



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 950 OF 2023

Kanchan S/o Sundarrao Barsale
Age : 53 years, Occ. : Agriculture
R/o. Antarwali dai, Tq. Ghansawangi,
Dist. Jalna.

... Appellant.
(Orig. Complainant)

Versus

1. The State of Maharashtra
Through : Police Inspector,
Police Station Ghansawangi,
Tq. Ghansawangi, Dist. Jalna
2. Ajay Shivaji Bhutekar,
Age : 29 years, Occ. : Agri.
3. Nitin Shivaji Bhutekar,
Age : 22 years, Occ. : Agri.
4. Shivaji Narayan Bhutekar
Age : 54 years, Occ. : Agri,
5. Ramdas Dhondiba Bhutekar,
Age: 68 years, Occ. : Agri.

All R/o. Antarwali dai,
Tq. Ghansawangi, Dist. Jalna

... Respondents.
(Orig. Accused Nos.1 to 4)

...
Ms. Rakhi V. Sundale, Advocate for Appellant.
Mr. S. M. Ganachari, APP for Respondent - State.
Mr. Sudarshan J. Salunke, Advocate for Respondents Nos.2 to 5.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 21st FEBRUARY, 2024

PRONOUNCED ON : 29th FEBRUARY, 2024

JUDGMENT :

1. Dissatisfied by the judgment and order of acquittal dated 28.06.2023 passed by learned Additional Sessions Judge-2, Ambad, District Jalna, thereby, acquitting present respondents from offence punishable under sections 307, 323, 504 and 506 read with section 34 of Indian Penal Code (IPC), original complainant has taken exception to the same by filing instant appeal.

IN NUTSHELL CASE OF PROSECUTION IN TRIAL COURT

2. Present appellant/ defacto complainant was proceeding on motorcycle on 10.02.2017. His vehicle was intercepted by accused and after abusing him he was assaulted by means of axe and iron rod. Respondent accused Ajay used axe, whereas respondent accused Nitin hit him iron rod, whereas respondent accused Shivaji and Ramdas pressed neck of appellant on account of old dispute and hence the complaint, which was registered by Ghansawangi Police Station, bearing Crime No. 15 of 2017 for above offence.

3. After being charge-sheeted and tried, learned Additional Session Judge-2, acquitted accused from all charges by judgment and order dated 28.06.2023, which is precisely questioned by original complainant by way of instant appeal.

SUBMISSIONS

On behalf of Appellant :-

4. Questioning the legality and maintainability of the impugned judgment and order, learned counsel for appellant would submit that, incident took place in the backdrop of old dispute. Learned counsel pointed out that complainant victim injured had lodged report, narrating the sequence of events that incident took place on 10.02.2017. According to learned counsel, distinct roles played by each of the accused are well defined. That, informant had suffered grievous injuries that too on vital part like head. That, there is injury certificate regarding nature of injuries. That, going by the manner of assault, articles used, she submits that, it was clear offence of attempt to commit murder, however, according to her, unfortunately, learned trial court did not appreciate the above evidence properly. That, informant had suffered grievous injuries, still all accused are acquitted. There is improper appreciation of evidence. That, observation of learned trial court about false implication due to previous animosity are bereft of any evidence.

5. She next submitted that, as all necessary ingredients for attracting offence of 307, 323, 504 and 506 of IPC were made out, therefore conviction ought to have been recorded, but the learned trial Judge has failed to do so. For all above reasons, she

prays to allow the appeal by setting aside the impugned judgment.

On behalf of Prosecution :-

6. In answer to above, learned counsel for respondents accused would submit that, apparently implication was false one. Testimonies were inconsistent and contrary. That, every independent witness and alleged eye witness has not supported prosecution. Injuries are not proved by examining doctor, and therefore, learned trial Judge, according to learned counsel, committed no error in acquitting the accused as prosecution failed to establish the charges.

7. Here is an appeal against acquittal. Before analyzing the evidence to ascertain whether acquittal was justified or not, it would be appropriate to briefly discussed law while dealing with the appeal against acquittal.

The Apex Court in *Chandrappa & Ors. v. State of Karnataka, (2007) 4 SCC 415*, in paragraph 42 has laid down the general principles regarding powers of the Appellate Court while dealing with an appeal against an order of acquittal. Paragraph 42 reads as under :-

“42. From the above decisions, in our considered view, the following general principles regarding powers of 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 emphasize 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 the accused. Firstly, the presumption of innocence 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.”*

8. Keeping in mind above settled principles, evidence on record is put to scrutiny.

It seems that, in support of said charges, prosecution examined in all five witnesses i.e. **PW1** Kanchan complainant himself; **PW2** Parmeshwar is the brother of de facto complainant; **PW3** Pandhrinath and **PW4** Eknath are the eye witnesses and **PW5** PI Jagan Puri, Investigating Officer.

9. The sum and substance of witnesses i.e. **PW1** Kanchan informant is that, on 10.12.2017 around 9:00 a.m, when he was returning from his field, he was intercepted by accused and according to him accused Ajay gave blow with axe on left side of the head, accused Nitin hit him with iron rod on the back, accused Shivaji and Ramdas hit him with sticks and they even pressed his neck. One Pandhari, Mukinda and Eknath intervened and took him to hospital, where his statement was recorded.

In cross, he answered that, before visiting hospital he had approached police station and gave information, which was noted by police. He deposed about single blow given by both Shivaji and Ramdas by means of stick, but he is unable to state why such version is not appearing in his statement. He admitted that

accused Nitin had filed complaint against him and his brother regarding beating to his father. He admitted that criminal proceedings to that extent being pending.

10. **PW2** Parmeshwar claims that he heard shouts and saw quarrel between his brother and accused. According to him, accused Ajay was having axe, whereas accused Nitin was having iron rod. He also deposed about blow given on left arm and stomach when he intervened.

In cross, he admitted complaint by Nitin against his brother and himself.

PW3 Pandharinath and **PW4** Eknath did not support the prosecution.

11. Above is the only evidence. De facto complainant in cross admits about approaching police before going to hospital and lodging information. Same is not finding place. Secondly, though there is allegedly use of axe and iron rod and though de facto complainant allegedly visited hospital and gave statement while in hospital, examining and treating doctor has not been examined for the best reasons known to prosecution. Mere medical report Exh.79 is gathered by Investigating Officer and placed on record. On carefully going through the medical papers (Exh.79), history is

reported about assault by rod and there is absolutely no reference about use of any axe.

12. In view of charge under section 307 of IPC, it was imperative for prosecution to adduce medico legal evidence to demonstrate that, injury was life threatening. Going by the sequence, there are allegations that when PW1 Kanchan informant was returning home, he was intercepted and beaten. What actually happened that day trigerring the incident has not come on record. In view of charge of attempt to murder, intention to kill has to be established coupled with *mens rea*. There is said to be single blow.

13. Accused party also seem to have suffered injuries. Therefore, prosecution was expected to offer explanation for the same, but the same has not happened here. Consequently, the very genesis of the crime is not forthcoming. Already there is existing dispute between complainant and accused party and so possibility of false implication cannot be ruled out. There is no corroboration from independent corner to the occurrence, even when persons by name Pandhari, Mukinda and Eknath alleged intervened and separated.

14. There is omission in informant's evidence on the point

of beating by sticks and pressing neck. Brother PW2 Parmeshwar merely speaks about quarrel going on between accused and his brother. His testimonies shows that, he speaks about only Ajay to be armed with axe and Nitin to be armed with iron rod. He does not speak about any use of such articles in his presence, but only deposed about he being hit with iron rod on hand.

15. Therefore, the sum total of above discussed material is that, version of informant regarding assault by axe is doubtful as history reported is of merely assault by rod. Examining and treating doctor is not examined, even when there is charge of 307 of IPC. Doctor was the best witness to prove injury. Mere report Exh.79 is placed on record. Therefore, apparently, evidence is fragile and weak in nature.

16. On going through the judgment, all aspects appear to be dealt and discussed by learned trial Judge. The view taken is the possible view. Therefore, there being no perversity, there being no reason to interfere. Hence, I proceed to pass the following order :-

ORDER

The Criminal Appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)