



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 744 OF 2004

The State of Maharashtra
through Police Station Wadhona,
Taluka Udgir.

... Appellant

versus

1. Bhagwan s/o Bhujangrao Gaikwad
Age 32 years, R/o Jalkot,
District Latur.
2. Shivram s/o Mariba Waghmare,
Age 55 years
3. Madhav s/o Shivram Waghmare,
Age 35 years
4. Yadav s/o Shivram Waghmare,
Age 30 years
5. Balu @ Ankush s/o Shivram Waghmare
Age 20 years
6. Sahebrao s/o Shivram Waghmare
Age 25 years
7. Baliram s/o Manikrao Sonkamble
Age 45 years

All r/o Digras, Taluka Kandhar,
District Nanded.

... Respondents
[Accused]

.....

Mr. S. M. Ganachari, APP for the Appellant-State.
Mr. Nandagavale h/f Mr. V. G. Sakolkar, Advocate for the
Respondents.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 25.04.2024

Pronounced on : 06.05.2024

JUDGMENT :

1. Aggrieved by the acquittal of respondents by learned J.M.F.C., Udgir in R.C.C. No. 53 of 1999 vide judgment and order dated 28.07.2004, State has preferred appeal by invoking Section 378 of of the Criminal Procedure Code [Cr.P.C.].

FACTS LEADING TO TRIAL ARE AS UNDER

2. Informant and accused no.1 are real brothers are neighbours. There were disputes between them on account of area in possession and their used to be quarrels between them on such count. On 28.11.1998, informant Shravan was abused by accused persons in above background. When he requested them not to abuse him, it is alleged that, all accused attacked him. When wife and sons of informant came to his rescue, they too were beaten by means of stick, kicks and fist blows. Accused also set vehicle owned by informant to fire. Same night, complaint was lodged with police, on the strength of which, crime was registered bearing Crime No. 91 of 1998 for

offences punishable under Sections 147, 148, 149, 324, 325, 504, 506 and 435 of Indian Penal Code [IPC].

On completion of investigation, they were chargesheeted and tried before learned J.M.F.C., Udgir vide R.C.C. No. 53 of 1999. On appreciation and analyzing the evidence, learned trial Judge reached to a finding that prosecution failed to establish its case beyond reasonable doubt and extending benefit of the same, by judgment and order dated 28.07.2004, all accused persons came to be acquitted.

Said judgment is now taken exception to, by the State.

SUBMISSIONS

On behalf of the appellant State :

3. Learned APP pointed out that there was dispute between accused and informant, who are in close relation and immediate neighbours. There used to be regular quarrels between both parties. That, on 28.11.1998, informant was abused and on being questioned, he was attacked and beaten by accused. He pointed out that when informant's sons and wife came to his rescue, they were also beaten. Therefore, all were beaten. Learned APP pointed out that all accused

are named. Who was holding what is also stated by the informant, his wife as well as sons. They are all consistent in their evidence. Their evidence stood unshaken in cross. That, further, accused persons also set jeep of informant to fire and caused loss and damage. Complaint was promptly lodged. Pancha to spot and medical expert, who treated injured, are examined. According to learned APP, there is improper appreciation. There is not only eye witness account, but also injured witness account. However, in spite of charges being proved, learned trial court disbelieved the prosecution version. Consequently, learned APP submitted that on re-appreciation, judgment under challenge is required to be set aside by allowing the appeal.

On behalf of the respondents :

4. In answer to the above, learned counsel for the accused respondents pointed out that admittedly there is previous enmity. Complaint is with ulterior motive for false implication. He pointed out that there was no occurrence as alleged by informant and that there is no independent evidence about the incident. Moreover, only interested witnesses are examined and even their evidence is full of material omissions, contradictions and improvements. He further pointed out that though there is medical evidence, there is

overwriting over the same and as such, there is room to presume that it is manufactured document. According to him, there are general and omnibus allegations. Therefore, learned trial court rightly disbelieved the prosecution version and acquitted accused. Resultantly, he submitted that, there is no merit in the appeal and hence he prays to dismiss the same.

IN BRIEF, EVIDENCE ADDUCED BY PROSECUTION IN TRIAL COURT

5. Prosecution seems to have adduced evidence of following witnesses in support of their case:

PW1 Shravan, who is examined at Exhibit 78, deposed about occurrence dated 28.11.1998 that, around 9.30 p.m., he being abused initially in the backdrop of previous dispute. According to him, when he requested not to abuse, he was assaulted by Yadav, Shivram, Madhav by means of iron bar, resulting into grievous injury to his head. According to him, accused Sahebrao and Balu assaulted him by means of stick, whereas accused Bhagwan and Baliram assaulted by means of kicks, fist blows and stone. When his sons Sangram and Raju and wife Bharatbai came, they were also beaten by means of stone, iron rod and stick respectively. Thereafter accused persons torched the jeep bearing no. MH-24-749 causing loss of Rs.3,00,000/-, and hence complaint.

PW2 Bharatbai, wife of PW1, also stated in her evidence at Exhibit 80 that on said night, she heard abuses and after noticing some incident outside the house, she went and at that time, accused Shivram, Madhav, Yadav assaulted her husband by means of iron bar causing him injuries on head, back and right hand. Then they came towards her and she was beaten by Madhav on the right hand, whereas accused Baliram hit her with stone. Accused Bhagwan, Balu and Sahebrao beat her son Sangram with iron bar. Accused Yadav and Madhav assaulted her son Raju by means of stick. Accused Madhav also assaulted her another son Satish with iron bar and all accused put jeep to fire.

PW3 Sangram, son of informant also stated that there was abuse to his father. That, Shivram, Madhav, Yadav, Sahebrao, Balu and Baliram all abused his father and thereafter all seven accused assaulted his father. According to him, his father was assaulted with iron bar by Shivram, Madhav and Yadav, whereas accused Balu, Sahebrao, Bhagwan and Baliram hit his father with stick. This witness was also assaulted by means of iron bar by accused Shivram and Yadav, whereas his mother was assaulted by means of stick by Sahebrao and Balu and accused set their vehicle on fire.

PW4 Raju, another son of informant, also reiterated about the assault by accused to his father by means of iron bar and stick. According to him, Shivram, Madhav, Yadav were armed with iron bar, whereas accused Sahebrao and Balu used sticks and accused Bhagwan and Baliram used kicks and fist

blows as well as iron bar and sticks, causing grievous injuries. He was assaulted on back and legs and accused persons set their vehicle to fire.

PW5 Kerba, is pancha to spot panchanama. He identified the same at Exhibit 93.

PW6 Kashibai, sister-in-law of informant, stated that she was present in the house and that time she heard noise and came out of the house and saw the incident.

PW7 Dr. Jadhav, who examined Shravan, Sangram as well as Bhagirathibai and issued certificates Exhibits 104, 105 and 106.

PW8 Namdeo, pancha to seizure of stick and iron bar at the instance of accused present in the police station.

PW9 API Gaur, who registered complainant and carried out investigation.

ANALYSIS

6. Here, this court is dealing with an appeal against acquittal. Therefore before examining the evidence, it is desirable to reproduce the law on the aspect of power of the appellate court while dealing with an appeal against an order of acquittal.

7. Recently, the Hon'ble Apex Court in the case of **Mohan @ Srinivas @ Seena @ Tailor Seena v. State of Karnataka** 2021 SCC OnLine SC 1233 and **N. Vijayakumar vs. State of Tamil Nadu** [(2021) 3 SCC 687] observed as under :

“While dealing with appeal against acquittal, by invoking Section 378 of Cr.P.C., appellate court has to consider whether trial court’s view can be termed as possible view, particularly when evidence on record has been analyzed. The reason is that, an order of acquittal adds to the presumption of innocence in favour of accused. Thus, appellate court has to be relatively slow in reversing the order of acquittal rendered by trial court. Therefore, the presumption in favour of accused does not get weakened but only strengthens. Such double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on accepted legal parameters.

8. Very recently, the Hon'ble Apex Court in the case of **Ravi Sharma v State (Government of N.C.T. Delhi and another)**, 2022 LiveLaw (SC) 615, has considered and discussed the law 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, reappraise 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.”

Likewise in the same judgment, the Hon’ble Apex Court has touched and dealt with as to what is meant by perverse findings by taking recourse to the earlier decisions in the cases of *Arulvelu and another v. State*, (2009) 10 SCC 206; *Babu v. State of Kerala* (2010) 9 SCC 189 and *Anwar Ali and another v. State of Himachal Pradesh*, (2020) 10 SCC 166.

9. Similarly, while dealing with the aspect as to what is meant by “possible view”, the Hon’ble Apex Court in *N. Vijay Kumar* (supra), by referring to the Judgments in the cases viz. *Murgesan v. State*, (2012) 10 SCC 383, *Hakeem Khan v. State of M.P.*, (2017) 5 SCC 719, observed 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 so 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 High Court cannot be supplant over the view of the trial Court”.

10. In the instant case, informant, his wife and two sons are the only witnesses to the occurrence. Obviously, incident having taking place in the courtyard of informant, there may not be independent witnesses. All witnesses thus being interested witnesses, there evidence is required to be meticulously and carefully appreciated. On placing testimonies of PW1 to PW4 in juxtaposition to each other and on comparing the same to ascertain whether they are lending support to each other by giving consistent version, it is emerging as under:

PW1 Shravan-informant claims that **accused Bhagwan** gave him kicks and fist blows and hit him with stone. His wife Bharatbai attributed role to Bhagwan for using Iron bar, but in assaulting Sangram. Whereas PW3 Sangram has attributed role to Bhagwan for beating with stick to his father Shravan and giving fist and kick blows to PW4 Raju. Thus PW3 Sangram does not himself speaks about he being beaten by Bhagwan by means of Iron bar, as is deposed by his mother. PW4 Raju attributes role of kicks, blows, iron bar and stick to

Bhagwan, but when Bhagwan laid his hand on iron bar is not clarified by either informant or other witnesses.

On carefully going through evidence of informant as regards to the role of **accused Shivram** is concerned, he has attributed role of using iron bar in beating informant as well as PW4 Raju on his left arm. However, PW4 Raju himself does not speak about he being hit by Shivram on his left arm. He only states that accused also assaulted over his back side and leg. Bharatbai attributes assault by iron bar to accused Shivram for hitting her husband PW1 Shravan only, and not to her son Raju. In stead, she attributes role of assaulting her son Raju to accused Yadav and Madhav, that too with stick and not iron bar. Whereas her another son PW3 Sangram deposed that accused Shivram hit iron bar to all four of them.

As regards to role of **accused Madhav** is concerned, informant deposed that he was assaulted by Madhav with iron bar and blow was also given to Bharatbai. Bharatbai corroborates assault by Madhav on her right wrist. However, she further attributes role to accused Madhav for hitting her son PW4 Raju with stick and not iron bar.

All four are found to be attributing assault to **accused Yadav** by using Iron bar, but there are contradictions about who was assaulted by him. Further, informant and his wife are also speaking about he using stick in assaulting PW4 Raju. Thus, he is also said to have put to use iron bar as well as stick.

As regards role of **accused Balu** is concerned, there are allegations of use of stick being hit to informant and Raju. On the contrary, Bharatbai alleged that accused Balu used iron bar to hit Sangram, but Sangram attributed role to Balu for using stick, and that too only to his parents.

Informant claims that he was hit with stick whereas his wife was hit by stone by **accused Sahebrao**. But his own wife alleges assault by iron bar, that too only to son Sangram. Whereas Sangram attributes role of using stick to Sahebrao, not to himself but to his parents and brother.

Further according to informant, **accused Baliram** used both, kicks and fist blows as well as stone in assaulting himself, and also assaulted his wife with stone on shoulder and back. But PW3 Sangram attributes role of using stick to accused Baliram, which is not

stated by his parents. Whereas PW4 Raju made omnibus allegations attributing use of kicks, blows, stick as well as iron bar.

Therefore, above witnesses are giving distinct roles. There is variance in the articles allegedly held by each of the accused and allegedly put to use.

11. PW7 Dr. Jadhav is the doctor who had occasion to examine and treat witnesses and he has issued certificates of informant Shravan, PW3 Sangram and Bhagirathibai. PW4 Raju does not seem to have been examined. Doctor has opined injuries suffered by informant Shravan, Sangram and Bhagirathibai to be simple. However, in cross, medico legal expert has answered that he has examined only three injured and that, he has examined woman namely Baghirathibai and not Bharatbai. He admitted that certificates Exhibits 104 to 106 do not match in sequence of injuries as per MLC register. He has admitted that there is overwriting in respect of description of injuries on the person of informant Shravan and Sangram. He is also unable to remember at what time injured came at Primary Health Center.

12. It is noticed that in trial court, PW8 Namdev has been examined in support of recovery, but there is no memorandum and

this witness at Exhibit 111 directly speaks about police informing about quarrel and Police Head Constable preparing seizure panchanama of one iron bar and one stick and taking his signature over it. He identified the same to be at Exhibit 112. Finding him not supporting, learned APP was permitted to put questions to him, wherein he denied there to be three iron bars and two sticks. In cross at the hands of defence, this witness has admitted that police did not affix label over sticks or any other weapon. According to Investigating Officer, on 02.12.1998 accused Bhagwan alone came to police station with three sticks and three iron bars, but evidence of PW8 is silent about presence of accused Bhagwan. Therefore even so called recovery is not cogently proved.

13. To sum up, testimonies of PW1 to PW4 are not consistent. There are material omissions, contradictions. Allegations of setting vehicle to fire are general and omnibus in nature. Documents of ownership of vehicle are not gathered and made part of investigation papers. Therefore, evidence on behalf of prosecution is apparently weak in nature. There is no independent witness in spite of occurrence taking place in a residential locality and when prosecution itself shows presence of 40 to 50 people on the spot. There seems to be dispute between both brothers, i.e. between informant and accused

Bhagwan. In said backdrop, there seems to be implication. It was expected of prosecution to prove the case beyond reasonable doubt, that ingredients of each of the offences existed in the evidence on behalf of prosecution.

14. For all above reasons, and bearing in mind the settled law regarding appreciation of evidence in appeal against acquittal, there is no merit in the present appeal and as no case to interfere is made out, I proceed to pass the following order :

ORDER

The appeal is hereby dismissed.

[ABHAY S. WAGHWASE, J.]