

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

CRIMINAL APPEAL NO. 292 OF 2003

State of Maharashtra

...**APPELLANT**

Versus

1. Trimbak Bhagwan Salunkhe
Age- 34 years, Occ- Driver,
R/o Khandoba Mal, Maruti Phuge,
Chowk, Bhosri, Pune.
2. Balu Ankush Mhaske
Age- 22 years, R/o. Khandu Gavhene,
Chawl, Gavane Vasti, Near Depot,
Bhosri, Pune.
3. Vijay Vasant Kulkarni
Age- 20 years, R/o. Gavane Vasti,
Agarwal Bldg, Near Dena Bank,
Bhosri, Pune.

...**RESPONDENTS**

...

Mr. V.B. Konde-Deshmukh, APP for Appellant-State.

Mr. D.G. Khamkar for Respondent No. 2 and 3.

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**CORAM : S. S. SHINDE &
S. P. TAVADE, JJ.**

RESERVED ON- 13th DECEMBER, 2021.

PRONOUNCED ON- 23rd DECEMBER, 2021.

JUDGMENT: [PER S.S. SHINDE, J.]

1. This appeal has been filed by the State against the judgment and order dated 23rd September, 2002, passed by Additional Sessions Judge, Pune, thereby acquitting the respondents (original accused) for the offence punishable under

Section 302 read with 34 of Indian Penal Code, 1860 (for short 'IPC'.)

2. The prosecution case in nutshell is as under-

Smt. Luga (PW1) was residing with her husband (deceased) and two children at Bhosari, Pune. On 22nd May, 2001 at about 1.00 am mid night Respondent No. 1- Trimbak knocked the door of complainant's house. She with her son Vishal opened the door. Respondent No. 1 brought the husband of the complainant with the help of cleaner with injury on his head and the blood stains on the clothes. The complainant made inquiry with Respondent No. 1 about cause of injury of her husband. At that time, Respondent No. 1 answered that her husband sustained injuries in an accident. She further made inquiry with Respondent No. 1 as to why he did not take her husband for treatment to the doctor. Respondent No. 1 answered her that during the night the dispensaries were closes, and therefore, her husband was not taken to the hospital for medical treatment. Her husband was brought to her house by Respondent No. 1 in his truck bearing No. MTQ 34. After bringing her husband in an injured condition the Respondent No. 1 and his cleaner left her house.

The complainant had given domestic treatment to her husband. She made inquiry with her husband about the cause of injuries. Her husband told her that on 21st May, 2001 at about 12 mid night Respondent No. 1- Trimbak, Respondent No. 2- Balu and others demanded money from him for consuming wine. On his refusal to give money all the three accused had given him kick blows. Respondent No. 1-Trimbak had given a blow with some weapon on his head and thereby he sustained bleeding injury. On 22nd May, 2001, the complainant had taken her husband to the hospital at Bhosari, Pune, and thereafter to the hospital at Pimpri. In Pimpri hospital husband was declared dead. Thereafter, police prepared inquest panchnama on the dead body of her husband. Postmortem was conducted in the Pimpri hospital. After conducting the postmortem the medical officer found particles of stone in the head of the deceased and he forwarded those articles of stones for investigation to the police. Thereafter, the complainant gave complaint against the accused person to the police on 22nd May, 2001.

3. On the basis of complaint of complainant Crime No. 154/2001 under Section 302 read with Section 34 of IPC was came to be registered. After completion of investigation, the investigating

officer of Bhosari Police Station submitted the chargesheet to the Court of JMFC, Pimpri, Pune on 16th August, 2001. The learned JMFC, Pimpri, Pune was pleased to commit the case to the court of Sessions as the offence punishable under Section 302 of IPC is exclusively triable by the Court of Sessions. Thereafter, the Sessions Judge, framed the charge under Section 302 read with 34 of IPC.

After a full fledged trial the Trial Court acquitted the accused. Hence, this appeal by the State challenging the judgment and order dated 23rd September, 2021.

4. Learned APP appearing for appellant-State invites attention of this Court to the notes of evidence and submits that the Trial Court has not properly appreciated the material on record. It is submitted that the prosecution case rests upon the direct evidence. The incident was witnessed by Sanjay (PW5). His evidence gets corroboration from the medical evidence. Therefore, learned APP submits that the appeal may be allowed.

5. Learned counsel appearing for the Respondent No. 2 and 3 submits that firstly inquest panchnama was prepared on 22nd May, 2001 from 9.25 to 10.35 am. The postmortem was conducted on the same day between 2.40 to 3.45 pm. Thereafter, Luga (PW1)

lodged the complaint. The said delay in lodging the complaint is fatal to the prosecution case. In support of his aforesaid submission he placed reliance on judgment in the case of Meghraj Singh Vs. State of U.P. (1994 SCC (cri.) 1390 and Ramji Surjya and another V/s. State of Maharashtra (1983) CRI. L.J. 1105.

6. We have given careful consideration the submissions of learned APP and learned counsel appearing for respondents. With their able assistance we have carefully perused the evidence on record. We have carefully perused the evidence of prosecution witnesses and in particular PW1, PW2 and PW5. Upon careful perusal of evidence of witnesses, we notices that the evidence of said witnesses is contradictory to each other.

7. Sanjay (PW5) in his examination in chief deposed that he along with accused No. 1- Trimbak and deceased Datta went to hotel of Anna Sheety for taking meal. The said narration is contradicted by hotel owner Anna Shetty (PW2). As per version of of PW2, accused no. 1 came along with accused no. 3 and deceased Datta. Also PW5 deposed that he and accused no. 1 brought deceased Datta to his house. The said narration is contradicted by Luga Salunkhe (PW1). As per version of Luga (PW1), accused no. 1

came along with accused no. 2. The statement of Sanjay (PW5) was recorded on 29th May, 2001 i.e. after about 8 days from the actual incident. Sanjay (PW5) has also made certain vital omissions which shows that he is not a truthful witness but a got up witness. Therefore, his evidence cannot be relied upon. Luga (PW1) has also made vital omissions in her deposition and hence her evidence coupled with delay in lodging the complaint shows that, her evidence is after thought and cannot be relied upon. The accused no. 2 was arrested on 27th May, 2001 and the accused no. 3 was on 28th May, 2001. On 29th May, 2001, the clothes of accused no. 2 were seized under panchnama Exh. 33 and on the same day shirt of accused no. 3 was seized under panchnama Exh. 37. Therefore, it is very difficult to believe that the accused will wear same clothes for eight days.

8. The law is well settled that while considering the appeal against acquittal, the Court has to bear in mind that, if the plausible view is taken by the trial Court, even though other view is plausible on the basis of evidence on record, cannot be a ground to interfere in the findings of acquittal. As already observed the evidence of eye witness is contradictory, and therefore, no implicit reliance can be placed on such evidence to reverse the order of

acquittal. The findings recorded by the trial Court are in consonance with the evidence on record and there is no perversity as such. The view taken by the trial Court is plausible. Therefore, no case is made out to interfere in the impugned judgment and order of acquittal. Hence, the appeal is devoid of any merit and same stands dismissed.

(S. P. TAVADE, J.)

(S. S. SHINDE, J.)