Shrikant was conscious when he came to his hospital. Whereas the injured Shrikant has said he was unconscious and not aware about recording of statement. He has also not informed the police. He has not mentioned about nature of injury being fresh or

otherwise. He has not recorded the identification mark of patient Shrikant. Dr.Suvarnala Ravat was attached to KEM Hospital and he has examined Shrikant. He admits that the patient has told him the history but not the names of the assailants.

9. PW No.14 Mukesh is the pancha witness who has witnessed the recovery of sickle and stick at the instance of accused no.1. He admits about not collecting the blood on the sickle with the help of the cotton swab.

10. The Investigating Officer – PW No.15 admits about not sending the articles to Chemical analyser. He admits not collecting the blood falling on the motor cycle with the help of cotton swab. He admits about non-seizure of incriminating article from the house of accused no.2.

11. So on the basis of above evidence, the trial Court has pointed out several lacunas in the prosecution evidence. We do not want to reproduce them again. After hearing learned APP we do not find that a view different from the view taken by the Trial Court can be taken. For the lacunas and contradictions mentioned in the impugned judgment we feel that it is rational view. If it is so, the judgment cannot be inferred with. We do not find any perversity in the findings. Appellate

Court cannot interfered merely because a different view is possible. It can be inferred only when there is a perversity. We do not find such perversity. Hence, there is no merit in the appeal. Hence, it is dismissed.

S.M.MODAK, J

PRASANNA B. VARALE, J

L.S. Panjwani, P.S.