

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

CRIMINAL APPEAL NO. 57 OF 2021

Yuvraj Shamrao Salokhe

..Appellant

v/s.

The State of Maharashtra & Ors.

..Respondent/s

Mr. Shashank Mangle for the Appellant.

Mr. P.H.Gaikwad, APP for the Respondent-State.

CORAM : ANUJA PRABHUDESSAI, J.

DATED : 14th OCTOBER, 2021.

P.C.

1. By this appeal filed under Section 372 of Cr.PC., the Appellant, who is the son of the first informant, has challenged the judgment dated 7.10.2016 whereby the learned JMFC, Kolhapur has acquitted the Respondent Nos. 2 to 4 of the Offences under Section 452, 324 504, r/w. 149 of IPC.

2. The Complainant Shamrao Haribhau Saloke filed the FIR alleging that on 7.6.2010 at about 10.30 p.m. these Respondents along with two children in conflict with law entered his house armed with weapons and abused and assaulted him and his son. Pursuant to the said First Information Report, Crime No.84 of

2010 was registered against the Respondents and his two children in conflict with law for offences under Section 143, 148, 452, 324, 504, 506 323 r/w. 149 of IPC. The Investigating Officer recorded the statements of the injured, conducted spot panchanama and seized the clothes of the injured. He also recovered the weapon of offence under seizure panchanama at Exh.70. Upon completion of investigation, chargesheet came to be filed for offences under Section 143, 148, 452, 324, 504, 506 323 r/w. 149 of IPC.

3. The charge was framed against the Respondents. They pleaded not guilty to the charge and claimed to be tried. Prosecution, in support of its case examined 6 witnesses. The statement of the Respondent Nos.2 to 4 was recorded under Section 313 of Cr.P.C. The defence of the Respondents was of total denial and false implication.

4. The learned Magistrate, upon appreciation of evidence held that there is discrepancy in the evidence of the Complainant and the other injured witnesses. The learned Judge also held that the evidence of the Complainant and his son is not corroborated by

any independent witness. The learned Judge has also recorded a finding that the prosecution has failed to prove that these Respondents had inflicted injury by means of sword or any other sharp weapon. The learned Judge took note of the previous enmity between the complainant and the respondent, and observed that the evidence of the complainant does not inspire confidence. Based on this findings the learned Judge acquitted the Respondents.

5. Heard learned Counsel for the Appellant. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

6. This is an appeal against acquittal. It is well settled that the accused having secured acquittal, there is a double presumption of innocence in favour of the accused. While exercising the power in Appeal against Order of acquittal, the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable

person and, therefore, the decision is to be characterised as perverse. Merely because two views are possible, the court of appeal would not take the view which would upset the judgment delivered by the court below. However, the Appellate court has a power to review the evidence if it is of the view that the view arrived at by the court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to re-appreciate the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the crime he is charged with.

7. In the instant case, the Complainant Shamrao had alleged that the Respondents No.2 and 4 along with two children in conflict with law had entered the house armed with weapons and assaulted him and the Respondent No.2. He had further stated that the Respondent Nos.2 and 3 had assaulted him and his son with sword like weapon. He had further stated that the other persons who had accompanied the Respondent Nos.2 and 3 had

assaulted him and his son by kicks, sticks and blows.

8. PW2 Yuvraj claims that Respondent Nos.1 and 2 were armed with sword like weapons and they had assaulted his father with a sword like weapon. He claims that he was assaulted by Respondent No.3 assaulted with a sword like weapon. Both the injured persons were examined by PW3 Dr. Ranjitsingh Yadav. The evidence of PW3 vis-a-vis injury certificate at Exhibit 55 and 56 indicate that Complainant Shamrao had sustained CLW on left parietal region and occipital region. Both these injuries were simple in nature. PW3 has deposed that the injuries sustained by PW2 and PW4 could be caused by a blunt object. The medical evidence does not corroborate the testimony of PW2 and PW4 as regards the assault by sharp weapon or sword like weapon.

9. The evidence on record clearly indicates that there is previous enmity between the parties. There are several omissions and contradictions in the evidence of PW2 and PW4. The testimony of PW2 and PW4 is not supported by any other independent witnesses. In such circumstances, the view taken by the learned

Magistrate was a plausible view. Moreover it is seen that the State had challenged the order of acquittal in Criminal Appeal No. 186 of 2016. The learned Sessions Judge, Kolhapur dismissed the said appeal by judgment dated 28.10.2020. The learned Judge has observed that the prosecution has failed to prove beyond reasonable doubt that the Respondent had assaulted the Complainant and his son by means of sword or any sharp weapon. The learned Judge has also confirmed the finding that the evidence of the Complainant suffers from material infirmities and does not inspire confidence. The learned Judge therefore dismissed the appeal and confirmed the judgment of acquittal passed by the learned Magistrate.

10. Having gone through the record, in my considered view, no grounds are made out to interfere with the judgment of acquittal. Hence the Appeal is dismissed.

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signed by
PRASANNA P
SALGAONKAR
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(ANUJA PRABHUDESSAI, J.)