

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 988 OF 2002**

The State of Maharashtra ... Appellant
V/s.
1. Santosh Shahaji Ronge- Patil
2. Balu Ankush Ronge- Patil
3. Shahaji Shyamrao Ronge-Patil
4. Sanju Shahaji Ronge- Patil
(All residents of Khadkalgaon,
Tal: Barshi, Dist. Solapur) ... Respondents

Mr. Arfan Sait, APP for the Appellant-State.
Mr. Ujwal Agandsure for Respondent Nos.1 to 4.

**CORAM : PRASANNA B. VARALE &
N.R. BORKAR, JJ.
DATE : 26.07.2021**

JUDGMENT

1] This appeal at the instance of State takes an exception to the judgment and order dated 29.05.2000 passed by the learned 2nd Additional Sessions Judge, Solapur in Sessions Case No. 54 of 2000. By the impugned judgment and order, the respondents, who were accused before the trial court, have been acquitted of the offences punishable under sections 302, 323, 504, 506 read with 34 of the Indian Penal Code (for short 'IPC') and for the offence punishable under section 135 of the Bombay Police Act.

2] The deceased Pruthavi was the son of PW-1 Vinayak Dhas. According to the prosecution, on 31.12.1999 at about 9.00 a.m., when PW-1 was standing in front of his house, the

accused came there with swords and sticks and assaulted him due to previous enmity.

3] According to the prosecution, during assault on PW-1, his 6 years old son Pruthavi was standing at the distance of about 10 to 12 feet away from him. It is alleged that accused No.2 threw stone at Pruthavi and he was hit by the said stone. According to the prosecution, the villagers came to the rescue of PW-1 and they saved him from the assault of the accused.

4] After the incident Pruthavi was taken to the hospital of PW-5 Dr. Yadav for treatment as he was complaining pain in his stomach. According to the prosecution, Pruthavi died on 1.1.2000 in between 1.30 a.m. and 1.45 a.m. as he was hit by the stone in the incident in question.

5] On the basis of report lodged by PW-1 with Pangri, Police Station, crime No.1 of 2000 was registered against the accused for the offence punishable under sections 302, 323, 504 and 506 read with 34 of IPC and for offence punishable under section 135 of the Bombay Police Act. On completion of investigation, chargesheet was filed against the accused persons for the said offences.

6] The accused were charged and tried for the above said offences. As stated earlier, the trial court by the impugned judgement and order acquitted the accused of all charges.

7] We have heard learned APP for the appellant/ State and learned counsel for the respondents/accused.

8] The learned APP for the respondent - State has submitted that the trial court discarded the evidence of eye witnesses for no valid reasons. It is submitted that the learned trial court has failed to appreciate the evidence on it's correct perspective and arrived at the wrong findings. It is submitted that the impugned judgment and order thus, needs to be quashed and set aside and the respondents/accused need to be convicted.

9] On the other hand, learned counsel for the respondents has submitted that the version of eye witnesses is not probable. It is submitted that the trial court was therefore, justified in acquitting the accused. It is submitted that the view taken by the trial court is possible view and thus no interference is called for in the impugned judgement and order.

10] PW-1 has stated in his evidence that on 9.10.1999, a quarrel took place between him and accused persons and thus they were enraged with him. On 31.12.1999 at about 9.00 a.m., the accused came to his house and at that time they were armed with swords and sticks. According to PW-1, the accused after coming to his house started assaulting him with fist and kick blows. At that time, his 6 years old son Pruthavi was standing at distance of about 10 to 12 feet away

from him. According to PW-1, accused No.2 threw stone at his son Pruthavi and the said stone hit on his son's stomach.

11] In cross-examination conducted on behalf of the accused, PW-1 has admitted that in relation to incident dated 9.10.1999, report was lodged against him and Brahamdeo Dhas, Manik Dhas, Bapu Dhas and Bhausahab Ronge. PW-1 has further admitted that on the basis of said report, he and other persons were arrested. PW-1 has admitted that on seeing the accused with sword and sticks, he started shouting, however, his family members did not come out of the house. He has further admitted that the accused persons were assaulting him for about half an hour and even during the said period, his family members did not come out of the house. He has further admitted that he did not sustain any external injury.

12] It is unlikely that PW-1 would not sustain any external injury in the incident even though according to him the accused were armed with swords and sticks and he was assaulted for about half an hour. It is also unlikely that even after shouting for half an hour, the family members of PW-1 would not come out of the house to save him. It would not therefore be safe to rely upon the testimony of PW-1.

13] Admittedly, PW-1 was arrested on the basis of complaint lodged by accused No.2 in relation to the incident dated 9.10.1999. The possibility of false implication, therefore, cannot be ruled out.

14] Apart from above, according to the prosecution after the incident Pruthavi was taken to the hospital of PW-5 Dr. Yadav. PW-5 has stated in his evidence that on 21.12.1999 at about 1.00 p.m., patient by name Pruthavi was brought to his hospital by his relative and mother. The history was given to him that there was quarrel in the village and in that quarrel the said boy was hit by a stone. He examined him and on examination, he suspected blunt abdominal trauma with internal bleeding. He gave emergency treatment by administering I.V. fluids and antibiotics and advised the surgery after blood transfusion. At about 2.30 p.m., on the same day, he found that there was no responsible relative present near the said patient and there was no blood available and he suspected specialize surgical treatment is required. He, therefore, referred the said patient to Civil Hospital, Solapur.

15] PW-5 has further stated that on 1.1.2000 at about 1.00 a.m., the said patient was again brought to the hospital. The patient was in serious condition. He tried to give emergency treatment. However, unfortunately, the said patient died at 1.55 a.m.

16] In the cross-examination conducted on behalf of the accused, PW-5 has admitted that he has not mentioned in the case papers that history of hitting by a stone was given to him. He has further admitted that when the child was brought to his hospital for the first time at about 1.00 p.m. on

31.12.1999, he did not inform to the police though it was case of assault. Even if the evidence of PW-5 is accepted, it would show that there was quarrel in the village and in the said quarrel Pruthavi was hit by the stone.

17] Considering overall facts and circumstances of the case, it is difficult to hold that the prosecution has proved its case against the accused beyond reasonable doubt. The trial court was therefore, justified in acquitting the accused. No interference is called for in the impugned judgment and order. In the result, the following order is passed.

ORDER

Criminal Appeal stands dismissed.

(N.R. BORKAR, J.)

(PRASANNA B. VARALE, J.)