

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

CRIMINAL APPEAL NO. 1166 OF 2019

**VIJAY S/O. KISHANRAO KADAM
VERSUS
HANUMANT S/O. SHIVRAJ POTPOLE & OTHERS**

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Advocate for Appellants : Mr. Kale Mahesh P
Advocate for Respondent/State : Mr. R.V. Dasalkar

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**CORAM : SMT. VIBHA KANKANWADI &
Y.G. KHOBRAGADE, JJ.
DATE : 23rd March, 2023**

ORDER :- (Per: Y.G. Khobragade, J.)

1. The present appeal under Section 372 of the Cr.P.C. is preferred by the informant-victim challenging the judgment and order of acquittal of the respondent-accused nos.1 to 22 passed by the learned Additional Sessions Judge, Parbhani in Sessions Trial No.119/2012 thereby acquitting them from the offence punishable under Section 307, 148, 323, 324, 506 read with Section 149 of the I.P.C.

2. Heard Mr. Kale the learned advocate appearing for the appellant and Mr. R.V. Dasalkar the learned APP for the State at length at the stage of admission.

3. We have considered the prosecution case as narrated in the FIR and evidence led by the prosecution. In nutshell it is the case of the prosecution that, on 03.06.2009, at about 10.30 p.m. informant-Vijay Kadam lodged a report with Police Station Palam, Tq. Palam, Dist. Parbhani alleging that, in the year 2005 he was elected as a Sarpanch and the opposite party had proposed no confidence motion against him due to which there was enmity between him and accused. All the accused persons had gathered near Maroti temple alongwith sticks, axes, lathi, stones, etc at about 7.00 p.m on 03.06.2009 and assaulted him, due to said political rivalry. After hearing shouts of the informant, his family members rescued him. The informant further alleged that, the accused no.16-Bhimrao Galande assaulted on his right side of head with axe and the accused no.2 assaulted on his backside of head with stone with an intention to kill him. All the accused had gathered there being member of unlawful assembly and with common object. On the basis of said report a Crime No.44/2019 was registered with the Palam Police Station against the accused for the offence punishable under Section 307, 148, 323, 324, 506 read with Section 149 of the I.P.C.

4. The Investigating Officer PW9-Ramchandra Adkine visited at the spot of the incident on 04.06.2009 and has drawn spot panchanama (Exh.190) and arrested the accused persons under arrest memo (Exh.191 to 211). The Investigating Officer interrogated the accused persons and seized

weapons, sticks, stone, etc. Clothes of victim were seized under seizure panchanama. Statement of the witnesses were recorded. After due investigation a charge-sheet came to be filed against the accused persons before the learned JMFC, Palam. On compliance of Section 207 of the Cr.P.C., the learned JMFC passed an order under Section 209 of the Cr.P.C. and committed the case for trial to the Court of Sessions. Accordingly, the learned trial Court framed charge at Exh.32, to which the accused pleaded not guilty and claimed for trial.

5. In order to bring home the guilt of the accused, prosecution has examined Informant PW1-Kishanrao Kadam at Exh.100, PW2-Laxman Narsingrao Kadam at Exh.103, PW3-Kiran Namdeorao Bidwai at Exh.112, PW4-Ramrao narsingrao Kadam at Exh.144, PW5-Prahlad Raosaheb Kadam at Exh.166, PW6-Vithal Kishanrao Pawar at Exh.6, PW7-Jagannath Maroti Chinchole at Exh.173, PW8-Gangadhar Deorao Shinde at Exh.175 and PW9-Ramchandra Sakharam Adkine at Exh.189

6. On conclusion of trial, the learned trial Court has recorded the statement of the witnesses under Section 313 of the Cr.P.C. at Exh.218 to 235. The say of the accused is about false implication on the basis of false report, hence prayed for acquittal. Learned trial Court passed the impugned judgment

and order on 06.07.2019, and acquitted the respondents-accused. The informant has challenged the said acquittal here in this appeal.

7. The learned advocate appearing for the appellant vehemently canvassed that though the prosecution examined the injured-PW1 Vijay Kadam at Exh.100 and PW2-Laxman, eye witness at Exh.103, PW4-Ramrao Kadam at Exh.144 as well as PW5-Prahlad Kadam at Exh.166 and all these witnesses have deposed that, on 03.06.2009, at about 7.00 p.m. when the injured-PW1-informant reached near Maroti Temple, at that time, the accused persons who were members of unlawful assembly and with their common object assaulted the PW1-informant on account of bringing no confidence motion. However, the learned trial Court failed to consider oral as well as documentary evidence in positive manner and acquitted the respondents-accused. Therefore, the impugned judgment and order passed by the learned trial Court deserves to be quashed and set aside.

8. The learned advocate appearing for the informant-appellant further canvassed that the appellant-informant has suffered grievous injuries on his vital part of the body due to assault by axe at the hands of the accused no.16-Bhimrao Galande who gave blow on the back side of his head with axe and accused no.2-Shivling Khedkar gave blow with stone on his head. Death of informant could have been caused due to said assault, if would not have

been treated within time and the respondent-accused would have been held guilty of his murder in such event. However, the learned trial Court recorded perverse findings and acquitted the accused, hence prayed for quashing and setting aside the same.

9. Evidence of informant-PW1 would suggest that accused persons were having katti, stones, sticks, axes and the accused no.16-Bhimrao assaulted on his head by axe. The accused no.2-Shivling Khedkar hit stone on his head, other accused Chandrakant Khedkar (accused no.21) assaulted to one Laxman Kadam with stick. Madhav Khedkar assaulted Laxman with stick and Manohar assaulted Prahlad Kadam on his leg with stick. The accused no.14-Ram Khedkar assaulted Ramrao Kadam with stick. Admittedly, he is saying about strained relationship or political rivalry and therefore, his testimony should be minutely considered. Prosecution should rule out the possibility of false implication. We will have to insist on material corroboration to his testimony, before holding accused guilty of committing any crime.

10. Further as per the evidence of PW1, PW2, PW3, PW4 and PW5 the accused persons used sticks and axe during the assault, however, evidence of PW1-informant itself suggest that the accused persons were having katti and stones in their hands but evidence of PW2-Laxman Kadam and PW5-

Prahlad Kadam appears that the police did not seize axe, sticks, katti and stones.

11. The evidence of PW9-Investigating Officer-Ramchandra Adkine appears about recovery of one stick under seizure panchanama Exh.213 at the instance of accused no.8-Shivaji Malge, one stick from the accused no.2-Shivling Khedkar, axe from the accused no.16-Bhimrao Galande, one stick at the instance of accused no.14-Ram Khedkar, one stick from accused no.7-Chandrakant Khedkar but eye witness to the memorandum panchanama and seizure panchanama turned hostile. As per the testimony of informant-PW1 the accused no.16-Bhimrao Galande assaulted on his head by axe but the prosecution failed to prove seizure and axe recovered at the instance of accused no.16, though he was interrogated. The prosecution failed to examine other witnesses to prove seizure panchanama. The testimony of PW2-Laxman Kadam does not help the prosecution and there are material improvements amounting to omission brought on record. The testimony of PW9-Investigating Officer does not appear credible and creates a serious doubt about story of the prosecution as well as seizure of weapons. The evidence of PW4-Ramrao Kadam does not inspire confidence as his evidence is not in corroboration with the evidence of other witnesses.

12. Further the evidence of Medical Officer-PW3 Dr. Kiran Bidwai would show that he examined Shivaji Malge-respondent no.8, Bhimrao Galande-respondent no.16, Vitthal Kadam-respondent no.17, Damodar Kadam and Manohar Khedkar on 03.06.2009 and found injuries on their person. Therefore, it appears that the respondents-accused in the present case were injured during the incident, which is subject matter of Sessions Trial No.11/2012 and the prosecution suppressed material facts in the trial about sustaining of injuries by the accused. Though, the informant-PW1 alleges about assault at the hands of the respondent no.16-Bhimrao Galade with axe and another accused no.2-Shivling Khedkar with stick, yet it could have been the result of free fight between the two groups. The prosecution has failed to prove that there was common object for the accused to commit the said crime. No confidence motion could have been only against one person. Why others should join to that person. How the 'unlawful assembly' was formed has not been clarified.

13. Learned trial Court passed the impugned judgment and order on 06.07.2019, holding that the prosecution has failed to bring substantial evidence on record to prove guilt of the accused for the offence punishable under Section 307, 148, 323, 324, 506 read with Section 149 of the I.P.C. and acquitted the accused. The said findings do not warrant interference at the hands of this Court, in absence of substantial grounds. Therefore, the present

appeal is liable to be dismissed at the threshold at the stage of admission. Accordingly, the appeal stands dismissed. R & P be remitted back to the trial Court.

[Y.G. KHOBRAGADE, J.]

[SMT. VIBHA KANKANWADI, J.]

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