



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

CRIMINAL APPEAL NO. 548 OF 2004

The State of Maharashtra
Through Police Station Officer,
Police Station Jamkhed,
Tq.Jamkhed, Dist.Ahmednagar.

....Appellant

Versus

Bhausahab Haribhau Jaibhai
Age: 34 years, R/o.Telangshi,
Tal.Jamkhed, Dist.Ahmednagar.

.....Respondent
(Ori. Accused)

.....
APP for Appellant : Mr.S.M.Ganachari
Advocate for Respondent : Mr. N C Garud

...
CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 10 JANUARY, 2024
PRONOUNCED ON : 16 JANUARY, 2024

JUDGMENT :-

1. State has come up in appeal on getting dissatisfied by the judgment and order of acquittal passed by the learned Judicial Magistrate, First Class, Jamkhed on 27-04-2004, thereby acquitting respondent from charge under Section 25(1)(a) read with Section 4 of the Arms Act.

CASE OF PROSECUTION IN BRIEF

2. Prosecution was launched against present respondent alleging

that on 13-10-2000, villagers approached Jamkhed Police Station accusing one Mahadeo Narhari Waibhase, who was the former Sarpanch, for forming a group of Gundas and indulging in committing various offences like extortion, theft of electric pumps and committing rape. In the said complaint, accusations were also made against present respondent alleging that he was one of the members of said group. Due to fear, villagers avoided to make complaint. On 28-04-2000, there was deadly assault on Subhash Jaibhai. There was alleged use of deadly weapons like sword, pistol and hunter while committing above offences. Therefore, on receipt of complaint, Police registered FIR under Section 25(1)(a) read with Section 4 of the Arms Act, conducted investigation and chargesheeted respondent.

On denial of charge, he was tried by learned Judicial Magistrate, First Class, Jamkhed, who on appreciating evidence adduced by prosecution, held charges as not proved and acquitted respondent and hence, the appeal.

SUBMISSIONS

On behalf of State :

3. Learned APP for appellant would submit that full proof case

was made out. That there is overwhelming evidence against respondent accused. That prosecution had adduced evidence of material witnesses. That their evidence had remained unshaken. That respondent was found to be in possession of deadly arms and weapons without licence or permit and as there was contravention of provisions of Arms Act, charges were proved, but according to him, learned trial Court has failed to appreciate evidence and erred in acquitting respondent. That learned trial Court failed to appreciate the fact that weapons were seized, which were in possession of respondent accused, but learned trial Court has not considered this crucial aspect. Police witnesses have been disbelieved without assigning proper reasons. For all above reasons, he submits that appeal be allowed.

In support of above submissions, he seeks reliance on following rulings :

- (i) ***State of Gujarat v. Raghunath Vamanrao Baxi*** reported in *AIR 1985 SC 1092*.
- (ii) ***Gopal Mahadeo Tambada v. The State of Maharashtra*** reported in *1997 Cri.L.J.2425*.
- (iii) Judgment of Hon'ble Allahabad High Court in ***Mahadeo v. The State*** reported in *1990 Cri.L.J. 858*.

(iv) Judgment of this Court in Criminal Appeal No.530 of 2004 decided on 19-07-2010.

On behalf of respondent :

4. In answer to above, learned Counsel for respondent would submit that prosecution miserably failed to establish the charges. Material witnesses are not examined. That most importantly Pancha to alleged seizure has not been examined. That there is no independent, reliable witnesses except Police witnesses, who were interested in the fate of the prosecution. According to learned Counsel, as required ingredients for attracting the charges framed were not brought on record by prosecution, learned trial Court committed no error in acquitting the accused and he prays to dismiss the appeal for want of merits.

PROSECUTION EVIDENCE IN TRIAL COURT

5. To ascertain correctness of the impugned judgment, this Court has re-examined the prosecution evidence.

PW1 Shridhar Jivaraj Kendre, who was API at relevant time, in his evidence at exh.12 has deposed that in October 2000, villagers despatched a application alleging that former Sarpanch and a group

of 10 persons including respondent were possessing arms like pistol and that villagers felt alarmed and threatened and therefore, on such application, Police staff reached the Vasti of Kantilal Jaibhai on the dawn of 20-10-2000 alongwith panchas namely Prabhakar Dhale and Ashru Chaure. They visited the house of Bhausahab Jaibhai i.e. present respondent and conducted house search during which beneath the bed, one iron sword and one hunter was found. Accused respondent had no explanation of its possession. In presence of panchas, seizure was caused vide panchanama exh.13 and this witness lodged complaint exh.14.

PW2 Sham Mohaniraj Barde (ASI) is also a Police Official and he stated that on 19-10-2000 he was called by PW1 Kendre and apprised about complaint being received against respondent for possessing pistol and therefore, raid was carried out in presence of panchas and during search, a sword and a hunter were found and the same were seized.

Likewise **PW3** Waman Ananta Thorat, Head Constable also deposed in the similar manner about receipt of complaint regarding respondent to be in possession of arms like pistol and therefore, PW1 Kendre arranged raid on 19-10-2000 and in presence of panchas, even this witness joined the raiding party and entered the house of

the respondent and they all came across a sword and a hunter beneath the bed of respondent and the same to be seized and the complaint being filed by PW1 Kendre.

Record shows that on the strength of evidence of all three Police officials, prosecution took up trial of respondent.

All above three witnesses were subjected to extensive **cross-examination.**

PW1 Kendre (API) posted at Jamkhed Police Station in his cross-examination admitted that application from villagers was received by one Thorat (PHC), but he did not place any report to this witness. He admitted that no pistol was recovered. He has admitted that there is no mention of sword and hunter in the complaint lodged by villagers. He also admitted that immediately at the time of raid accused was not arrested.

PW2 Barde (ASI) also a Police official has admitted in cross-examination that he cannot give details of panchas or from where they were called and by whom. He has also admitted that he is unable to state who prepared the panchanama. He has answered that during the raid only one person was present in the vasti. He has admitted that raid and search was conducted by use of Torch light. He has also admitted that the person whose house was raided was

not arrested immediately.

PW3 Thorat, who was a Head Constable at relevant time, has admitted in cross-examination that pancha witness in this case was accused in other case. He admitted that no opinion of expert has obtained regarding the age of seized sword. He also admitted that statement of person, who lodged complaint, was not recorded. Even he admitted that exh.16 is silent about sword or hunter. He is also unable to state who called or arranged panchas. He admitted that accused is having wife and children.

ANALYSIS AND CONCLUSION

6. On carefully evaluating above evidence, except testimonies of Police officials, here there is no other independent witness as pointed out by learned counsel for respondent. In spite of two persons allegedly engaged as panchas, prosecution has not adduced their evidence for the best reasons known to them. The very purpose of engaging independent panchas is to rise the credibility of prosecution case. Unfortunately, panchas to so called seizure have not examined. All three Police officials have no satisfactory answer as to who summoned panchas and from where. Infact one of the witnesses admits in cross-examination that pancha used was an accused in

another case. It is also emanating that after alleged seizure has been carried out that night from the house of respondent, he was not immediately arrested. Apparently, so called raid and seizure was allegedly done by use of torch light. Out of three witnesses, two denied accused to be having family members and PW3 Thorat contradicts by stating that accused was married and he was having children. Above discussed evidence shows that complaint was received regarding possession of pistol. Admittedly, it is not seized. Hunter seized does not fall in the category of arms.

7. Here apparently alleged complaint exh.16 is received on 13-10-2000 but raid is apparently arranged after almost a week that too in the dead of the night and FIR is lodged on 20-10-2000. There is no explanation for the said delay. More importantly, it needs to be reiterated that panchas to alleged recovery and seizure of articles are deliberately withheld. This crucial aspect proves fatal for the prosecution. There is no corroboration to the testimonies of all witnesses who are admittedly Polices officials. Consequently corroboration from independent corner was essential.

8. On re-appreciation and re-analysis of the evidence, apparently

there is very fragile and weak evidence on behalf of prosecution in support of the charges. Panchanamas ought to have been proved by examining through panchas, but they are not examined. There is no material to show that the seizure was infact of a deadly weapon. Raid was carried out on receipt of information regarding possession of pistol, but the same has apparently not seized during raid.

9. Learned APP has referred to above mentioned rulings but in those cases, there was other incriminating material and therefore, testimonies of Police officials taken aid of and also relied. Here it is not so. Except Police witnesses, no other independent witnesses and even the panchas, used in the process of seizure, have been examined by prosecution thereby rendering its case weak.

10. On taking survey of above discussed evidence, even this Court is of the considered opinion that the view taken by the learned trial Court is the most possible view that could emerge on appreciation of available evidence.

Learned APP could not point out any patent perversity or error in the manner of appreciation of evidence, findings and conclusion. Hence, there being no merits in the appeal, it deserves to be dismissed. Accordingly, following order is passed :

ORDER

Criminal Appeal No.548 of 2004 is dismissed.

(ABHAY S. WAGHWASE)
JUDGE

SPT