

rkmore

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.44 OF 2004**

The State of Maharashtra	]	...	Appellant
vs.			
Balu Shankar Pawar & Ors.	]	...	Respondents

Ms.M.H. Mhatre, APP for the State/Appellant.
Mr.Anilkumar Patil, for Respondents.

**CORAM : SMT.SADHANA S. JADHAV &
N.R.BORKAR, JJ.**

**RESERVED ON : 9th FEBRUARY, 2021
PRONOUNCED ON : 30th APRIL, 2021**

JUDGMENT : (PER : N.R.BORKAR, J)

1] This appeal at the instance of State takes an exception to the Judgment and order dated 27th November, 2003 passed by the learned Sessions Judge, Nashik in Sessions Case No.123 of 2002.

2] By the impugned Judgment and order, the Respondents who were original accused before the trial Court have been acquitted of the offences punishable under Sections 147, 148, 302 read with 34 and 426 of the Indian Penal Code.

3] It is the case of the prosecution that at the relevant time, the deceased Anil was residing with his family at Village Khopadi Budruk, Taluka Sinnar, District Nashik. The incident took place on 17th March, 2002. On the day of the incident, at about 11.00 a.m. the deceased had gone to Sinnar for purchasing household items. He came back at about 6.00 p.m. in the evening and at that time he was

under the influence of liquor. After coming back home, the deceased had raised the quarrel with his wife Sangita, who is complainant in the present case. The accused No.1 was neighbour of the deceased. He came to the house of the deceased and pacified him.

4] It is alleged that at about 8.30 p.m. PW 1 - the complainant heard the commotion while she was preparing food. She asked her son PW 7 Sandeep to go out and see as to what is going on. After some time, she heard the cries of her son Sandeep. She, therefore, came out of the house and saw that the present respondents/accused were assaulting her husband by sticks in front of their house.

5] It is alleged that in the assault the deceased was seriously injured and died at the place of incident itself.

6] On the basis of complaint lodged by PW 1 with Sinnar Police Station, crime was registered vide CR No.45/2002 for the offences punishable under Section 302, 147, 148, 149 and 426 of the Indian Penal Code. On completion of investigation, charge-sheet was filed. The Respondents/accused were charged and tried for the above-said offences. The learned trial Court, as stated earlier, acquitted the respondents/accused by the impugned Judgment and order.

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

8] Learned APP for the State has submitted that the PW 1 and PW 7 in no uncertain terms have stated in their evidence that the accused assaulted the deceased by sticks. It is submitted that the trial Court has, however, discarded the evidence of eye witness for no valid reasons. It is submitted that the medical evidence on record is

also consistent with the version of PW 1 and PW 7 . It is submitted that the trial Court was, therefore, not justified in acquitting the accused.

9] On the other hand, learned counsel for the respondents/ accused has submitted that the trial Court has rightly disbelieved the evidence of PW 1 and PW 7. It is submitted that in absence of any perversity in the Judgment and order of trial Court, the present appeal may not be entertained.

10] The case of the prosecution is mainly based upon the evidence of following two eye witnesses :

- 1] PW 1 Sangita Anil Gaikwad (wife of the deceased)
- 2] PW 7 Sandeep Anil Gaikwad (son of the deceased)

11] PW 1 Sangita Gaikwad has stated in her evidence that her husband was working as a labourer. She has stated that the incident occurred in front of the house of accused No.1. At about 9.00 p.m. she heard the commotion and asked her sons Sandeep and Rahul to go and see as to what is going on. She, thereafter, heard the cries of her son Sandeep. She, therefore, came out of the house. After coming out of the house, she saw that accused No.1 was assaulting her husband with stick. Due to said assault her husband fell down. Thereafter, other accused assaulted him by sticks. She raised shouts for help. After hearing her shouts for help people residing in the vicinity gathered at the place of incident. Her husband was seriously injured. He was brought home.

12] PW 1 has stated that Police Patil Bairagi came to her house. Intimation about the incident was given to the police. Police visited her house at about 11.00 p.m. She narrated the incident to the police. It was reduced into writing. Her husband was then taken to hospital.

13] In the cross-examination conducted on behalf of the accused, PW 1 has admitted that there was no dispute between her husband and the accused. The accused no.1 and her husband were friends. She has admitted that she did not name the accused as assailants in the complaint which was recorded at her house.

14] It is thus apparent from the evidence of PW 1 that the present respondents/accused were not named as assailants by her in her complaint, which was recorded immediately after the incident at her house.

15] Apart from above, according to the complaint at Exhibit 32, on the day of incident at about 6.00 p.m. exchange of words took place between PW 1 and the deceased and with the intervention of accused No.1 it was resolved. PW 1 has, however, in the evidence denied to have stated the said fact to the police in her complaint at Exhibit 32. The said fact according to the prosecution is genesis of the incident. If the said fact was not stated by PW 1 in her complaint at Exhibit 32, then the whole prosecution case becomes doubtful.

16] PW 7 Sandeep Gaikwad who according to the prosecution is another eye witness to the incident is a child witness. Initially, he has stated in his evidence that, when he went out of the house, after hearing commotion, he saw that the accused were assaulting his father. He thus shouted for help. However, in a very next breath he has stated that the accused assaulted his father after his mother (PW 1) came out of the house. If according to PW 7, his father was not being assaulted, when he went there, then there was no reason for him to raise shouts for help. Considering the contradictory evidence of PW 7, it would not be safe to rely upon his evidence.

17] Considering the overall facts and circumstances, the view taken by the learned trial Court cannot be said to be perverse

warranting interference by this Court. In the result, following order is passed :

ORDER

Criminal Appeal No. 44 of 2004 stands dismissed.

[N.R.BORKAR, J]

[SMT.SADHANA S. JADHAV, J]