

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 224 OF 2019**

Maruti Tukaram Hazare

... Appellant

V/s.

Tukaram Gopal Maske And Ors

... Respondents

Mr. Raj Thobde a/w Mr. Sagar Tambe for Appellant.

Mr. H. J. Dedhia APP, for Respondent-State.

Mr. V. V. Purwant a/w Mr. Rushikesh Kale for Respondent Nos. 1 to 6.

**CORAM : A.S. GADKARI AND
MILIND N. JADHAV, JJ.****DATE : 4th AUGUST 2022.****PC. :**

1. The present Appeal under Section 372 of the Code of Criminal Procedure (for short “the CrPC”) is filed by the first informant in Sessions Case No.132 of 2011 impugning the Judgment and Order dated 30th November 2015 passed by learned Sessions Judge, Solapur, thereby acquitting Respondent Nos.1 to 6 for the offence under Sections 395, 452, 323, 504, 506, 143, 147 read with 149 of the Indian Penal Code (for short “the IPC”) and Section 37(1) read with 135 of Bombay Police Act.

2. Heard Mr. Thobde, learned Advocate for Appellant, Mr. Purwant, learned Advocate for Appellant Nos.1 to 6 and Mr. Dedhia, learned APP for Respondent-State. Perused record produced before us.

3. It was the prosecution case that, on 14th October 2010 at about 9.00 p.m. Appellant was sitting on a staircase of the grocery shop. At that

time, Respondent Nos.1 and 4 stared at him to which the Appellant objected. Respondent Nos.1 and 4 came near Appellant and abused Mahadev (PW.3). Both the said Respondents pelted stones towards them. The other Respondents came on the spot subsequently. They entered in the grocery shop and dragged Mahadev (PW.3) out of it and assaulted him with kick and fist blows. It is further alleged that, in the said assault Respondents snatched a chain made of gold metal which was on the person of Appellant. That, Respondent No.6 Manoj assaulted Mahadev (PW.3) with a glass bottle due to which Mahadev (PW.3) suffered scratches on his face. After completion of investigation Police submitted charge-sheet.

4. The trial Court framed charge below Exh-8. The contents of said charge were read over and explained to the Respondents in vernacular language to which they pleaded not guilty and claimed to be tried. It was the defence of Respondents that, in fact the Appellant and his family members were aggressors and there was free fight in two groups. That, the Respondent No.1 has also lodged a cross-case bearing Sessions Case No.19 of 2012 arising out of CR. No.237 of 2010. The trial Court by its impugned Judgment and Order has acquitted Respondent No.1 to 6 from the charges framed against them.

5. Perusal of evidence of witnesses indicate that, the presence of the chain made by gold metal on the person of Appellant has not been proved by

the prosecution. There is a serious doubt as to whether the Appellant in fact was wearing the chain made of gold metal on the date and time of the alleged offence. It is to be noted here that, in his substantive evidence Appellant has stated that, Manoj threw a glass bottle towards Mahadev (PW.3) due to which Mahadev (PW.3) suffered scratches on his face. However, in his testimony Mahadev (PW.3) has deposed that, Manoj (Respondent No.6) pelted glass bottle which went brushing on his left hand. There are material contradictions in the testimonies of both the said important witnesses. It appears to us that, both the witnesses did not tell truth to the Court and with a view to implicate Respondents in a crime have deposed before the Court. As per the version of Appellant himself, initially Respondent No.1 and 2 came at the scene of offence and subsequently other Respondents joined them. It is therefore difficult to infer that, all the Respondents shared common object to attract Section 149 of the IPC. Perusal of evidence available on record clearly indicates that, prosecution has failed to prove the charge under Section 395 of the IPC against the Respondents.

6. Mr. Purwant, learned Advocate appearing for Respondent Nos. 1 to 6 on instructions submitted that, the Respondent Nos. 1 to 6 have been acquitted from the charges framed against them in Sessions Case No.19 of 2012 arising out of CR. No.237 of 2010 lodged by Respondent No.1. That, the F.I.R. in the said case was lodged by the Appellant herein.

7. After perusing entire record, this Court is of the opinion that, the view adopted by trial Court is probable view based on the evidence on record. We find that, the trial Court has not committed any error either in law or on facts while appreciating evidence and passing impugned Judgment and Order. There are no merits in Appeal.

Appeal is accordingly dismissed.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]