



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

CRIMINAL APPEAL NO.260 OF 2005

The State of Maharashtra,
Through Police Station Officer,
Pathardi Police Station, Pathardi,
Dist.: Ahmednagar

**.. Appellant
(Ori. Complainant)**

Versus

1. Babasaheb Baburao Andahle,
Age: 33 years,
2. Babarudhan Baburao Andhale,
Age: 35 years,

All R/o. Akole, Tq. Pathardi,
Dist. Ahmednagar

**.. Respondents
(Ori. Accused No. 1 & 2)**

...
APP for Appellant/State: Mrs. Uma S. Bhosle
Advocate for Respondents: Mr. Arvind G. Ambetkar
...

CORAM : ABHAY S. WAGHWASE, J.
Reserved on : 12.06.2024
Pronounced on : 19.06.2024

JUDGMENT:

1. The State is hereby assailing the judgment and order of acquittal passed by the learned Judicial Magistrate First Class, Pathardi, dated 05.01.2005, in R.T.C. No.16 Of 2003, by which present respondents were acquitted from charges under sections 324, 323, 504, 506 read with 34 of IPC.

2. PW-1 complainant, set law into motion lodged report with Pathardi Police Station, alleging that on 04.02.2003 while he was sitting in front of his house, accused Babasaheb and Babrudhan arrived getting armed with axe and stick respectively. They questioned the complainant as to why his cattle entered their gram crop. Babasaheb assaulted by means of axe on the head and when his wife intervened, she too was given blow near eye, whereas the accused Babrudhan hit his son on his head. Therefore, he approached the police, who referred him to the hospital and he lodged report at Exhibit 22, on the strength of which crime came to be registered for offence under sections 323, 324, 504, 506 read with 34 of IPC.

3. After conclusion of investigation accused persons were chargesheeted and tried by learned J.M.F.C. vide R.T.C. No. 16 of 2003. Prosecution adduced evidence of four witnesses i.e. the complainant, his son, his wife and medical expert were examined who treated the injured. Learned trial court on appreciating the oral / documentary evidence reached to a finding that the prosecution failed to prove case beyond reasonable doubt and, thereby, acquitted accused from all the charges.

4. Feeling aggrieved by the same, State has come up in appeal on various grounds spelt out in the appeal memo.

ARGUMENTS

Submission on behalf of the learned APP:

5. Appraising this court about the complaint and charge, learned APP submits that there is cogent reliable convincing evidence including that of injured eye witnesses. That roles of accused are clearly spelt out. She pointed out that PW-1, PW-2 and PW-3, who are father, son and wife, they were all assaulted by accused persons. Their roles are clearly spelt out. The witnesses have narrated the nature of article held and used and they have also narrated the site on which assault was made. That, immediately they were examined by PW 4 - Medical Officer, who noted the injuries and treated them. Such a Medical Expert himself has stepped in the witness box and described and narrated the injuries and he identified the injury certificates. According to the learned APP all required ingredients attracting the charges were available. She pointed out that testimonies of injured eye witnesses has remained intact and remained unshaken throughout. Therefore, prosecution version has not been disturbed or rendered doubtful. The offence is thereby proved and, therefore, learned trial court ought not to have held that case is not proved beyond the reasonable doubt. According to her, all necessary ingredients were available and, therefore, conviction ought to have been recorded but the same not being done, State has come up in appeal and,

therefore, it is prayed that the impugned judgment under challenge be set aside by allowing appeal.

Submission on behalf of the Respondents:

6. In answer to above, supporting judgment and order of acquittal learned defence counsel submitted that there is false implication. The witnesses are non consistent. The answers given by witnesses in cross are rendered doubtful. The witnesses are not supporting to each other. Learned trial court who conducted trial has noticed several infirmities, inconsistencies, contradictions, omissions and, therefore, learned trial court disbelieved prosecution story and committed no error whatsoever in acquitting the accused. According to him, the judgment is supported by sound reasons and the findings are in consonance with the evidence on record. There is no need to deconstruct such findings. There is no merit in the appeal of the State and he prays to dismiss the same.

EVIDENCE ON RECORD

7. **PW-1** Abhiman, informant, who deposed at Exhibit 21, states that accused nos.1 and 2 are brothers and accused nos.3 and 4 are their wives. According to him, the incident took place on 04.02.2003 at 08.00 p.m., when he was in his house at that time accused nos.1 and 2 came. They were armed with axe and stick respectively. Accused no.1 –

Babasaheb told him that his cattle were grazing in the gram crop and, thereafter, accused Babasaheb hit him with axe on the head. He also assaulted his wife on the left eyebrow. Accused no.2 – Babrudhan hit his son; complainant's son; with stick on the head. He approached police, lodged report and he was referred to hospital.

8. **PW-2** Tukaram, who is examined at Exhibit 23, deposed that incident took place at 08.00 p.m. in front of the house. He himself, his younger brother, father and mother were present in the house. Accused No.1 – Babasaheb his uncle came there, he was armed with axe, whereas accused no.2 – Babrudhan also came with the stick. They both told his father that his goats have grazed gram crop and Babasaheb hit his father with axe on the head. His mother has tried to intervene and separate them at that time Babasaheb hit her with axe near the left eyebrow. He deposed that accused no.2 – Babrudhan gave blow of stick on his head. Accused Leela and Parabai also came there who abused and issued threats to them. His father lodged complaint and they have also visited hospital.

9. **PW-3** Sitabai, who is examined at Exhibit 24, testified that incident took place on 04.02.2003 at 08:00 p.m. and she was present in the house along with family members. Accused Babasaheb came with axe and accused Babrudhan came with stick. They started abusing on account

of grazing of crop by their goat. According to her Babasaheb gave axe blow on her husband's head, whereas he hit her below the left eye with axe. Whereas accused no.2 Babrudhan hit her son Tukaram by stick on the head, whereas accused nos.3 and 4 abused them and, therefore, they approached police station and later on reached to the hospital.

10. **PW-4** Medical Officer, who is examined at Exhibit 27, stated that on 04.02.2003, while he was attached to R.H.Pathardi as a Medical Officer, police referred injured Abhiman, Tukaram and Sitabai vide Yadi No.326/2003. He examined all of them. He narrated injuries noticed on all three persons. He also narrated that there was history of assault. He identified Medical Certificates issued by him, which is at Exhibits 28 (Tukaram), 29 (Abhiman) and 30 (Sitabai). He also carried MLC register. He deposed that injuries are possible by hard and blunt object.

LEGAL POSITION

11. Before re-appreciating the entire evidence, it would be profitable to first deal and discuss the settled legal position and principles to be borne in mind while dealing with an appeal against acquittal.

It is fairly settled legal position and also cardinal principle of criminal jurisprudence that there is always presumption of innocence in favour of accused unless it is proved otherwise. It is further settled that the presumption gets strengthened unless it is shown that the

appreciation at the hands of the trial court was patently perverse, illegal and or in absence of evidence on record. That, though there are powers with appellate higher court, to re-appreciate the entire evidence, while dealing with appeal against acquittal, the appellate court is not expected to substitute it's own view with the view taken by the trial court, more particularly when the view taken by the trial court is possible view.

12. As to what is meant by "possible view" is dealt in numerous judgments. Law to this extent is settled by the Hon'ble Apex Court in the case of ***Chandrappa v. State of Karnataka***, (2007) 4 SCC 415, which are as under :

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law.

Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

13. Similar views are expressed and echoed by the Hon’ble Apex Court in the cases of ***Ravi Sharma v State (Government of N.C.T. Delhi and another)***, 2022 LiveLaw (SC) 615, ***N.Vijay Kumar v. State of Tamil Nadu***, (2021) 3 SCC 687; ***Murugesan v. State***, (2012) 10 SCC 383, ***Hakeem Khan v. State of M.P.***, (2017) 5 SCC 719, and the ratio that is culled out that “*if the “possible view” of the trial Court is not agreeable for the High Court, even then such “possible view” recorded by the trial Court cannot be interdicted. It is further held that as long as the view of the trial Court can be reasonably formed, regardless of whether the High Court agrees with the same or not, verdict of the trial Court cannot be interdicted and the view of the High Court cannot supplant over the view of the trial Court*”.

ANALYSIS

14. Bearing above discussed legal propositions and principles propounded by the apex court, evidence in the case in hand is put to scrutiny.

PW-1, PW-2, PW-3 are father, son and wife. They all deposed about accused Babasaheb and accused Babrudhan coming armed with axe and stick respectively. According to witnesses Babasaheb hit axe to

informant and his wife. The role attributed to Babrudhan is dealing blows to PW-2 Tukaram. But PW-4 the Doctor, who examined them, has in his substantive sentence deposed about all injuries suffered by PW-1 to PW-3 to be simple in nature and according to him, such injuries are possible by hard and blunt object. He has not opined the injury to be by sharp or cutting weapon or injury to be a cut injury or gaping injury to hold use of axe. PW-2 while under cross specifically answered that blow of the axe was given by the edge side. If this was so, then doctor would have noticed sharp cut injury. PW-2 also admits that at the time of incident there was darkness near the spot. While under cross PW-4 has flatly denied that injury suffered by PW-1 Abhiman complainant to be possible by sharp weapon like axe. Equally he has also denied injury suffered by PW-3 to be possible by axe. Therefore, testimony of injured witness is not finding support from medical expert.

15. Another distinct feature of the case is that recovery of article is at the instance of only accused Babasaheb i.e. both axe as well as stick. Said recovery is said to be effected on 15.02.2003 regarding incident which took place on 04.02.2003. Panchas to the memorandum and recovery are not examined by the prosecution for the best reasons known to him. Further, I.O. did not take pains to send seized axe to analysis. Clothes of injured are also not seized even when PW-1 deposed and

answered that after the incident his clothes were blood stained. Therefore, investigation is apparently defective in nature and in casual manner.

Admittedly, parties are on cross terms since previously and as such there is chequered history of disputes. There is no independent evidence. In the light of previous enmity, prosecution ought to have adduced evidence from independent corner.

16. Trial court has already given benefit of doubt. On re-appreciation even in the considered opinion of this court, evidence of prosecution is not foolproof for above discussed reasons. The view taken by the trial court with such quality of evidence is possible view. Applying the above discussed settled legal position, there is no reason to interfere and learned APP having failed to specifically point out how the impugned judgment is patently perverse and illegal, relief as prayed by the State cannot be granted.

Hence no case made out on merits. Consequently appeal is required to be dismissed.

ORDER

Criminal Appeal No.260 of 2005 is dismissed.

[ABHAY S. WAGHWASE, J.]