

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

CRIMINAL APPEAL NO. 923 OF 2014

The State of Maharashtra ...Appellant
vs.
1. Vijay Tukaram Jadhav
Age 31 years, Occ.: Business
2. Ushabai Tukaram Jadhav
Age: 55 years, Occ.: household
Both residing at Settlement Free Colony
No. 2, Solapur ...Respondents

Mr. Y. Y. Dabke - APP for the Appellant/State
Mrs. Vrushali R. Raje – Appointed Advocate for the Respondent

CORAM : S. M. MODAK, J.

DATE : 13th MARCH, 2023

JUDGMENT :-

1. Heard learned APP Shri Dabke and learned Advocate Mrs. Vrushali Raje for the Respondents appointed by the Court.
2. Both these Respondents were acquitted by the Court of the JMFC, Solapur on 15/06/2010 for the offence punishable under Sections 324, 504, 506 read with Section 34 of the Indian Penal Code and under Section 4 (25) of Indian Arms Act and under Sections 37(1), 135 of Bombay Police Act.

3. On the point of incident, here were three eye witnesses.

They are as follows:-

P. W. No. 2	Indira Gaikwad	First informant
P. W. No. 3	Mina Bajrang Gaikwad	Relative of first informant
P.W. No. 4	Roushani Gaikwad	Daughter of first informant

4. In addition to that there is recovery of sword at the instance of the Respondent No. 1- Vijay Jadhav. On the basis of the above evidence, the trial court has given them benefit of doubt on account of variances in between their oral testimonies. So now question is whether the benefit of doubt given to the Respondents is proper or not and whether there is any scope of interference.

5. It is true that the law on the point of scope for the Appellate court in case of judgment of acquittal is well settled. Learned Advocate for the Respondents relied upon the judgment in case of *Mohinder Singh Vs. State of Punjab*¹ and more specifically para no. 15. The observations in earlier judgment in case of *Chandrappa Vs. State of Karnataka*² are reproduced in para no. 15. If those criteria are concerned, I do not think that there is any scope

¹ (2018) 18 Supreme Court Cases 540

² (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325

for interference by this Court. I will give reasons for my conclusion.

6. The first informant - Indira Gaikwad is resident of Mumbai. Her son resides in a Settlement Free Colony No. 4, Solapur. There are certain criminal cases against him. It was also suggested that he was externed but it is not accepted. There was an allegation of stealing a motor cycle by the son and on that ground the Respondent No. 1-Vijay beat him. When the first informant got knowledge about the same, she went to Solapur. Even she hurled abuses and that is why the Respondent No. 1-Vijay and his mother Usha got annoyed.

7. The incident took place on 01/05/2002 in the morning hour at 8.30 a.m. in front of house of P.W. No. 3- Mina Bajrang Gaikwad. The first informant and her daughter had gone to the house of the said Mina. The said Mina was busy in her household work. Both the Respondents were abusing the first informant and the Respondent No. 1-Vijay possesses with the sword. The incident was very short. The Respondent-Usha caught hold Indira from back and the Respondent No. 1-accused assaulted her by means of sword. She received injuries on her left hand which was certified by Dr. Padmakar Wadhavrao Patil, Medical Officer attached to the Civil

Hospital. According to him, injuries were simple. Whereas Shashikant Baswaraj Ganjale, Medical Officer attached to the Aashwini Private Hospital certified injuries to be grievous.

8. After assault the injured was taken to Police Station first and then to Civil Hospital. She was accompanied by Bajarang Gaikwad, Mina Gaikwad, Laxmi and Sundrabai. There is also an objection that these persons were not examined. I am not impressed by these arguments. It is not always necessary that the person who accompany the injured to the hospital need to be examined but persons who have witnessed the incident are necessary to be examined.

9. P.W. No. 3 - Mina Bajrang Gaikwad and P.W. No. 4 - Roushani Gaikwad both have witnessed the incident. There is an argument that it is highly improbable. Mina has witnessed the incident when she was busy in household work and incident took place outside gate of the house of the Mina and it is difficult to witness the incident from the house. There are certain lacunae in her evidence. There are not on material aspects. The defense of the Respondents is of denial and they have pleaded that in fact the son of the injured quarreled with the people and when the first

informant tried to intervene she has received injuries. It was denied by the first informant.

10. With the assistance of both the sides, I have perused the evidence of three witnesses. Their evidence needs to be assessed on the basis of the contemporaneous record. It is true that the incident is very short. If such is a case, job of the Court is difficult. The reason is when the witness has given minimum details the evidence has to be appreciated within a limited scope. Furthermore when these two witnesses claimed to be eye witnesses their evidence is not challenged on the point of their possible reaction to the assault on the first informant.

11. As said above, there are two contemporaneous record. It includes the letter given by the Investigating officer to Civil hospital. It is at Exh. 103 and second is history mentioned by the medical officer attached to the Civil Hospital at Exh. 92. In Exh. 103 what the police have said is due to quarrel, the first informant has received injuries on her hand. It is true that purpose of giving such letter is very limited. If it is medical legal case, the Doctor insists on obtaining the letter from the Police. The Police were not supposed to write details in that letter. However genesis of the incident needs to

be mentioned. There is vast difference in between the quarrel and assault. It is not mentioned in the letter that there was assault on the first informant. This letter must have been given on the basis of facts stated by the first informant because the signatory may not be having first information about the incident. So not mentioning the assault in that letter is also important aspect.

12. In Exh. 92 the Doctor has mentioned the assault by person residing in front of the gate. It is true that names of two persons i.e. Bajrang and Saundrabai who have brought Indira-first informant to the hospital are mentioned but the name of the assailants are not mentioned. Even there is certificate issued by the Aashwini hospital there is mention of an assault, but names of the assailants are not mentioned. I do not think name of the assailants are necessary to be mentioned in the history.

13. It is true that there is nothing on record to show that the injured was hospitalized for 17 days. It is also true that the first Doctor from the Civil Hospital has said the nature of injury as simple but Doctor attached to the Aashwini hospital has said the nature of the injuries as grievous. Any injury can be grievous if it falls within purview of Section 320 of the Indian Penal Code. I do not think that

the injury noticed even by the Doctor of the Aashwini Hospital falls within purview of the Section 320 of the Indian Penal Code. It does not fall within either of the categories mentioned therein.

14. It is true that hurt is caused by the dangerous weapon and sword is dangerous weapon. The injury falls within purview of Section 324 of the Indian Penal Code. However the question remains whether both these Respondents are author of those injuries.

15. I have perused the evidence of these three eye witnesses. The trial Court has noticed the variances in testimonies of the witnesses. So far as abuses are concerned, none of the witnesses have specifically mentioned about those abuses. The F.I.R. is recorded in the Civil Hospital as it is clear from the evidence of the first informant as well as evidence of the investigating officer. As contended by learned Advocate for the Respondents even though the clothes of the injured are seized and the weapon is seized, they were not sent to the Chemical Analyser. In each and every case, it may not be possible.

16. When I have perused the evidence of the three eye-witnesses on the background of the allegation of committing theft by the son of the first informant, the trial court has rightly scrutinized

their evidence with caution. The fact that at the earliest occasion it was not told to the Police that the injuries to the hand were caused by assault and it was told to Police when admitted in the hospital. There was time gap. Not stating about assault on the first occasion also creates doubt.

17. On this background, the variance noted down by the trial court gains significance. If the evidence of the eye witnesses is reliable and trustworthy, then only the recovery of weapon gains importance. If these three witnesses lacks creditibility, the recovery of the weapon which is corroborated piece of evidence is having no value. So I am unable to disagree with the trial court.

18. Prosecution under Section 4 of the Arms Act is maintainable only when there is a notification thereby banning possession of the certain weapons. It is not produced on record. Even though one witness P.W. No. 8 is examined on the point the publication of the notification under Section 37 of the Bombay Police Act his testimony is oral testimony and not supported by evidence as to how publication of the notification under Section 37 of the Bombay Police Act was made. Possessing the weapon can be offence when only public came to know that their possession is banned. The

trial court has rightly acquitted the Respondent No. 1 for the offence under Arms Act and Police Act.

19. For the above discussion, I do not think the judgment of the acquittal can be interfered with. Hence appeal is dismissed.

20. Office to pay necessary fees to appointed learned Advocate Mrs. Vrushali R. Raje for the Respondents as per Rules.

[S. M. MODAK, J.]