

Ajay

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

CRIMINAL APPEAL NO. 428 OF 2001

The State of Maharashtra
(At the instance of Sr.P.I. of Dindoshi
Police Station Vide C.R.No. 601 of 97)

Appellant.
.. (Orig. Complainant)

Versus

1. Omprakash @ Munna Aliyar Singh
2. Sanjay Gopal Pawar
3. Rakesh @ Babu Sakharam Tejam
4. Prakash Chhedilal Nagar.
All residing at Aliyarsingh Chawl,
Shivaji Nagar, Malad (East),
Mumbai - 400 097.

Respondents.
(Orig. Accused Nos.
.. 1 to 4)

-
- Mr. V.B. Kondedeshmukh, APP for Appellant - State.
 - Mr. M.K. Kocharekar for Respondent Nos. 1 to 4.
-

**CORAM : S.S. SHINDE &
MILIND N. JADHAV, JJ.**

**RESERVED ON : 20 DECEMBER, 2021.
PRONOUNCED ON : 10 FEBRUARY, 2022.**

JUDGMENT (PER MILIND N. JADHAV, J.) :

1. The learned Additional Sessions Judge, Court of Sessions, Greater Bombay, by judgement and order dated 26.02.2001-28.02.2001 has acquitted Respondent Nos. 1 to 4 (**originally Accused Nos. 1 to 4 respectively**) of the offences punishable under Section 302

read with Section 34 of the Indian Penal Code, 1860 (for short, “**IPC**”). The State of Maharashtra is in appeal against the said judgement acquitting the Respondent Nos. 1 to 4 in Sessions Case No. 299 of 1998. The Trial Court has arrived at the conclusion that the Prosecution has failed prove its case against the Respondent No. 1 in its entirety and it beyond reasonable doubt against Respondent Nos. 2 to 4.

2. According to the Prosecution, Respondent Nos. 1 to 4 intentionally caused the death of one Shri. Virendra Ramchandra Singh (hereinafter referred to as “**the deceased**”) in furtherance of their common intention at 6:00 PM on 27.11.1997 in front of a paan-beedi shop of one Shri. Radheshyam Shivshankar Rai, which is adjacent to the hardware shop of Maharashtra Trading Company situated at Adarsh Nagar Chowk, Kurar Village, Malad (East), Mumbai – 97.

3. Before we advert to the submissions made by the respective advocates and to the reappraisal of evidence on record, it will be apposite to refer to the relevant facts of the incident briefly.

3.1. Respondent No. 1 is the son of Shri. Aliyar Singh, who is the owner of a chawl near the spot of the incident. Respondent No. 1 and

his father have had a long-standing dispute with the deceased and his brother Shri. Jitendra Ramchandra Singh (P.W. 1) in respect of a room housing a manufacturing unit. This dispute pertained to the transaction and valuation by which the manufacturing unit was purchased by the deceased and his brother from the father of Respondent No. 1.

3.2. The deceased and his brother Shri. Jitendra Singh (P.W. 1) had paid a consideration of Rs. 50,000.00 to the Respondent No. 1 and his father for the manufacturing unit. However, the latter demanded more money from the former, over and above the consideration that was already paid. Proceedings in respect of the said dispute between the parties were also pending in the Small Causes Court, Bandra.

3.3. In the past, a criminal case was also lodged against the deceased for assaulting the Respondent Nos. 2 to 4.

3.4. On 27.11.1997, at about 6:00 PM, the deceased left the manufacturing unit for having paan at the shop of Shri. Radheshyam Rai, which was situated close by. According to the Prosecution, the deceased was attacked and assaulted with deadly weapons like choppers, guptis and knives. As a result, the deceased was injured

seriously. The deceased was immediately taken to Asha Hospital, thereafter to Agarwal Hospital, and finally to Bhagwati Hospital. However, on reaching Bhagwati Hospital, the deceased was pronounced dead. According to the Prosecution, Shri. Jitendra Singh (P.W. 1, brother of the deceased) was beside the deceased at the time. The police constable on duty thereafter registered an entry in the Emergency Police Register (EPR) and informed the concerned police station by telephone.

3.5. Shri. Trimbak Lal Patil (P.W. 11), the Investigating Officer, immediately visited Bhagwati Hospital. He was told that Shri. Jitendra Singh (P.W. 1, brother of the deceased) was not in a position to make any statement. As a result, he recorded the statement of the owner of the paan shop, Shri. Radheshyam Rai, and treated the same as the First Information Report (F.I.R.). The statement of Shri. Jitendra Singh was recorded later, during investigation.

3.6. The body of the deceased was sent for autopsy. A spot panchanama of the spot of the incident was also drawn up. Photographs of the crime scene were taken. Blood-stained items from the spot of the incident such as slippers and strands of hair were seized.

3.7. On 29.11.1997, the Respondent No. 1 was arrested, and his clothes were seized under a panchanama.

3.8. On 03.12.1997, Respondent Nos. 2 to 4 were arrested.

3.9. On 04.12.1997, according to the Prosecution, the Respondent Nos. 3 and 4, in the presence of panchas, made a voluntary statement pertaining to the concealment of weapons and blood-stained clothes. These items were subsequently seized from the house of one Shri. Sunil Gupta (P.W. 4) and sent for chemical analysis.

3.10. A chargesheet was filed before the Additional Chief Metropolitan Magistrate of the 24th Court, Borivali. As the offence was exclusively triable by the Court of Sessions, the learned Metropolitan Magistrate committed the case to the Court of Sessions, Greater Bombay, under the provisions of Section 209 of the Code of Criminal Procedure, 1973 (for short, “CrPC”). Charges were framed against the Respondents on 17.01.2000 and were read out and explained to them. The Respondents denied their complicity in the offence by a total denial and claimed to be tried.

4. The Prosecution examined in all twelve witnesses in support of its case. No witnesses were produced before the Trial Court by the

Defence. The Trial Court, after recording evidence and hearing the parties, was pleased to pass the impugned judgement and order dated 26.02.2001-28.02.2001, acquitting the Respondents of the offences punishable under Section 302 read with Section 34 IPC.

5. Shri. V.B. Konde-Deshmukh, Assistant Public Prosecutor appearing on behalf of the Appellant-State, submits that the impugned judgement and order suffers from grave infirmity as it has been passed without properly appreciating the evidence on record, which, according to him, implicates the Respondents in the crime beyond reasonable doubt. As such, he prays for the impugned judgement and order to be set aside. He submits that:

- i. the Trial Court overlooks the evidence of two eyewitnesses to the incident i.e., Shri Jitendra Singh (P.W. 1, brother of the deceased) and Shri. Sagar Gawade (P.W. 2);
- ii. the finding of the Trial Court that Shri Jitendra Singh (P.W. 1, brother of the deceased) was not present at the time of the commission of the act is erroneous;
- iii. the testimony of Shri. Jitendra Singh (P.W. 1, brother of the deceased) and Shri. Sagar Gawade (P.W. 2) is corroborated by the deposition of Shri. Dharmendra Singh (P.W. 3), who had heard of the plan to assault the deceased;
- iv. the evidence of all the aforementioned three witnesses along

with the recovery of the blood-stained clothes and weapons recovered pursuant to the statement recorded by Respondent No. 3 and 4 themselves proves the case of the Prosecution beyond reasonable doubt.

6. We shall now outline and then scrutinize the evidence given by each of the three witnesses based upon which Prosecution makes out its case against the Respondents.

6.1. Shri. Jitendra Singh (P.W. 1), brother of the deceased, has deposed as under:

- i. He states that he opened the manufacturing unit at 9:00 AM on 27.11.1997, as usual. At around 6:00 PM, the deceased left the manufacturing unit and went to the paan shop of Shri. Radheshyam Rai, which is in the vicinity of the manufacturing unit;
- ii. In Paragraph 5 of his examination-in-chief, he has deposed as under:

“5....then my brother Virendra left our factory at about 6:00 PM on that day. Then he went to paan shop to take paan as usual, the said paan shop was in front of our factory. That time, I had remained in our factory as a phone call was received from the customer. The said phone call was for the purpose of supplying of goods from our factory. So I went out of the factory to call out my brother. Then that time I saw persons

on the street were running away. The people were helter and skelter on the road. Then I came little ahead from my factory and I saw that my brother was being assaulted by all the four accused now before the court.” [emphasis supplied]

- iii. In his lengthy cross-examination, he has deposed that when he reached the spot where the deceased was lying injured, he saw that the deceased was bleeding profusely and that he took the deceased to Agarwal Hospital, then to Asha Hospital, and finally to Bhagwati Hospital;
- iv. In his cross-examination, he also states that the clothes of Shri. Radheshyam Rai, the owner of the paan shop, were stained with the blood of the deceased and that Shri. Radheshyam Rai accompanied and helped him take the deceased to the various hospitals;
- v. In Paragraph 14 of his cross-examination, he has deposed that:

“14.....I had tried to help my brother by running towards my brother when I saw assault on my brother by the accused. However, till I reached to my brother and while I was in the way running towards my brother, accused ran away from my brother. I did not see as to what were the weapons with the particular accused....police also did not enquire with me about details of weapons and its size.”

- vi. He has stated that the incident transpired outside the hardware shop on the same street, rather than in front of

the paan shop. In Paragraphs 14 and 16 of his cross-examination, he has deposed that:

“14.....It is not correct to say that I saw the incident that took with my brother inside the hardware shop. I did not disclose in my statement before the police that incident with my brother had taken place inside the hardware shop.

15. ...

16. I had disclosed in my statement before the police that the place of incident was in front of the hardware shop.”

- vii. He has also extensively deposed about the civil dispute between the deceased and the family of the Respondent No. 1 regarding the manufacturing unit;
- viii. He has deposed that he was sitting and wailing beside the body of the deceased upon the arrival of the Investigating Officer at Bhagwati Hospital;

6.2. Our observations on the evidence given by Shri. Jitendra Singh (P.W. 1, brother of the deceased), as well as further aspects to the case that arise from his evidence, are as follows:

- i. From the evidence given by P.W. 1, it is clear that the incident took place in the presence of Shri. Radheshyam Rai, the owner of the paan shop adjacent to the factory. His clothes are also said to have been stained with the blood of the deceased. It is also stated that he accompanied P.W. 1 to the various hospitals. Thus, Shri.

Radheshyam Rai becomes an important witness to the incident. However, surprisingly, Shri. Radheshyam Rai has not been examined by the Prosecution. This deficiency in the Prosecution's case has also been underscored by the Trial Court. Furthermore, the blood-stained clothes of Shri. Radheshyam Rai have also not been seized by the Investigating Officer and no explanation for the same has been given;

- ii. P.W. 1 is the brother of the deceased, and therefore is an interested witness, especially owing to the long-standing disputes between the deceased and the Respondents;
- iii. Notwithstanding P.W. 1's deposition in Paragraph 5 of his examination-in-chief, there is an additional item of evidence on record that raises a doubt as to the presence of P.W. 1 at the spot of the incident. Shri. Dharmendra Singh (P.W. 3) has deposed that he saw Shri. Radheshyam Rai, the owner of the paan shop, take the then-injured deceased to a hospital in an autorickshaw. However, P.W. 3 does not mention the presence of P.W. 1 at the spot of the incident, or in the autorickshaw along with Shri. Radheshyam Rai;
- iv. The presence of P.W. 1 at Bhagwati Hospital, along with the body of the deceased and Shri. Radheshyam Rai, is

directly contradicted by two additional items of evidence on record:

- a. The Emergency Police Register (EPR, marked as Exhibit 69) does not reflect the name of P.W. 1 despite the fact that he was the only relative of the deceased who was purportedly present at Bhagwati Hospital;
- b. Contrary to P.W. 1's deposition as to his whereabouts while at Bhagwati Hospital, Shri. Trimbak Lal Patil (P.W. 11), the Investigating Officer) and Shri. Dharmanand(P.W. 12, the police constable on duty) have deposed that the body of the deceased was in the morgue by the time P.W. 11 arrived at Bhagwati Hospital. Therefore, the question of P.W. 1 sitting and wailing beside the body of the deceased does not arise. In Paragraph 37 and 39 of his cross-examination, P.W. 11 states as under:

“37. It is true that in none of the panchanamas prepared in the hospital, there is reference to presence of Jitendra Singh. It is true that in spot panchanama also there is not reference to his presence.

Emergency Police Register (

38. ...

39. ...I did not make any

enquiries from constable on duty at the hospital as to who informed him about the four assailants.”

- v. In view of our observations as above, we find that a serious doubt has been raised as to whether Shri. Jitendra Singh (P.W. 1, brother of the deceased) was even present at the spot of the incident or at the hospital thereafter, which fells the Prosecution’s assertion of P.W. 1 being an eyewitness to the incident entirely. Our observation is further strengthened with the fact that the blood stained clothes of P.W.1 have not been seized or recovered as evidence, if it is his case that he carried the deceased alongwith Radheshyam Rai to the three hospitals.

6.3. Shri. Sagar Gawade (P.W. 2) is also stated by the Prosecution to be an eyewitness to the incident. He has deposed as under:

- i. He was standing at the junction when the incident took place, also witnessed it, but did not appraoch the police as he was too scared;
- ii. Paradoxically, he also stated that he, along with a friend, went to visit the Respondent Nos. 1 to 4 in jail in January 1998 and was not afraid of doing so because he was with his friend;

- iii. In his cross-examination, he has deposed that after the incident and till the recording of his statements, he was attending to his duty as a salesman of garments as usual;

6.4. Our observations on the evidence given by Shri. Sagar Gawade (P.W. 2) are as follows:

- i. Although the incident took place on 27.11.1997, the statement of P.W. 2 was recorded by the police authorities on 04.12.1997 i.e., seven days after the incident. The delay in the recording of P.W. 2's statement is unexplained and *prima facie* suspicious;
- ii. It has come on record that P.W. 2 was found in the company of Respondent Nos. 2 to 4 when they were arrested. The same is confirmed by the Station House Diary (marked as Exhibit 57) produced by the Prosecution. As such, even though Shri. Trimbak Lal Patil (P.W. 11, the Investigating Officer) has deposed that P.W. 2 was separately summoned to the police station in the evening of 03.12.1997 (which is also the date of the arrest of the Respondent Nos. 2 to 4), it cannot be ruled out that P.W. 2 was arrested along with the Respondent Nos. 2 to 4 and forced to be a prosecution witness;
- iii. Thus, the evidence given by P.W. 2 does not inspire any confidence, especially since his statements are

inconsistent with each other.

6.5. Shri. Dharmendra Singh (P.W. 3), another witness examined by the Prosecution, has deposed, *inter alia*, that he visited the video center of the Respondent No. 1 four days prior to the incident where he heard all the Respondents conversing about a quarrel that they had with the deceased and about how they plan to deal with the deceased. However, he has deposed that he had not mentioned this incident in the statement he gave to the police. We may state our analysis of the evidence given by this witness as follows:

- i. The statement of P.W. 3 has been recorded on 08.01.1998 i.e., forty days after the incident, even though P.W. 3 was available from the date of the incident till 30.11.1997 and thereafter from 08.12.1997 to 08.01.1998. This unexpected delay raises a serious doubt as to the veracity of the evidence given by P.W. 3;
- ii. As stated earlier, P.W. 3 did not mention Shri. Jitendra Singh (P.W. 1, brother of the deceased) as being present at the spot of the incident. Thus, the evidence given by P.W. 3 does not even corroborate that of P.W. 1, and is in any case unreliable because of the aforementioned unexplained delay in recording his statement;
- iii. That apart, P.W. 3 has not deposed about hearing "any plan" to eliminate the deceased from the Respondents

four days ago. He has deposed about hearing from the Respondents that "they will have to see him", due to their quarrel with the deceased. This statement amongst the Respondents does not amount to hatching any plan to eliminate or kill the deceased.

6.6. Shri. Sunil Gupta (P.W. 4) is the owner of the house from which the blood-stained clothes and weapons purportedly used by the Respondents were seized. There are two circumstances pertinent to note in relation to the evidence given by P.W. 4, which are as follows:

- i. It is important to note that P.W. 4 deposed that he had visited Arthur Road Jail with one Shri. Parag Kalusingh Pardeshi to meet the Respondents on 24.06.2000, which was before the recording of his evidence. This raises a serious doubt as to the veracity of the evidence given by P.W. 4;
- ii. P.W. 4 deposed that the Respondent Nos. 2 to 4 had come to his room, changed their clothes and kept the clothes they were wearing during the incident in the room. However, the police authorities recovered only the clothes of the Respondent Nos. 3 and 4 in the course of their investigation. Thus, the evidence given by P.W. 4 in this regard does not inspire any confidence.

6.7. At this juncture, we may also highlight one relevant aspect of Shri. Trimbak Lal Patil (P.W. 11, the Investigating Officer), who deposed that the blood-stained clothes of the Respondent No. 2 were on his person at the time of arrest and were seized therefrom. However, the Respondent Nos. 2 to 4 were arrested on 03.12.1997 i.e., seven days after the incident; it is impossible for the Respondent No. 2 to have worn the blood-stained clothes for a period of seven days. Thus, even the evidence given by the Investigating Officer in the present case is not without its shortcomings.

6.8. Shri. Bansi Prasad (P.W. 5) a pancha, who witnessed the seizure of the weapons and blood-stained clothes from Shri. Sunil Gupta (P.W. 4)'s house, has turned hostile. Suffice to say, the Prosecution cross-examined this witness extensively but has failed miserably.

6.9. Shri. Ravindra Singh (P.W. 6) is the witness to the inquest panchanama. Shri. Sureshbhai Patel (P.W. 7) is the witness to the spot panchanama. Dr. Manikprabhakar Sangale (P.W. 8) is the doctor who conducted the autopsy of the body of the deceased. Shri. Ramesh Mahimkar (P.W. 9) is the draftsman of the map of the scene of crime. Shri. Dilip Amrella (P.W. 10) is a photographer who photographed the scene of the crime as well the body of the deceased in Bhagwati

Hospital. We have perused the depositions of these witnesses carefully, but the same do not throw any light on the culpability of the Respondents.

7. It is a well-settled position of law that reversal of acquittal is permissible on the touchstone of the principle that the appellate court should, generally, be loath in disturbing the finding of facts recorded by a trial court as the trial court has the advantage of seeing the demeanor of the witnesses, and that the appellate court should interfere with the conclusions of the trial court only when they are palpably erroneous, unreasonable, perverse and likely to result in injustice.

7.1. The Hon'ble Supreme Court in the case of *Murlidhar @ Gidda vs. State of Karnataka*,¹ while considering criminal appeals, averted to the fundamental principles to be kept in mind by an appellate court while hearing an appeal against acquittal. Paragraphs 10, 11 and 12 are relevant and read thus:

“10. Lord Russell in Sheo Swarup [Sheo Swarup v. King Emperor, (1933-34) 61 IA 398 : (1934) 40 LW 436 : AIR 1934 PC 227 (2)] , highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said : (IA p. 404)“... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the

¹ 2014 (5) SCC 730 : 2014 (2) SCC (Cri) 690

witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.” The opinion of Lord Russell has been followed over the years.

11. As early as in 1952, this Court in *Surajpal Singh* [*Surajpal Singh v. State*, AIR 1952 SC 52 : 1952 Cri LJ 331] while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed : (AIR p. 54, para 7)

“7. ... the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.”

12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in *Tulsiram Kanu* [*Tulsiram Kanu v. State*, AIR 1954 SC 1 : 1954 Cri LJ 225] , *Madan Mohan Singh* [*Madan Mohan Singh v. State of U.P.*, AIR 1954 SC 637 : 1954 Cri LJ 1656] , *Atley* [*Atley v. State of U.P.*, AIR 1955 SC 807 : 1955 Cri LJ 1653] , *Aher Raja Khima* [*Aher Raja Khima v. State of Saurashtra*, AIR 1956 SC 217 : 1956 Cri LJ 426] , *Balbir Singh* [*Balbir Singh v. State of Punjab*, AIR 1957 SC 216 : 1957 Cri LJ 481] , *M.G. Agarwal* [*M.G. Agarwal v. State of Maharashtra*, AIR 1963 SC 200 : (1963) 1 Cri LJ 235] , *Noor Khan* [*Noor Khan v. State of Rajasthan*, AIR 1964 SC 286 : (1964) 1 Cri LJ 167] , *Khedu Mohton* [*Khedu Mohton v. State of Bihar*, (1970) 2 SCC 450 : 1970 SCC (Cri) 479] , *Shivaji Sahabrao Bobade* [*Shivaji Sahabrao Bobade v. State of Maharashtra*, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033] , *Lekha Yadav* [*Lekha Yadav v. State of Bihar*, (1973) 2 SCC 424 : 1973 SCC (Cri) 820] , *Khem Karan* [*Khem Karan v. State of U.P.*, (1974) 4 SCC 603 : 1974 SCC (Cri) 639] , *Bishan Singh* [*Bishan Singh v. State of Punjab*, (1974) 3 SCC 288 : 1973 SCC (Cri) 914] , *Umedbhai Jadavbhai* [*Umedbhai Jadavbhai v.*

State of Gujarat, (1978) 1 SCC 228 : 1978 SCC (Cri) 108] , K. Gopal Reddy [K. Gopal Reddy v. State of A.P., (1979) 1 SCC 355 : 1979 SCC (Cri) 305] , Tota Singh [Tota Singh v. State of Punjab, (1987) 2 SCC 529 : 1987 SCC (Cri) 381] , Ram Kumar [Ram Kumar v. State of Haryana, 1995 Supp (1) SCC 248 : 1995 SCC (Cri) 355] , Madan Lal [Madan Lal v. State of J&K, (1997) 7 SCC 677 : 1997 SCC (Cri) 1151] , Sambasivan [Sambasivan v. State of Kerala, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320] , Bhagwan Singh [Bhagwan Singh v. State of M.P., (2002) 4 SCC 85 : 2002 SCC (Cri) 736] , Harijana Thirupala [Harijana Thirupala v. Public Prosecutor, (2002) 6 SCC 470 : 2002 SCC (Cri) 1370] , C. Antony [C. Antony v. K.G. Raghavan Nair, (2003) 1 SCC 1 : 2003 SCC (Cri) 161] , K. Gopalakrishna [State of Karnataka v. K. Gopalakrishna, (2005) 9 SCC 291 : 2005 SCC (Cri) 1237] , Sanjay Thakran [State of Goa v. Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] and Chandrappa [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] . It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court

in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.”

8. In view of the above discussion and findings, we may state that there are demonstrable flaws in the evidence given by the key prosecution witnesses. The Prosecution has heavily relied on the circumstantial evidence given by the three witnesses as alluded to and discussed above to make out its case against the Respondents. However, given that this evidence in our opinion is not only palpably erroneous, but also unreliable to prove the chain of causation of the actual incident beyond reasonable doubt, especially because Shri. Radheshyam Rai, the first informant and owner of the paan shop, has not been examined by the Prosecution. The findings of the Trial Court conform with our reappraisal of evidence on record, and hence we concur with the findings of the Trial Court in its entirety. In view thereof, the impugned judgement and order does not call for any interference.

9. Criminal Appeal stands dismissed with no order as to costs.

[MILIND N. JADHAV, J.]

[S. S. SHINDE, J.]