

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

CRIMINAL APPEAL NO. 506 OF 2021

Suryakant s/o Dnyanoba More
Age: 36 years, Occu: Labour,
R/o. Ajani, Tq. Ahmedpur,
Dist. Latur

... APPELLANT
(Orig. Informant)

VERSUS

1. The State of Maharashtra
Through Office Incharge of
Ahmedpur Police Station,
Tq. Ahmedpur, Dist. Latur
2. Rahul s/o Sadashiv kamble
Age: 31 years, Occu: Labour
3. Sangram s/o Sambhaji More
Age: 76 years, Occu: Labour,
4. Sundarbai s/o Sangram More
Age: 71 years, Occu: Household,
5. Ramdas s/o Sangram More
Age: 39 years, Occu: Agril.,
All R/o. Ajani, Tq. Ahmedpur,
Dist. Latur

... RESPONDENTS
(Nos.2 to 5 Orig. accused)

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Mr. V. P. Golewar, Advocate for appellant
Mr. A. M. Phule, APP for respondent No.1 - State
Mr. S. B. Madde, Advocate for respondent Nos. 2 to 5

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**CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

DATE : 13.03.2023.

ORDER [PER Y. G. KHOBRAGADE, J.] :

. The appellant / victim has filed the present appeal under Section 372 of the Code of Criminal Procedure, questioning the judgment and order dated 26.08.2021 passed by the learned Additional Sessions Judge, Ahmedpur in Sessions Case No.17/2018, whereby the respondents / accused are acquitted for the offence punishable under Sections 307, 326 read with 34 of the Indian Penal Code (I.P.C.) in Crime No.61/2017 registered with Ahmedpur Police Station.

2. Heard Mr. V. P. Golewar, the learned Counsel appearing for the appellant, Mr. A. M. Phule, learned APP and Mr. S. B. Madde, learned Counsel for respondent Nos.2 to 5, at length.

3. With the able assistance of the learned Counsel appearing for the respective parties, we have gone through the record. It is the case of prosecution that on 04.03.2017 at about 7.30 p.m. Shri Dnyanoba More, the informant's father was standing behind Maroti temple at Ajani and at that time, accused No.1 Rahul, accused No.2 Sangram, accused No.3 Sundarabai, accused No.4 Ramdas Bhagwan More and one Devshala More picked up quarrel on account of old

enmity. Therefore, the informant had gone there and questioned as to why the accused are abusing his father, but at that time Bhagwan More and Ramdas More caused the informant to fall down on the ground and sat on his legs. Sundarabai More and Devshala More caught hold both hands of the informant and the accused No.1 Rahul assaulted him with the stone with an intention to kill him. The accused No.2 Sangram and accused No.4 Ramdas assaulted him with a stone on his stomach, due to which he sustained multiple injuries to his person, due to which he became unconscious. Thereafter, the informant was taken to Government Hospital at Latur and on 10.03.2017 he regained consciousness. Thereafter, he lodged report with Ahmedpur Police Station, on which basis Crime No.61/2017 was registered against the accused for the offences punishable under Sections 307, 326 read with 34 of I.P.C. The PW-6 Police Inspector Mohan Bhosle conducted investigation and seized stone under seizure panchanama and seized the clothes of accused No.1 Rahul and present appellant Satyakant under separate seizure panchanama and recorded statements of witnesses. The Investigating Officer collected injury certificate of the informant Satyakant and arrested the accused. On completion of investigation, the charge-sheet came to be filed against the accused before the learned J.M.F.C. Ahmedpur. On

compliance of Section 207 of the Code of Criminal Procedure, the learned J.M.F.C. Ahmedpur passed the order under Section 209 of the Code of Criminal Procedure and committed trial to the Court of Sessions as the offence under Section 307 of I.P.C. is triable by the Court of Sessions. The learned trial Court framed the charge at Exh.25 against the accused and explained the contents of charge in vernacular language. The accused pleaded not guilty and claimed for trial. The defense of the accused depicts that, on account of land dispute in respect of one Kerabai, there was animosity between the accused and informant, due to which they have been falsely implicated.

4. In order to bring home to the guilt of accused for the offence punishable under Section 307, 326 read with 34 I.P.C., the prosecution examined in all total six witnesses and proved spot and seizure panchanama Exh.41. Cloth seizure panchanama of accused No.1 Rahul at Exh.42. Cloth seizure panchanama in respect of injured Satyakant More at Exh.48. On conclusion of the trial, the learned trial Court recorded the statements of the witnesses under Section 313 of Cr.P.C., and pointed out incriminatory evidence.

5. On 26.08.2021, the learned trial Court passed the impugned judgment and order and thereby acquitted the accused for the offence punishable under Section 307 and 326 read with Section 34 of I.P.C.

6. Being aggrieved by the said judgment and order of acquittal, the appellant / victim instituted the present appeal under Section 372 of Cr.P.C. on the various grounds enumerated in the memo of appeal. It is well settled principle of law that the Appellate Court having full powers to review and re-appreciate the evidence upon which the order of acquittal is founded, however, while exercising power of Appellate Court in the case of acquittal, the Appellate Court should not only consider every matter on record having bearing on the question of fact and the reasons elaborated by the Court below in support of order of acquittal and the Appellate Court required to consider whether the order of acquittal passed by the trial Court is justifiable or not and the Appellate Court should slow in reversing the order of acquittal, “unless there are strong and good grounds”, the order of acquittal passed by the trial Court should not be interfered with. Therefore, taking into consideration all said principles we have gone through the record. In order to prove the

offence punishable under Section 307 read with Section 34 of I.P.C. the burden cast upon the prosecution to prove that the accused acted and assaulted the victim with this common intention and/or knowledge and under such circumstances if by that act the death of informant victim would have caused and the accused would be the guilty of his murder.

7. In order to bring home the guilt of accused for the offence punishable under Section 326 read with Section 34 of I.P.C. the prosecution require to discharge burden on that the accused persons with their common intention caused grievous hurt defined under Section 320 of I.P.C., by dangerous weapon like any instrument used for shooting, stabbing or cutting or any such instrument which used as a weapon of offence likely to cause his death.

8. As per the evidence of victim / appellant PW-1, on 04.03.2017, the alleged incident took place and he lodged a report Exh.35 on 12.03.2017. PW-1 deposed that due to assault, he was unconscious and he regained consciousness while his hospitalization and thereafter police recorded his report Exh.35. However, the informant PW-1 himself admitted in his cross examination that he does not know the reason why delay has been caused for lodging the

F.I.R. PW-1 – informant has not assigned any reason as to why the police did not mention in his report that the accused No.2 Sangram and accused No.4 Ramdas caught hold of his legs and the accused No.3 Sundara and Devshala Kamble caught hold of his hands. PW-1 admitted in his cross examination that he is unable to say that on the day of incidence or on the next day of incidence, he had gone to the hospital.

9. The appellant victim admitted that he is residing on land of Kerabai, but he does not know whether the accused persons submitted applications against him with the Grampanchayat, Police Station Ajani and the place of incidence is surrounded by houses of other people. Though the prosecution examined PW-4 and Chandramani Prabhakar Bhalerao and PW-5 Angad Pundlik Suryawanshi, but both the witnesses turned hostile. The Investigating Officer PW-6 proved spot panchanama and seizure panchanama of stone at Exh.41.

10. As per the evidence of informant PW-2, on 04.03.2017 at about 7.30 p.m., the accused had quarreled with his father Dnyanoba More and when he visited at the spot of incident and inquired with the accused, at that time the accused persons abused him and

threatened to cause his death. As per the evidence of PW-2 informant, the accused No.2 Sangram and accused No.4 – Ramdas caught hold of his both legs and the accused No.3 Sundarbai and Devshala caught hold of his hands. The accused No.1 Rahul assaulted him with a stone on his stomach, whereas the accused No.2 Sangram and accused No.4 Ramdas assaulted him with stone on his stomach and due to sequel of assault he was became unconscious at the spot. However, there is variance and omissions in evidence of the informant PW-2 in respect of caught holding his legs by accused No.2 Sangram and accused No.4 Ramdas. The omissions were put to the Investigating Officer PW-6 who stated that the informant had not stated him while recording Exh.35 oral report/statement hold his legs by accused Nos.2 and 4. So also there is omission in evidence of informant PW-2 that the accused No.3 Sundarbai and Devshala were caught hold his hands and said omissions testified by the PW-6 Investigating Officer about not stating said fact while reducing the report Exh.35.

11. Section 155(3) of the Evidence Act provides that the omissions and contradictions can be used by the accused against the prosecution to impeach the crediting of witnesses. As per contents of information report Exh.35, one Bhagwan More had sat on the legs of the informant PW-2, but said Bhagwan More was not impleaded as

accused. So also, as per evidence of PW-2 informant one Devshala was caught hold his hands but she is also not impleaded as accused.

12. In order to prove injuries sustained to the informant PW-2, the prosecution examined PW-3 Dr. Amrut Narayan Chiwade at Exh.37. PW-3 deposed that, on 05.02.2017, he medically examined and treated the patient Suryakant at Rural Hospital Ahmedpur and found following injuries:

- i) Contusion left side abdomen size 5x3 c.m.
- ii) Abrasion right side eyebrow region size 3x2 c.m.
- iii) Crush injury right hand little finger
- iv) Abrasion left knee joint size 0.5 x 0.3 c.m.

13. PW-3 issued injury certificate Exh.38. However, PW-3 admitted in his cross examination that at the time of examination, the patient (injured informant) was conscious and injury No.1 described in injury certificate Exh.38 mentioned by him as per the discharge card issued by Government Medical College and Hospital, Latur. PW-3 admitted that while examination of the injured Suryakant, M.L.C. Register was not brought and no X-ray or sonography was conducted.

14. On perusal of injury certificate Exh.38 as well as oral testimony of PW3, it does not reveal that due to injury No.1, death of injured would have been caused, if he could not have been medically

treated. The evidence of PW-3 also silent about nature of injuries described in Exh.38 whether said injuries can be caused due to assault by stone at the hands of the accused and whether those injuries are grievous. Therefore, the evidence of the prosecution witness does not inspire confidence that due to assault at the hands of the accused, the injuries described in certificate Exh.38 are caused and the accused with their Common intention assaulted the injured PW-2 and the accused were having intention to commit murder of informant PW-2.

15. No doubt, the Investigating Officer PW-6 seized one stone from the open place i.e. spot of incident under seizure panchanama Exh.41. The incident allegedly occurred on 04.03.2017, but the Investigation Officer seized said stone on 14.03.2017 after ten (10) days from the public or open place. Therefore, the recovery of stone from open place is very much doubtful and the prosecution failed to bring substantial evidence to prove nexus between the seized weapon and the accused. So also, recovery of alleged stone after gap of after ten (10) days is very much doubtful and suspicion. Though the clothes of accused No.1 – Rahul were seized under seizure panchanama Exh.42 and clothes of one Satyakant More under seizure

panchanama Exh.48, but Satyakant More is not impleaded as an accused. Irrespective of said fact, the FSL report of clothes of accused not produced on record. Therefore, merely drawing seizure panchanama in respect of clothes of accused No.1 Rahul also not helpful to the prosecution case and the injuries which allegedly been caused to the informant appellant as described in injury certificate Exh.38 may be due to accident or due to falling on hard substance like stone from motorcycle or bicycle. Therefore, the prosecution failed to prove the essential ingredients for the offence punishable under Section 307 and 326 read with 34 of I.P.C.

16. On perusal of impugned judgment and order dated 26.08.2021, passed by the learned trial Court it appears that the learned trial Court has considered oral as well as documentary evidence coupled with Sections 307, 326 and Section 34 of I.P.C. and held that there are material omissions, contradiction and evidence of the prosecution witness are not credible and trustworthy. The findings recorded by the learned trial Court are based on evidence available on record, which does not appear perverse. The appellant / informant has not set out any substantial ground to interfere with the findings recorded by the learned trial Court.

17. In view of above discussions, the present appeal is liable to be dismissed. Accordingly, the same is hereby dismissed.

[Y. G. KHOBRADE, J.] [SMT. VIBHA KANKANWADI, J.]

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