

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 545 OF 2003

The State of Maharashtra	}	Appellant (Orig. Complainant)
Versus		
Yogesh Shivnath Ghadge, Age : 20 yrs, R/o. Lallgun, Tal. Khatav, Dist. Satara	}	Respondent (Orig Accused)

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

Mr H.S. Venegavkar a/w Mr. Ajay Bhise for the Respondent

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

DATED : JANUARY 12, 2021.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. Being aggrieved by the judgment and order passed by the V Additional Sessions Judge, Satara in Sessions Case No. 55/2002, dated 09th January, 2003, whereby respondent herein (Original Accused) was acquitted of the charge for committing offences punishable under Sections 307 of the India Penal Code (for short “IPC”), the present Criminal Appeal is preferred by the Appellant – State of Maharashtra.
2. Learned APP appearing for the Appellant – State vehemently

submitted that the prosecution through version of eye witness, and more particularly, the injured eye witness, the medical evidence and other supporting evidence in the form of various panchanamas such as spot and seizure panchanama etc established its case. Learned APP further submitted that learned Trial Judge while appreciating the evidence committed serious error in appreciating the evidence in proper perspective more particularly, the evidence of eye witnesses. Thus, learned APP prayed for setting aside the judgment and order of acquittal by allowing the Criminal Appeal.

3. Per contra, learned Counsel Mr. Venegavkar appearing for the Respondent – Orig. Accused submitted that no error is committed by the learned trial Judge while appreciating the evidence. Learned Counsel, Mr. Venegavkar further submitted that there were material discrepancies on account of incident in the version of so called eye witnesses. Mr. Venegavkar then submitted that the version of injured witnesses itself is full of omissions. There is not consistency in so far as the alleged assault as well as the place of incident is concerned. It is also submitted by learned Counsel Mr Venegavkar that the theory of prosecution for alleged recovery of weapon itself is in the cloud of doubt. He further

submitted that the prosecution evidence itself show that there was an enmity that the injured witnesses himself was carrying grudge against the accused on account of sharing the well water and enmity being double edged weapon thus, the version of injured witness cannot be accepted as a complete truth. Learned Counsel Mr. Venegavkar further submitted that the medical evidence only show the injuries suffered by the witness but by itself it cannot connect the accused as an author of the crime. It is also vehemently submitted by learned Counsel Mr. Venegavkar that the prosecution for the reasons best known to them failed to examine important witness who was accompanied the injured witness at the time of incident and withholding such an important witness also creates suspicion over the case of prosecution. Thus, learned Counsel, Mr Venegavkar prayed for dismissal of appeal.

4. With the assistance of learned Counsel appearing for the respective parties, we have gone through the record.

5. We may now refer to the relevant and material evidence brought before the Trial Court and asses the same for deciding the present appeal.

6. As the prosecution case unfold through the complaint / report lodged at the instance of Ashok Ghadge (PW 8), we may refer to this witness firstly. Though, this witness is the person who set the investigating agency in motion by lodging the report, he is not supporting the case of prosecution and was declared as hostile witness. Ashok Ghadge (PW 8) is running a hotel named as Alankar hotel at village Lallgun.

In the cross- examination this witness denied almost all the suggestion put to him by learned APP except admitting presence of Suresh, Shivaji, Santosh Eknath and others near his hotel on the day of incident and Manaji, Hanmant, Sanjay taking injured Namdeo to the dispensary.

7. As Manaji Narayan Ghadge (PW 6) is claimed to be an eye witness, we may refer to the version of this witness. Manaji stated before the Court that he knows accused as well as injured Namdeo Ghadge and they are from his “bhauki” (relations). Then he stated that the incident took place at about 1 ½ years in the evening near the hotel of Ashok Ghadge. He stated that he along with other three person including one Rajendra were near the hotel of Ashok. At the relevant time the accused

was coming towards the hotel having fire wood over his head from his field. Then he stated that Namdeo (injured witness) was also present near the hotel and there was 'bachabachi' (exchange of heated words) between Namdeo and accused. Interestingly this so called eye witness also fails to support the case of prosecution and is declared as an hostile witness.

In the cross-examination by the learned APP this witness reiterated that Rajendra was present in the said hotel at that time. Then in the cross-examination by the learned defence Counsel an important admission is brought on record that he snatched axe and had produced the same on the next day before police. Then he gives another important admission that Namdeo sustained injury over his head as accused thrown bundle of fire wood. Then he further admits that Namdeo was able to speak when he was brought in the hospital at Pusegaon. As this admission assumed importance, we may refer the same at later part of the judgment while discussing the aspect of alleged recovery shown by the prosecution.

8. Now we may refer to the important witness i.e. the injured witness Namdeo Sitaram Ghadge (PW 2). As per his version in examination-in-chief, on 15.02.2001 at about 7-7.30 pm he along with

one Rajendra Ghadge were proceeding to hotel Alankar to have a cup of tea. Rajendra Ghadge went to the counter of the hotel and Namdeo was standing outside the hotel. At that time, accused came from the back side and gave one blow with the handle of an axe over his back as such, he turned back and at the same moment accused inflicted another blow over his head by the blade side of axe. Due to the blow Namdeo became unconscious and he regained his consciousness at Krishna Hospital, Shahupuri, Kolhapur. His statement was recorded on the next day i.e. 16.02.2001. Then again his statement was recorded on 20.02.2001 and 23.02.2001. He then stated before the Court that on 15.02.2001 at 07.00 am he had been to his ancestral land for fetching water to the crop. Then he admits that the accused is one of sharers in the well came there and switched the electric motor. Then he stated that 1/4th share of his ancestral land as well as well water was given to Mansing Shamrao Ghadge by his father. Then he admits that there was a dispute on account of sharing the well leading to criminal case arising out of a complaint lodged at his instance.

In the cross-examination he reiterates his admission of the accused having share in the land as well as in the well. Then he admits

that on the day of incident the accused told him that it was the time of his shift (for taking the well water). Then he denied the other suggestions.

9. Perusal of evidence of this important injured witness show that there was an enmity between this witness and accused on account of share in agricultural land and well water. On the day of incident in the morning a dispute took place between the accused and witness on account of lifting the well water and it was the version of accused that on said day it was his turn for lifting the water from well and Namdeo (PW 2) made an attempt to break the turn by putting on the fuse and lifting water. It is also reflected in the evidence of this witness that one Rajendra Ghade accompanied him to the hotel Alankar and he was present at the time of incident. No plausible explanation is coming forth as to why the prosecution failed to record the statement of important witness Rajendra and if it was recorded why the said material was not brought before the Court. Thus, one can reasonably believe that the prosecution has not brought on record the entire material so as to ascertain complete truth in the matter.

10. Parshuram Tukaram Sankpal (PW 1) is the panch in whose presence patient Namdeo (PW 2) produced one blood stained shirt having checks and one baniyan. These clothes were blood stained and they were marked as articles A and B and attached under panchanama at Exhibit 11. Mugurao Ramchandra Pawar is another panch to Exhibit 11. This witness was subjected to cross-examination and all the suggestions made to this witness were denied. Learned Trial Court observed that the panchanama Exhibit 11 of attachment of blood stained clothes of the injured is duly proved through panchas. It may not be necessary for us to refer to this witness in detail as such same would not by itself establish the authorship of the crime by respondent – accused.

Similarly, Baburao Jadhav (PW 3) is the panch witness and through this witness prosecution proves the attachment of clothes of the accused. This witness stated that on 16.02.2001 at about 4 pm he was called by police at Pusegaon police station along with another panch Rupesh Jadhav. Accused was present there. He produced the clothes namely, one pant, t-shirt of Grey and white colour respectively. These articles were marked as Articles C and D and they were attached under panchnama Exhibit 15. Suggestions were given to this witness and he

denied the suggestions.

11. Santosh (PW 4) and Dadasaheb (PW 5) are the panch witnesses on spot Exhibit 17. Both these witnesses turned hostile. Though, the spot panchanama Exhibit 17 in view of panch witnesses turning hostile, the scene of offence Exhibit 17 was proved through investigating officer and the learned Trial Judge rightly so refused to accept thus, evidence has a strong circumstance against accused.

12. Then another piece of evidence on which the prosecution placed heavy reliance is in the form of discovery / recovery of weapon axe at the instance of accused. The accused while in custody on 18.02.2001 made a statement that he would produce an axe concealed in his house. Accordingly, the memorandum panchanama was drawn and the said article E i.e. weapon axe was recovered from the house of accused.

13. Satish Jadhav (PW 7) is the panch witness to the discovery of weapon at the instance of accused stated that the accused led the panch and other police personnel to his house. Then he entered in the shed and from heap of dry grass the accused produced an axe. Axe was seized under seizure panchanama. Axe having having wooden handle of 2 ft in

length and having blood stains.

14. Learned Trial Judge could not place reliance on this material as material supporting the case of prosecution for two reasons, firstly, the same was recovered from a shed and was kept in heap of grass. Learned Judge was pleased to observe that it was usual and common practice in the villages that such articles which are used by the agriculturists are commonly kept in a shed under heap of grass and place namely, the shed of house was accessible to third party. Secondly, Manaji (PW 6) admitted in his cross-examination that he snatched an axe and produced the same on the next day before the police. Though, the evidence brought before the Court itself indicated that there were 2 axes and axe which was snatched by Manaji (PW 6) and produced before the police on the next day was not subjected to any scientific examination.

15. Rest of the witnesses are mostly the police officials who have played their role in the form of receiving the complaint / report i.e. Anand Sawant (PW 12) who was the police officer attached to police station, Pusegaon on 16.02.2001.

16. Raosaheb Jadhav (PW 11) who conducted part investigation and recorded the statement of witness and omissions are proved through this witness.

17. Now we may refer to the medical evidence brought on record through Dr. Rajendra Jagdale (PW 13) and Dr. Pawar (PW 14). Dr. Rajendra (PW 13) stated before the Court that injured Namdeo Ghadge was brought in the PHC, Pusegaon and on his medical examination he found incise wound on left side frontal parital region measuring 9 cm x 1 cm. As there was an skull fracture by suturing and applying bandage referred him to Civil Hospital, Satara for further treatment. Then he stated that the injury can be possible by the side of blade of an axe lying before the Court and in ordinary course of nature the death is possible, if patient is not treated immediately. Nothing was elicited from this witness in his cross-examination.

Dr. Pawar (PW 14) stated before the Court that at the relevant time he was working as neuro surgeon at Krishna Nursing Home, Kolhapur and on that day he had examined Namdeo Ghadge at Satara. On examination, he found sutured wound on the left side of head. Accordingly, he treated the patient and operated on his wound.

Then he supported the opinion of Dr. Jagdale (PW 13) that the injury can be possible by hit of an axe by its blade side and if patient is not treated within 24 hours the death is possible. He further stated that the injury can be possible by an axe which was shown to him.

18. On going through the above referred evidence, we found that there are material omissions and improvements in the version so called witnesses as well as in the version of injured himself. The injured witness admitted before the Court that there was an enmity between him and accused and on the day of incident in the morning injured himself had approach accused asking him why he was lifting water from well. Evidence was also suggestive on the aspect that there is no concrete material to show the actual place of incident. It also reveals from perusal of the record that the accused was carrying a bundle of fire wood and the injured witness himself was carrying an axe which was snatched by Manaji (PW 6). It also revealed that there are serious lapses on the part of investigating agency in not recording the statement of a witness, namely, Rajendra who was all the way accompanied the injured Namdeo and was present along with injured in the hotel when the alleged incident took place. The injured witness initially denied any concern of the

accused in the agricultural land and the well but before the Court he admitted that the accused was also having a share in the agricultural land and well and there was a dispute going on between the parties resulted in a complaint / report lodged at the instance of injured witness Namdeo. The so called recovery of weapon is also not acceptable as it is from an easily accessible place. Though, the medical evidence show that injured witness suffered injuries on a vital part of his body but the prosecution failed to show that it was the accused and accused only who was the culprit.

19. Though, certain judgments were relied on by the contesting parties in the Trial Court, it may not be necessary for us to refer to these judgment. The record show that the prosecution was unable to prove its case against accused beyond reasonable doubt as such the learned Trial Court by adopting the view of giving benefit of doubt to accused recorded the judgment and order of acquittal. We find considerable merit in the submissions of Mr. Venegavkar, learned Counsel for Respondent.

20. We are unable to find either any illegality or any perversity in the judgment of the trial Court. The conclusion arrived at by the Trial

Court are based on sound reasoning. Appeal, thus, being devoid of any merit, deserves to be dismissed. Accordingly, Criminal Appeal is dismissed.

(S.M. MODAK, J.)

(PRASANNA B. VARALE, J.)