

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

CRIMINAL APPEAL NO. 45 OF 2016

The State of Maharashtra

...Appellant

Versus

1. Sunny Sunil Shelar
Age 29 years.
2. Krunal Shankar Shelar
Age 55 years.
3. Ketan Krunal Shelar
Age 28 years.

All R/at Saraswati Sadan,
Room No.101, Sanewadi,
Badlapur (W), District Thane.

...Respondents

....

Mr. Y.Y. Dabake, A.P.P. for the Appellant – State.

Mr. Bhushan Walimbe, Advocate for Respondent Nos.1 to 3.

....

**CORAM : PRAKASH D. NAIK, &
DATE : 5th JANUARY, 2024.**

P.C.:

1. The Appellant-State has preferred this appeal under Section 378(3) of Code of Criminal Procedure (for short "Cr.P.C.") challenging the Judgment and order dated 13th January 2015 passed by the learned 5th Joint C.J.J.D. and J.M.F.C. Ulhasnagar in R.C.C. No.377 of 2011.

2. The case of the prosecution is that the informant is resident of Sanewadi, Badlapur. The girl residing in the same area used to visit the house of informant. She had love for him. Informant was a married person. He had told the girl that he would not keep relationship with her. On 19.04.2011 at about 9.30 p.m. informant was returning to his house on motorcycle. The accused were standing on the road. Accused Nos.1 & 3 assaulted him with iron rod on his head. Accused No.2 assaulted with brick. Report was lodged with Badlapur Police Station for offences punishable under Section 324 read with Section 34 of Indian Penal Code (for short "IPC"). On completing investigation, charge-sheet was filed.

3. Charge was framed for an offence under Section 324 r/w Section 34 of IPC.

4. On 21.06.2013, the prosecution examined seven witnesses. PW-1 Nitin Ramchandra Shinde is the first informant and the injured witness. PW-2 Vaibhav Baban Jamdare is the panch witness for spot panchanama. PW-3 Ramchandra Dattu Shinde is the father of PW-1. PW-4 Vishal Maruti Shinde is the friend of PW-1. PW-5 Umesh Ankush Dhavale is the friend of PW-1. PW-6 Prakash Rambhau Choudhari is the Investigating Officer. PW-7, Dr. Shalaka Chandrakant Thorat is the Medical Officer.

5. Vide Judgment and order dated 13th January 2015 all the accused were acquitted.

6. Learned A.P.P. submitted that the impugned Judgment is contrary to evidence on record. There are eye witnesses to the incident. The evidence of injured witness cannot be discarded. The evidence of injured witnesses corroborated by PW-3, PW-4 & PW-5. The witnesses have categorically stated that PW-1 was assaulted by the accused. The motive for the assault was proved. The accused were armed with weapons. Minor contradictions would not be sufficient to discard their evidence. The Medical evidence corroborates the ocular evidence. The injured had suffered injuries. The Medical Certificate was proved in evidence. The Medical Officer has deposed that the injuries were possible by the weapons used in the crime. The Judgment of the trial Court is contrary to evidence on record.

6. Learned Advocate for the Respondents submitted that the order of acquittal does not require interference. The Judgment is supported by cogent reasons. The evidence of the witnesses does not inspire confidence. There are contradictions in the evidence of witnesses. Contradictions are in respect of weapons used in Crime. All the three eye witnesses have referred to different weapons

being used by the accused to assault the informant. The Medical Certificate refers to history provided by the injured stating that assault was by 7 to 8 known persons. There is no evidence that 7 to 8 persons were involved in assault. The Investigating Officer has stated that he had seized the clothes from the person of the informant, whereas the Panchanama Exhibit-23 shows that the clothes were seized at the Police Station. The informant had deposed that he was discharged from the hospital and he had gone to the Police Station on 23.04.2011 and the clothes were seized in the presence of the witnesses at the Police Station. The clothes were kept in the house on 23.04.2011. He was examined by the Medical Officer immediately after the incident. He admitted that he was discharged from the hospital and he visited the Police Station on 23.04.2011. The clothes were seized in the presence of the witnesses at the Police Station. The Medical Officer has stated that she was on duty on 19.04.2011 and 20.04.2011. Patient had come to the hospital at about 1.30 a.m. and she had examined him. The Investigating Officer has deposed that the iron rod and the brick used for assaulting the informant was seized in the presence of two witnesses and Panchanama was prepared to that effect. However, the record does not show any such recovery of weapons as deposed by Investigating Officer. The entire case suffers from

suspicion. The prosecution has not been able to prove the charges beyond reasonable doubt. The Appellate Court can interfere in the Judgment of acquittal in exceptional cases. The trial Court order is based on cogent reasons which does not warrant interference.

7. The trial Court has scrutinized the evidence on record. Cogent reasons are assigned for finding of acquittal. The trial Court has considered the fact that there are major contradictions in the version of the witnesses, and weapons used by the assailants.

8. PW-1 is the injured witness. He is the first informant. According to him the girl residing in adjacent building was visiting his house. She was aged around 16 years. She was in love with him. He was married person and did not consent for relationship. On 19.04.2015 accused Nos.1 and 3 assaulted him by iron rod by giving blow on his head. Accused No.2 assaulted by brick by giving blow on neck. His father came there and took him to Badlapur Police Station. Complaint was lodged. PW-3 (Father of PW-1) deposed that there was altercation between accused and PW-1. Accused No.3 assaulted PW-1 with Pipe. Accused No.1 assaulted by stick. Accused No.2 assaulted with brick. According to PW-4 accused were assaulting PW-1 with iron rod. There was bleeding from his head. He was taken to Police Station. PW-5 stated that all the accused were assaulting PW-1 with iron rod. Thus there are

contradictions regarding nature of weapons used by accused. PW-1 has not referred to any altercation with accused. PW-4 has stated that he visited house of PW-1. PW-3 was at home. He do not refer to presence of PW-3 at his residence. There are contradictions regarding overt act of the accused. PW-3, PW-4, and PW-5 do not refer to their presence at the spot *interse*.

9. PW-3 is the father of PW-1. PW-4 and PW-5 are friends of PW-1. All of them are interested witnesses. Their evidence has to be considered with caution.

10. The eye witnesses have referred to different weapons. According to PW-1 the accused had assaulted with iron rod and brick. Except PW-1, none of the witnesses have referred to assault by brick. The father of the informant has deposed that all the three accused had used different weapons i.e. iron pipe, stick & brick. The other witnesses have stated that assault by all the accused was by iron rod.

11. According to the Investigating Officer he had seized the clothes of the informant from the person of informant. Panchanama Exhibit – 23 shows that the clothes were seized at Police Station. PW-1 has stated that he had gone to the Police Station on 23.04.2011 after he was discharged from the hospital and his

clothes were seized at the Police Station. He also deposed that before going to hospital he had kept the clothes at his house. Whereas the father of informant has stated that the clothes of the informant were removed from the person on the next day of incident and he had kept the clothes in the house.

12. According to the Investigating Officer the iron rod and brick were seized in the presence of two witnesses. He prepared Panchanama to that effect. However, the record does not show any such recovery. The Medical Officer has examined the injured person. PW-1 has stated that he was examined by the Doctor at Central Hospital. He was admitted in Central hospital on 20.04.2011 between 11.00 a.m. to 11.30 a.m. The Doctor has deposed that she was on night duty on 19.04.2011. She has examined the patient. She had come to the hospital at about 1.30 a.m. Thus, according to PW-1 he was brought to the hospital at 11.00 a.m. but the Medical Officer has stated that the patient was brought before her at 1.30 a.m. on 20.04.2011. It is also pertinent to note that the patient had given history of assault by 7 to 8 known persons around 9.30 p.m. on 19.04.2011 by iron rod. The Medical Officer has issued certificate of the injury. The certificate shows history of assault by 7 to 8 known persons. It is not the case

of any witnesses to show that 7 to 8 persons were involved in assaulting PW-1. The motive attributed for assault is that the sister of accused No.1 was in love with informant. He refused to keep relations with her. Motive is weak. It is difficult to accept that the accused would assault the first informant, who was a married person and used to maintain relationship with the minor sister of accused No.1.

13. Taking into consideration the totality of the circumstances, the trial Court has observed that the prosecution has failed to establish its case and acquitted the accused. Order of acquittal can be interfered in exceptional circumstances.

14. I do not find any reason to interfere in the Judgment of acquittal. The appeal is devoid of merits and required to be dismissed.

ORDER

Criminal Appeal No.45 of 2016 is dismissed and stands disposed of.

(PRAKASH D. NAIK, J.)