

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 685 OF 2019

Babasaheb S/o Ganpat Batule
Age : 47 Years, Occu. : Social Worker,
R/o. Ranjangaon Shenpunji, Tq. Gangapur,
Dist. Aurangabad

... Appellant
(Orig. Informant)

Versus

1. Sanket S/o. Vilas Shinde,
Age : 32 Years, Occu. : Nil.,
R/o. Chetna Colony, MIDC Ahmednagar,
Dist. Ahmednagar
2. Dinesh S/o Ramesh Salve,
Age : 36 Years, Occu. : Driver,
R/o. Chetna Colony, M.I.D.C. Ahmednagar,
Dist. Ahmednagar.
3. Shaikh Adam Shaikh Akbar,
Age : 48 Years, Occu. : Business,
R/o. Ranjangaon Shenpunji, Tq. Gangapur,
Dist. Aurangabad.
4. Bharat S/o. Pandharinath Garad,
Age : 48 Years, Occu. : Business,
R/o. Chetna Colony, M.I.D.C. Aurangabad.
5. Ashok S/o. Gorakhnath Jadhav,
Age : 46 Years, Occu. : Business,
R/o. Chetna Colony, M.I.D.C. Aurangabad.
6. Asif S/o. Muktar Khan,
Age : 33 Years, Occu. : Labour,
R/o. Ganesh Chowk, Golegaon,
Tq. & Dist. Ahmednagar.
7. The State of Maharashtra

... Respondents
(Respondent No.1 to 6
Orig. Accused No.1 to 6)

...
Mr. U. B. Bondar, Advocate for Applicant.
Mrs. P. V. Diggikar, APP for Respondent No.1-State.

...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 21st FEBRUARY 2023.

ORDER (ABHAY S. WAGHWASE, J.) :

1. In the instant appeal the judgment and order of acquittal passed by the learned Additional Sessions Judge, Vaijapur in Sessions Case No. 38 of 2014 is impugned by original informant, praying to quash and set aside the said judgment by which accused – Respondents were acquitted from offences punishable under sections 307, 120-B, 341 read with section 34 of Indian Penal Code.

Brief facts giving rise to the case

2. Appellant was Deputy Sarpanch of Grampanchayat. 15 days prior to the incident he had asked through his wife Subhadrabai, who too was a member of Grampanchayat, details of expenses incurred by the Grampanchayat for the last three years. On 22.05.2013 at around 9.30 p.m., when he was returning to the village after meeting with Police Head Constable Shaikh Saleem, three unknown persons came from behind on Pulser motorcycle. The person sitting as a second pillion rider hit the appellant by

stick on his head. Thereafter, appellant's motorcycle was intercepted and he was again beaten causing grievous injuries to his head and left knee. One Tavera vehicle reached there. At that time these persons ran away. Informant had noted number of the said motorcycle which was MH-16-AF-8089. One Shivaji Mundhe took the appellant informant to hospital and thereafter he lodged FIR against three unknown persons.

3. Investigation was carried out and after its completion, respondent Nos.1 to 6 – accused were charge-sheeted and put up for trial, i.e. on the charge of commission of above offences. However, after appreciating the oral and documentary evidence, learned trial Judge held that prosecution has failed to establish the charges and thereby acquitted all accused – respondent Nos.1 to 6 from above charges.

4. Feeling aggrieved by the above judgment and order of acquittal, original informant is questioning the same by filing instant appeal by invoking section 372 of Cr.P.C.

SUBMISSIONS

5. Learned counsel for appellant appraised us about the background of the case and he took us through the entire oral and documentary evidence adduced before the trial court. It is his submission that prosecution had

succeeded in bringing home the charges by adducing trustworthy and reliable evidence. That, said evidence was supported by medical evidence and thereby offences for which respondents were charge-sheeted were proved, but the learned trial court failed to appreciate the same. It is pointed out that there was testimony of informant injured himself and he has narrated and attributed overt act to the accused persons, but the same was unfortunately disbelieved by the learned trial Judge. Spot panchanama was proved by examining the panch witness. Informant had also noted the vehicle number on which assailants had come. However, learned trial Judge has failed to appreciate the same and has surprisingly disbelieved the prosecution evidence. He invited our attention to the medical evidence and medical certificate and submitted that evidence of injured informant was corroborated by medical expert (PW-11 Dr. Ritesh Pathak) and therefore learned trial court ought to have accepted the case of prosecution, but it failed to do so and as there is failure on the part of learned trial Judge in not appreciating the evidence in its proper perspective, the judgment and order passed by the learned trial Judge is required to be set aside.

6. On behalf of State, learned APP also submitted that in spite of availability of injured witness account, the judgment and order of acquittal cannot be said to be just, legal and proper.

7. After hearing both sides, we have carefully gone through the oral and documentary evidence before the trial Court. It seems that in all 13 witnesses were examined by prosecution i.e. injured informant **PW-1** Babasaheb Batule. **PW-2** Subhadrabai Batule wife of PW-1 informant and her evidence is hearsay. **PW-3** Ajinath Garkal has acted as panch to spot panchanama which is at Exh.65. **PW-4** Prabhakar Bargaje is panch to memorandum of disclosure by accused Bharat. From his evidence it is seen that the red colour pulser motorcycle is recovered at the instance of accused Bharat. **PW-5** Manik Mote is panch to memorandum of disclosure by accused Asif and in his presence accused Asif has produced stick. This witness has identified the memorandum and seizure panchanama at Exh.74-A and 74-B. **PW-6** Sunil Kale, panch to memorandum, has not supported prosecution. **PW-7** Shivaji Mundhe, who had taken PW-1 informant to hospital. **PW-8** Nivutti Kangle turned hostile. **PW-9** Santosh Dhakne is panch to seizure of clothes of informant. **PW-10** Ashok Lohkare is panch to memorandum of disclosure by accused Sanket and recovery of black colour motorcycle bearing number MH-16-AF-8089. **PW-11** Dr. Ritesh Pathak is the treating doctor. **PW-12** Kailas Bhagwat has not supported prosecution. **PW-13** Dashrath Chaudhari is the Investigating Officer.

8. It seems that amongst above witnesses, unfortunately **PW-6** Sunil, **PW-7** Shivaji, **PW-8** Nivutti and **PW-12** Kailas have not supported prosecution.

9. In above backdrop, evidence of remaining witnesses is put to scrutiny. Here, there is no dispute that law was set in motion by PW-1 informant alleging assault at the hands of three unknown persons. Under such circumstances, it was initially expected of investigating machinery to get test identification parade done. But surprisingly there is no cogent evidence on this aspect. The very person who conducted test identification parade has not stepped into the witness box. Therefore prosecution case suffered major dent. There is no cogent and reliable evidence to the extent of whatever is deposed by informant in the witness box. Evidence of wife of informant i.e. PW-2 - Subhadrabai is apparently hearsay. Though there is testimony of PW-4 Prabhakar Bargaje in support of seizure of vehicle, in FIR it was reported that vehicle was black colour, but recovery is unfortunately of red colour vehicle. Likewise, PW-5 Manik Mote, before whom there was alleged disclosure at the hands of accused Asif for production of stick, has deposed that his signatures were obtained at police station i.e. after completion of panchanama.

10. Thus, in our opinion, though medical expert (PW-11 Dr. Ritesh Pathak) is examined, when prosecution had not cogently proved the very overt act or alleged incident of assault by stick, testimony of medical expert is of no relevance.

11. Therefore, from all angles, here prosecution case is very weak. Almost half of the witnesses have stood hostile.

12. From above discussion it is revealed that except testimony of PW-1 informant, who claimed assault by unknown persons and there being no test identification parade, the very foundation of prosecution case has got knocked off. Recovery is also rendered doubtful. For all above reasons, we hold that learned trial court committed no error whatsoever in refusing to accept the case of prosecution. With such quality of evidence, there is bound to be acquittal. Therefore, no fault can be found in appreciation of evidence at the hands of learned trial court. There being no merits in the appeal, we proceed to pass following order :-

ORDER

The criminal appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)