

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.709 OF 2021

Santosh d/o. Dadarao Mhaske,
Age: 38 years, Occu.: Driver,
R/o. Laxmikant Nagar, Ambad Road,
Jalna, Tq. and Dist. Jalna

.. Appellant

Versus

1. The State of Maharashtra
Through Police Station Taluka Jalna,
Tq. and Dist. Jalna.
2. Shaikh Taufik s/o Shaikh Rafik,
Age: 27 years, Occu.: Labour,
3. Shaikh Akram s/o Shaikh Shahed
Age: 27 years, Occu.: Labour,
4. Shaikh Salim s/o Khalil Ahmed
Age: 27 years, Occu.: Labour,
5. Shaikh Sahed s/o Ali Ahmed,
Age: 62 years, Occu.: Labour,
6. Shaikh Rafik s/o Shaikh Ali Ahmed
Age: 47 years, Occu.: Labour,

All R/o. Village Kumbhephal,
At present Laxmikant Nagar,
Tq. and Dist. Jalna.

.. Respondents

...

Mr. S. R. Bagal, Advocate for the appellant.
Mr. R. D. Sanap, APP for respondent No.1 – State.

...

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

DATE : 25th April, 2023

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

. Present appeal has been filed by the original victim/informant under Section 372 of the Code of Criminal Procedure to challenge the acquittal of respondent Nos.2 to 6 i.e. original accused Nos.1 to 5 by learned Additional Sessions Judge, Jalna on 29.11.2021 in Sessions Case No.202 of 2016 from the offences punishable under Sections 143, 147, 148, 307, 324, 504 read with Section 149 of the Indian Penal Code.

2. Heard learned Advocate Mr. S. R. Bagal for the applicant and learned APP for respondent No.1 – State. With the able assistance of learned Advocate for the appellant and learned APP, we have gone through the material, which was before the Trial Court.

3. The prosecution case in short is that the appellant was proceeding to fill petrol in his motorcycle around 12.00 noon on 06.05.2015. Accused No.4 was proceeding in his bullock cart, but he stopped the same almost in the middle and in front of the appellant. Appellant told accused No.4 that he should take the cart aside, but at that time accused No.4 abused and there was heat exchange of words between them. But that dispute was settled by nearby hotel owner. Appellant went to the petrol pump, filled it and started his return journey, however, accused No.4 had called the other accused persons

and the appellant was stopped by the accused persons. All the accused persons abused the appellant. They started assaulting him by pushing. Original accused No.1 assaulted informant with sickle on the shoulder. Thereafter appellant's brother Nitin and his uncle Sanjay had separated them, but again accused No.1 assaulted Nitin with sickle on his chest and to Sanjay on his legs. The other accused persons have assaulted with knife and sticks. Thereafter the informant - appellant had filed the FIR and on the basis of which offence vide Crime No.111 of 2015 came to be registered.

4. During the investigation the spot panchanama was carried out and clothes of the informant as well as injured were seized by drawing panchanama. Accused as well as injured were treated in the hospital and at a later point of time their injury certificates have been collected. Statements of the witnesses have been recorded. The weapons came to be seized by drawing panchanama under Section 27 of the Indian Evidence Act.

5. After completion of the investigation, charge-sheet was filed and after formalities were completed, the case was committed for trial to the Sessions Court.

6. Charge was framed against all the accused persons and their plea was recorded. The prosecution had examined in all nine

witnesses to bring home the guilt of the accused. After considering their evidence and the other evidence that has been produced on record, the learned Trial Judge has heard both sides and then passed the impugned judgment, which the appellant intends to challenge and, therefore, this appeal is filed.

7. In the present case P.W.2 Santosh, P.W.3 Sanjay and P.W.7 Nitin are the injured witnesses, whereas P.W.4 is stated to be an eye witness. Their injuries have been proved by examining P.W.1 Dr. Aparna Salunkhe and, therefore, the learned APP strongly canvassed that the prosecution had proved the guilt of the accused beyond reasonable doubt. The arrest of the accused persons as well as their memorandum panchanama has been got proved through P.W.5 Pandit Shirsat and P.W.9 PSI Boine. Therefore, the said link was also established between the injuries sustained by the injured persons and the weapons those were discovered by the accused persons. The learned Trial Judge therefore ought to have convicted the accused persons.

8. At the outset, it is to be noted that the triggering point is stated to be the dispute which was between informant and accused No.4 and it is stated to have been pacified by the hotel owner. It was on account of stopping of the bullock cart in the middle of the road by

accused No.4. Here, the width of the road has not come on record but the thing is simple, even if we consider that the road was from village and therefore it ought to be narrowed, yet it is unbelievable that a sufficient space for passing of the motorcycle would not have been left, even after parking or stopping the bullock cart in the middle of the road. It appears that it was the unnecessary quarrel that was picked up by informant. Any way it was pacified and then as per the FIR and the examination-in-chief of P.W.2 Santosh, that was settled and therefore, we need not go much beyond that. The testimony of the three eye witnesses has been disbelieved by the learned Trial Judge on the count that there are lot of material contradictions and omissions. The contradiction and omission is in respect of handling of the weapon by the accused persons. According to P.W.2 after filling petrol, he had returned to the hotel of P.W.3 Sanjay Hazare, who is his maternal uncle and stated to be an injured. He says that accused No.4 was still present there and then he had made phone call to someone and called four accused persons i.e. other accused persons. There is nothing on record to support this statement. The prosecution could have produced CDR of accused No.4 and the other accused persons to show that there was call at that time. Informant further says that accused No.1 had taken out *Koyta* from his back and assaulted informant on his neck. Accused

No.2 had caught hold of P.W.7 Nitin and then accused No.1 assaulted him with *Koyta* on his chest. Accused No.1 had thereafter assaulted on the legs of P.W.3 by means of *Koyta*. Accused No.3 had assaulted P.W.3 with knife. Accused No.5 is stated to have been instigating the accused to kill all. Again he says that accused No.3 has assaulted P.W.3 as well as P.W.7 with knife. That means accused No.3 is said to be using two weapons i.e. *Koyta* as well as knife. He then says that 22 stitches were applied to the wound of P.W.7 Nitin. The testimony of P.W.3 Sanjay and P.W.7 Nitin tried to bring the same acts but the contradictions and omissions have been brought on record. Another fact to be noted is that the medical officer P.W.1 Dr. Aparna has quoted that informant Santosh had sustained one simple injury, P.W.7 Nitin had sustained two simple injuries and P.W.3 Sanjay had received one simple injury. In her examination-in-chief itself, she has made it clear that according to her, there was no threat to the life of any patient due to causing of any injury. Therefore, there was no question of ingredients of Section 307 of Indian Penal Code. Merely because the injury was to neck that does not bring the case within the ambit of Section 307 of Indian Penal Code. The contradictions and omissions and other circumstances have been quoted by the learned Trial Judge in paragraph No.24 of the judgment and they appear to be true. Another fact is that the ocular evidence is not

supporting the medical evidence. P.W.3 Sanjay says that he was unconscious and was admitted in the Civil Hospital, however, the same record does not show. The prosecution has examined injuries on the person of accused. The learned Trial Judge has rightly relied on the citations regarding the decisions by this Court as well as Apex Court. When the testimony was unbelievable, the said has not been relied and, therefore, the acquittal of the accused persons appear to be justified. No interference is required. Hence, the appeal stands rejected.

[Y. G. KHOBRADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm