



Judgment

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1

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO.482 OF 2004

Pachu Jaidev Bishwas,
a/a 30 years, occupation : labour,
r/o Shamnagar, Chandrapur,
taluka and district Chandrapur. **Appellant.**

:: V E R S U S ::

State of Maharashtra, through
Police Station Officer,
Police Station – Ramnagar, Chandrapur,
taluka and district Chandrapur. **Respondent.**

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Dr. (Shri) Anjan De, Counsel for the Appellant.
Mrs.H.N.Prabhu, Additional Public Prosecutor for the
Respondent/State.
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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 05/09/2024
PRONOUNCED ON : 03/10/2024

JUDGMENT

1. By this appeal, the appellant (the accused) has
challenged judgment and order dated 23.7.2004
passed by learned 4th Ad hoc Additional Sessions Judge,

2

Chandrapur (learned Judge of the trial court), in Sessions Case No.32/2000.

2. By the said judgment impugned, the accused is convicted for offence punishable under Section 307 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years and to pay fine Rs.2,000/-, in default, to undergo rigorous imprisonment for six months.

3. Brief facts of the prosecution case are as under:

Gautam Gaurang Baid (the informant) has lodged report at Ramnagar Police Station, Chandrapur that he along with his parents is residing at Bangali Camp Nehru Nagar Chowk, Chandrapur. On 2.4.1999, between 8:00 pm to 8:15 pm, he along with his friends was proceeding towards the house of his sister Shilabai at Shamnagar. He noticed a quarrel near "Durga Temple" and, therefore, he approached the said persons and saw that the accused was assaulting

3

Shakti Mandal by means of knife and the other accused Pankaj Bishwas and Ribhang were also assaulting Shakti Mandal. Due to the assault, Shakti Mandal sustained injuries on his abdomen and left armpit. When he went to intervene the quarrel, the accused also assaulted him on his back by means of knife and, thereafter, he approached the police station and lodged the report. On the basis of the said report, the police registered the crime vide Crime No.167/1999 under Sections 307, 323 read with 34 of the Indian Penal Code.

4. After registration of the crime, wheels of investigation started rotating. During investigation, the investigating officer visited the alleged spot of the incident and drawn spot panchanama. During the investigation, accused persons were arrested at the instance of the accused and the weapon of the offence was recovered and seized. During spot panchanama, the investigating officer collected blood stained soil

4

and simple soil from the spot, statements of the injured and other eyewitnesses were also recorded. After collecting medical certificate, opinion of the Medical Officer, and after completion of the investigation, chargesheet was filed.

5. As the offence punishable under Section 307 of the Indian Penal Code was exclusively triable by the court of sessions, the case was committed to the court of sessions. Charge was framed vide Exhibit-18. The accused pleaded not guilty and claimed to be tried.

6. To substantiate the charge, the prosecution examined in all 11 witnesses as follows:

1. Shakti Mandal vide Exhibit-28 (PW1), the injured;
2. Champabai Vishwas vide Exhibit-30 (PW2);
3. Gautam Baid vide Exhibit-31 (PW3);
4. Sau.Pornima Das Exhibit-34 (PW4);
5. Bhaskar Sahare Exhibit-36 (PW5); the pancha

5

6. Gopal Mandal Exhibit-42 (PW6);
7. Manik Kumre Exhibit-51 (PW7);
8. Kusum Shete Exhibit-53 (PW8), the Medical Officer;
9. Dadarao Jadhav Exhibit-63 (PW9), the Investigating Officer;
10. Dr.Raju Shende Exhibit-72 (PW10), the Medical Officer, and
11. Shiodas Munjewar Exhibit-78 (PW11), Assistant Police Inspector.

7. Besides the oral evidence, the prosecution placed reliance on Chemical Analyzer's Reports Exhibits-24 and 25, Report Exhibit-32, First Information Report Exhibit-33, seizure panchanama of clothes of injured Exhibit-37, seizure of clothes of the accused Exhibit-38, memorandum statement of the accused Exhibit-39, discovery panchanama Exhibit-40, spot panchanama Exhibit-43, seizure memos Exhibits-44 and 52, requisition to the Medical Officer Exhibit-53, medical certificates Exhibits-55, certificate issued by the General Hospital Chandrapur Exhibit-56, medical

6

certificate Exhibit-57, diagram of weapon Exhibit-58, requisition to the Medical Officer Exhibit-73, and OPD Card of injured Gautam Exhibit-74.

8. After recording the evidence, incriminating articles were put to the accused for seeking his explanation. The defence of the accused is of total denial and was of false implication. Accordingly, his statement was recorded under Section 313 of the Code of Criminal Procedure.

9. After hearing both sides and appreciating the evidence on record, learned Judge of the trial court convicted the accused for offence as the aforesaid.

10. Being aggrieved and dissatisfied with the judgment impugned, the present appeal is preferred on ground that learned Judge of the trial court proceeded on inconsistent evidence and erroneously convicted the accused. There is no evidence on record to show that injuries sustained by the injured was sufficient to

7

cause death in ordinary course of nature if timely treatment is not given and, therefore, the conviction and sentence deserve to be quashed and set aside.

11. Heard learned counsel Dr. (Shri) Anjay De for the accused and learned Additional Public Prosecutor Mrs.H.N.Prabhu for the State.

12. Learned counsel for the accused submitted that the entire evidence of the prosecution is inconsistent and is not corroborating to each other. The evidence of injured PW1 Shakti Mandal, PW2 Champabai, and PW4 Pornima Das shows that they had been to the “Durga Temple” to attend a meeting. The meeting was called as on the day of the incident, there was a quarrel between daughter-in-law of Champabai and daughter-in-law of Khokubai. Said Khokubai and Champabai were called in the meeting. All accused persons were present with Khokubai as well as injured Shakti Mandal along with Pornima. All accused persons called injured Shakti Mandal at the corner and the accused gave a

8

blow of knife on his person due to which he sustained injuries. Informant PW3 injured Gautam intervened the quarrel and he was also assaulted. On the contrary, the evidence of informant PW3 injured Gautam shows that when he was proceeding along with his friends, he witnessed the quarrel and, therefore, he went to persons who were quarreling and saw that the accused was assaulting injured Shakti Mandal and, therefore, he intervened and he also sustained injuries. Thus, two different stories are narrated by witnesses. The evidence shows that several independent witnesses were present. Statements of independent witnesses were also recorded, but none is examined by the prosecution. As per the evidence of informant PW3 injured Gautam, blow was given on chest of Shakti and other parts of the body and there were five injuries. However, four injuries were found on his person and the medical evidence nowhere shows that nature of injuries was such which would likely to cause death. Thus, the entire evidence of the prosecution is

inconsistent. No blood stains were found on the weapon when it was forwarded to the Chemical Analyzer. Thus, on the basis of inconsistent evidence, the accused is convicted. He further submitted that during the pendency of the appeal, both parties settled the dispute and, therefore, the accused filed an application under Section 320 for of compounding the offence. The accused also filed applications for quashing of proceeding.

13. In support of his contentions, learned counsel for the accused placed reliance on following decisions:

1. Gian Singh vs. State of Punjab and another¹;

2. Manjit Singh vs. The State of Punjab and anr²;

3. Criminal Application (APL) No.755/2019 (Ahfaz Ahmad Ajaz Ahmad and ors vs. State of Maharashtra, thr. PSO PS Nagpuri Gate, Amravati and anr) decided by Division Bench of this Court on 29.8.2019;

¹ 2012(10) SCC 303

² 2019 ALL SCR (Cri) 1616

4. Ramgopal and anr vs. The State of Madhya Pradesh³, and**5. Kailash Chand vs. State of Rajasthan⁴.**

14. *Per contra*, learned Additional Public Prosecutor for the State submitted that the consistent evidence of the injured and eyewitnesses sufficiently shows involvement of the accused in the alleged offence and injuries sustained by informant PW3 injured Gautam are grievous in nature. During cross examination, the evidence was not shattered. Thus, the prosecution proved the case beyond reasonable doubt.

15. In support of her contentions, learned Additional Public Prosecutor for the State placed reliance on following decision:

1. Shahaja alias Shahajan Ismail Mohd. Shaikh vs. State of Maharashtra⁵;**2. Sau. Maya Sanjay Khandare and anr vs. State of Maharashtra⁶, and**

3 (2021) SCC OnLine SC 834

4 2018 ALL MR (Cri) 467

5 AIR OnLine 2022 SC 1011

6 2021 ALL MR (Cri) 660 (FB)

11**16. State of Rajasthan vs. Shambhu Kewat and anr⁷.**

17. Having heard both sides and perused the evidence adduced, it has to be seen whether the prosecution succeeded in proving the guilt of the accused. The entire prosecution case relies upon the evidence of injured PW1 Shakti Mandal and eyewitnesses PW2 Champabai, informant PW3 injured Gautam, and PW4 Pornima.

18. As far as the evidence of injured PW1 Shakti Mandal is concerned, he stated that on the day of the incident, at about 5:00 pm to 6:00 pm, PW2 Champabai had gone to fetch water along with her daughter-in-law. At that time, the daughter-in-law of Khokubai was also there and quarrel took place between them on account of throwing of the water. On that count, Khokubai beat Champabai and, therefore, a meeting was called. Along with Champabai, PW4 Pornima attended the

⁷ (2014) 4 SCC 149

12

meeting. In the said meeting, all accused persons were present. The accused and other accused persons called him at the corner and the accused inflicted knife blow on his person and he sustained five injuries in the said incident. Out of five injuries, one injury was on his chest. When the accused was giving blows, other two accused persons hold him. One Shamal and Gautam intervened the quarrel, but the accused also assaulted informant PW3 injured Gautam.

19. The evidence of PW2 Champabai and PW4 Pornima is on the similar line stating that when they were in meeting, the accused called injured PW1 Shakti Mandal and assaulted him.

20. Injured PW1 Shakti Mandal, was cross examined and during the cross examination, some omissions were brought on record which show that he has not stated before the police that the accused called him at corner and inflicted the blow of knife. He has also not stated before the investigating officer that other

13

accused persons caught hold him and the accused assaulted him. He has not stated that the accused inflicted blow of knife on the person of his brother-in-law. He has also not stated that Shamal and Pornima were present in the meeting. During the cross examination, he further admitted that in the meeting, Santosh was present who gave understanding to both the parties. Informant PW3 injured Gautam is his friend, who was also present there.

Thus, from the cross examination, it brought on record that when meeting was called, the alleged incident has taken place and material omissions brought are that the accused called him at the corner and gave a blow of the knife. At the relevant time, other accused persons were holding him. He specifically admitted that about 25% persons of the locality were present in the meeting so also one Santosh. They were giving understanding to both parties.

14

21. The cross examination of PW2 Champabai shows that informant PW3 injured Gautam alone came in the meeting and PW4 Pornima during the cross examination also stated that she informed the police that the panchayat was going on and the accused beat injured PW1 Shakti Mandal and injured Gautam. She has also not stated before the police that the informant tried to intervene the quarrel and sustained injuries.

22. Another witness, on which the prosecution relied upon is, informant PW3 injured Gautam. He testified that on the day of the incident, at about 8:00 pm to 8:15 pm, he along with his friend Manoj was going to the house of his sister. When he reached near the "Durga Temple", the accused was beating injured PW1 Shakti Mandal and, therefore, he intervened in the quarrel. While intervening the quarrel, he also sustained injuries. During his cross examination, it brought on record that he was not knowing the accused prior to the incident. It further shows that

15

instrument, by which the injured was caused injuries, was stained with blood.

23. Thus, in the evidence of informant PW3 injured Gautam, the said witness nowhere referred any meeting and the alleged incident during the said meeting. Recital of the First Information Report, also shows that when he was proceeding towards house of his sister, he noticed the alleged incident and, therefore, he intervened the quarrel and sustained injuries. Injured Gautam has also not stated presence of Santosh or any other persons from locality.

24. To corroborate the version of the prosecution witnesses, the prosecution placed reliance on the evidence of Medical Officer PW8 Kusum Shete. She testified that on 2.4.1999, she was attached to the General Hospital at Chandrapur as CMO. On that day injured PW1 Shakti Mandal was brought to the hospital. She examined him and on examination, she found following injuries on his person:

16

1) Incised wound on left upper arm, size 3 inches x 1 inch x 1 inch. It was caused by sharp cutting weapon. The age of injury was within half an hour.

2) Incised wound on left axilla, size 2 inch x 1 inch x 1 inch, injury was bleeding, bleeding profused, the vein was cut on left side.

3) Incised wound by hypochondrium, size 2 inch x 1 inc cavity deep, the injury was grievous.

4) incised wound over left side of chest, size 1 inch x 1 inch.

Her evidence further shows that the patient was admitted and subsequently referred to the Medical College, Nagpur. The injuries were caused by sharp cutting object and accordingly, she issued Certificate Exhibit-55. On 4.4.1999, one dagger was produced with clothes of the injured for opinion and she gave an opinion that all injuries were caused by sharp object and injury Nos.1 and 2 can be caused by the weapon brought before her. Her cross examination shows that injury No.1 was deep on abdomen and it was a grievous injury. She did not notice any blood stains on dagger.

17

25. Thus, as per the recital of the First Information Report, the alleged incident took place on 2.4.1999.

26. The evidence of informant PW3 injured Gautam shows that the weapon was stained with blood. The weapon was examined by the Medical Officer on 4.4.1999 and she has not seen any blood stains on the said weapon on 4.4.1999.

27. The prosecution has also examined Medical Officer PW10 Dr.Raju Shende, who examined informant PW3 injured Gautam. His evidence shows that on 2.4.1999 Gautam was brought to the hospital and on his examination, he found two injuries on his person namely lacerated wound on back right side 3cm x 1 cm x skin deep abrasion and abrasion on left arm flexor aspect, size 4 cm x 2 cm. The injuries were simple in nature and caused by hard and blunt object. He issued certificate Exhibit-75. He further deposed that injured PW1 Shakti Mandal was also admitted in his hospital.

18

As to injuries, he admitted that those injuries are possible by hard and blunt object.

28. Perusal of the injury certificate of injured PW1 Shakti Mandal reveals that no history of assault was given by him though immediately he was admitted in the hospital.

29. The another circumstance on which the prosecution relied upon is, seizure of the weapon at the instance of the accused. To prove the memorandum statement of the accused and discovery of the weapon, the prosecution examined PW5 Bhaskar Sahare, who stated that the accused made disclosure statement on 4.4.1999 that dagger used in the offence was concealed by him in his house and ready to produce the same. They went to the house of the the accused. The accused took out the said dagger out of the box. Accordingly, panchanama was drawn. During cross examination, this witness also stated that the dagger had blood stains. It also brought on record that PW5 is

19

habitual pancha as he admitted that he acted as a pancha in 40-50 cases. Besides the seizure of the dagger, PW5 has acted as a pancha on seizure of clothes of the injured. The evidence shows that shirt had holes and blood stains at various places. He also acted as a pancha on seizure of clothes of the accused.

30. PW6 Gopal Mandal also acted as a pancha on the spot panchanama, but he has not supported the prosecution case.

31. PW7 Manik Kumre, is also acted as a pancha on seizure of nail clippings of the co-accused. However, he has also not supported the prosecution case.

32. PW9 Dadarao Jadhav and PW11 Shiodas Munjewar are Investigating Officers, who narrated about the investigation carried out by them.

PW9 Dadarao Jadhav, stated that injured PW1 Shakti Mandal had not disclosed before him that the accused called him at the corner and inflicted a blow

20

by means of knife. He has also not stated before him that other accused persons caught hold of him. It was also not stated that in the meeting, Pornima, Shamal, Rakhi, and Chandramani were present.

PW11 Shiodas Munjewar, recorded the report of informant PW3 injured Gautam. His evidence is to the extent that he has recorded the statement of injured also.

33. Thus, on the basis of the evidence, the prosecution claimed that the prosecution has proved its case beyond reasonable doubt.

34. The entire case of the prosecution is based on the evidence of injured PW1 Shakti Mandal and eyewitness of the incident informant PW3 injured Gautam. As far as the earlier incident, as to the quarrel between PW2 Champabai and daughter-in-law of Khokubai, is concerned, the evidence of Shakti Mandal, Champabai, and PW4 Pornima substantiates

21

the same. The another part of the evidence is, due to the said quarrel, the meeting was called at "Durga Temple" whereat eyewitness and injured Gautam was allegedly present. However, injured Gautam nowhere referred as to the said meeting. His evidence is completely inconsistent as to the fact that there was some meeting and in that meeting, the accused took the injured at a side, gave a blow of knife on his person. All witnesses have categorically stated that the alleged incident was witnessed by several independent witnesses. None of independent witnesses is examined by the prosecution. The cross examination of Shakti Mandal shows the accused called him at the corner and inflicted blow of knife was not narrated by him before the investigating officer. The said omission is proved by the defence by putting the same to the investigating officer.

35. Thus, two stories are put forth; one is that due to the earlier dispute, the meeting was called at "Durga

22

Temple” and during that meeting, injured was assaulted. Whereas, other story is that, when informant PW3 Gautam was proceeding towards his sister’s house, he witnessed the quarrel and, therefore, he went and intervened the quarrel. At the relevant time, he also sustained injuries on his back as blow was given to him. The evidence is to be appreciated in the light of preponderance of probability. It is pertinent to note that injured Shakti Mandal and PW2 Champabai narrated that the alleged incident occurred when they had been to “Durga Temple” to attend the meeting. As per their evidence, informant PW3 injured Gautam was also present in the said meeting, but he has not mentioned any reference of the said meeting, which is a fatal blow, to the prosecution. This inconsistency is not explained by the prosecution. Moreover, the evidence of all witnesses shows that several persons were gathered there due to the assault, but no independent witness is examined by the prosecution.

23

The presence of PW4 Pornima at the time of incident is also doubtful.

36. As far as medical evidence is concerned, it shows that injured PW1 Shakti Mandal was brought to the hospital on 2.4.1999. He was examined by the medical officer immediately after the incident. No history was given to the Medical Officer, though assailants were known to the injured. Initially, the injured was taken to the General Hospital, Chandrapur and Medical Officer PW8 Kusum Shete examined him. She has not narrated about the history, if any, narrated by the injured or relatives. Thus, there was no disclosure to the Medical Officer also as to the cause of injuries. The injured sustained four injuries and out of which, three injuries were grievous in nature and one injury was simple in nature. Subsequently, the injured was shifted to the Medical College, Nagpur, as per the prosecution evidence, but no evidence is adduced as to treatment given to the injured at Nagpur.

24

Informant PW3 injured Gautam also took treatment at General Hospital, Chandrapur. As per his evidence, he was assaulted by the accused, but he has also not narrated any history before the Medical Officer.

37. It is well settled that while appreciating the evidence in criminal cases, defence has to show and establish defence on the basis of preponderance of probability.

38. It is difficult to accept that though several persons were present in the meeting, which was allegedly held due to the dispute between PW2 Champabai and one other lady, no independent witnesses came forward to intervene the quarrel. Their statements were not recorded and they were not examined. Whereas, eyewitness came with a case that when he was proceeding towards his sister's house, he saw scuffle between the accused and injured PW1 Shakti Mandal. He intervened the quarrel and

25

sustained injuries. Though both were immediately shifted to the hospital for medical treatment, they have not narrated history about the assault though assailants were known to them. As far as injury to informant PW3 injured Gautam is concerned, the Medical Officer admitted that injury sustained by Gautam is possible by hard and blunt surface. The cross examination of Medical Officer PW8 Kusum Shete shows that as to injury No.3 on abdomen, it is a grievous injury. She has not mentioned in Injury Certificate that injury Nos.2 and 3 were sufficient to cause death in ordinary course of nature. To justify conviction under Section 307 of the Indian Penal Code, it is not essential that bodily injury capable of causing death should have been inflicted. It is sufficient to show that with an intent coupled with some overt act in execution thereof, such act being proximate to the crime intended and if the attempt has gone, it should have been complete for extraneous intervention which frustrated its consummation. There are different

26

stages in a crime. First, the intention to commit it; second, the preparation to commit it; third, an attempt to commit it. If at the third stage, the attempt fails, the crime is not complete but the law punishes for attempting the same.

39. Thus, to justify conviction under section 307 of the Indian Penal Code, if there is an intent coupled with some overt act in execution thereof, it is not essential bodily injury of causing death should have been inflicted.

40. By applying the above said principle, the evidence as to any meeting is held, itself is absent in the present case. In the light of contradictory evidence of injured PW1 Shakti Mandal, PW2 Champabai, and informant informant PW3 injured Gautam, some material omissions are brought on record, which affect the prosecution case. The material omissions are to the extent that injured Gautam has not stated before the police that he was called aside during the said

27

meeting and was assaulted, which goes to the root of the matter. Another inconsistency pointed out is that the evidence of Gautam is not corroborating to the fact that the said incident occurred during the meeting. The presence of injured Gautam in the meeting or any meeting is held, itself is absent in the evidence of Gautam. Merely on the basis of medical evidence, learned Judge of the trial court held the accused guilty without considering inconsistent evidence and even in absence of immediate disclosure to the Medical Officer though assailants were known to the eyewitness as well as the injured. As to the incident, the First Information Report was lodged at 11:00 pm when the incident was occurred on 8:00 pm to 8:15 pm. The recital of the First Information Report nowhere discloses that the incident occurred during the meeting. Thus, the base of the incident, whether it was occurred during the meeting or subsequent to the meeting, itself is not established by the prosecution.

28

41. Learned Additional Public Prosecutor for the State submitted that it is well settled principles that in criminal appeals, interference in the judgment of the trial court shall not be readily, but if the High Court or the Appellate Court finds any perversity or appreciation is not proper, it can interfere. She placed reliance on the decision in the case of **Shahaja alias Shahajan Ismail Mohd. Shaikh** *supra*. In the said decision, exercise of powers of the Hon'ble Apex Court under Article 136 of the Constitution are discussed and held that powers of the Supreme Court under Article 136 of the Constitution is exercisable even in cases of concurrent findings of fact and such powers are very wide, but in criminal appeals, this Court does not interfere with the concurrent findings of fact save in exceptional circumstances. It has been further held that in Article 136 the use of the words Supreme Court, may in its discretion, grant special leave to appeal from any judgment.

29

42. Thus, the Hon'ble Apex Court considered its powers under Article 136 of the Constitution.

43. It is well settled that the prosecution has to prove all circumstances beyond reasonable doubts against the accused to prove the case against him. The proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course, it is possible the case is proved beyond reasonable doubt."

44. In the present case, no such evidence is brought on record against the accused as to leave only a remote possibility regarding his involvement. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence. A reasonable doubt is not an imaginary, trivial or a merely possible doubt;

30

but a fair doubt based upon reason and common sense. The concepts of probability, and degrees of it, cannot obviously be counted mathematically, but it should be appreciated by its cumulative effect and evidence to that effect.

45. By keeping in mind the aforesaid well settled law, if arguments advanced and materials on record are appreciated, it can be noted that there are vital omissions and contradictions which affect the core of the prosecution. It is well settled that where account of eyewitness is found credible and trustworthy, it is to be accepted. The evidence of eyewitnesses requires a careful assessment and evaluation of their credibility. It should be consistent with the account narrated by other witnesses and should be creditworthy. The probative value of such evidence becomes eligible when it put into the scales for cumulative evaluation.

46. During the pendency of the appeal, the injured and the accused arrived at settlement and various

31

applications are filed for compounding of offences as offence under Section 307 of the Indian Penal Code is non-compoundable. The said permission was not granted and application were kept pending and the appeal was finally heard. During submissions, learned counsel for the accused placed reliance on catena of decisions as to the compounding of offences though the offence is non-compoundable.

47. The Hon'ble Apex Court, in the case of **Gian Singh** *supra*, held that heinous and serious offences of mental depravity or offences like murder, rape, dacoity or under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc. as public servants cannot be quashed even though victim and offenders have settled the dispute. Such offences are not private in nature and have serious impact on society. But, criminal cases having overwhelmingly and pre-dominatingly civil flavour stand on a different footing.

32

The offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry or family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute, may quash criminal proceeding.

48. The Hon'ble Apex Court, in the case of **Manjit Singh vs. The State of Punjab and anr** *supra*, by referring earlier decision in the case of **Ishwarsingh vs. State of Madhya Pradesh**⁸ held that in a non-compoundable offence the compromise entered into between the parties is indeed a relevant circumstance which the Court may keep in mind for considering the quantum of sentence and held as under:

“In Jetha Ram vs. State of Rajasthan, (2006) 9 SCC 255, Murugesan vs. Ganapathy Velar, (2001) 10 SCC 504 and Ishwarlal vs. State of M.P., (2008) 15 SCC

⁸ (2008)15 SCC 667

671, this Court, while taking into account the fact of compromise between the parties, reduced sentence imposed on the appellant accused to already undergone, though the offences were not compoundable. But it was also stated that in **Mahesh Chand vs. State of Rajasthan, 1990 Supp. SCC 681** such offence was ordered to be compounded.”

49. *Per contra*, learned Additional Public Prosecutor for the State placed reliance on the decision of the Full Bench of this Court in the case of **Sau. Maya Sanjay Khandare and anr supra** wherein the the Full Bench considered quashing of conviction and held that in non-compoundable offence on the ground of settlement of parties quashing of conviction is not permissible, compromise post-conviction for non-compoundable offence *ipso facto* cannot result in acquittal of convict, compromise is one among various aspects to be considered while imposing appropriate sentence when conviction is to be maintained on examining merits of the case.

34

50. In the case of of **State of Rajasthan vs. Shambhu Kewat and anr** *supra* also the Hon'ble Apex Court considered compounding of the non-compoundable offence and held that offence under Section 307 is non-compoundable. The accused persons with common intention went to the shop of injured armed with weapons in furtherance of their common intention had caused serious injuries. The criminal justice system has to achieve that is safety and protection of the people at large and held that the crime committed was against an individual and it was a crime against the society and taking a lenient view in a serious offence will leave a wrong impression about criminal justice system.

51. In the recent judgment, in the case of **Ramgopal and anr vs. The State of Madhya Pradesh** it is held by the Honourable Apex Court that having regard to the nature of the offence and the fact that parties have amicably settled their dispute and

35

the victim has willingly consented to the nullification of criminal proceedings, can quash such proceedings in exercise of its inherent powers under Section 482 of the Code of Criminal Procedure, even if the offences are non-compoundable.

It has further been held, by referring the decisions in the cases of **Gian Singh** *supra* and **State of Madhya Pradesh vs. Laxminarayan and ors**⁹, that, “true it is that offences which are ‘non-compoundable’ cannot be compounded by a criminal court in purported exercise of its powers under Section 320 of the Code of Criminal Procedure. Any such attempt by the court would amount to alteration, addition and modification of Section 320, which is the exclusive domain of Legislature. There is no patent or latent ambiguity in the language of Section 320, which may justify its wider interpretation and include such offences in the docket of ‘compoundable’ offences

36

which have been consciously kept out as 'non-compoundable'.

It is further held that criminal proceedings involving non-heinous offences or where the offences are predominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise is struck post conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence.

37

While summing up, the Hon'ble Apex Court held that as opposed to Section 320 of the Code of Criminal Procedure where the Court is squarely guided by the compromise between the parties in respect of offences 'compoundable' within the statutory framework, the extraordinary power enjoined upon a High Court under Section 482 of the Code of Criminal Procedure or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 of the Code of Criminal Procedure. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind: (i) Nature and effect of the offence on the conscious of the society; (ii) Seriousness of the injury, if any; (iii) Voluntary nature of compromise between the accused and the victim; and & (iv) Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations.

38

52. In the light of observations of the Hon'ble Apex Court, as already observed, the evidence of prosecution witnesses as to actual incident is not consistent and corroborating to each other. The actual incident, whether occurred during the meeting or as narrated by informant PW3 injured Gautam, is not established. The evidence of the eyewitness and injured, PW3 Gautam, is not corroborating to each other. Though weapon of the offence was recovered at the instance of the accused, no blood stains were found on the said weapon. The Chemical Analyzer's Reports Exhibits-24 and 25 show no blood is detected on Exhibits-2, 3 and 4 and on clothes of the accused Exhibits-10 and 11 and soil collected from the spot of the incident. The evidence, as to memorandum statement and seizure of the weapon, of PW5 Bhaskar Sahare, nowhere shows that in his presence the accused has made voluntary statement and in pursuance of the said statement, the Article was recovered at his instance.

39

53. The Hon'ble Apex Court, in the case of **Subramanya vs. State of Karnataka**¹⁰ held that The conditions necessary for the applicability of Section 27 of the Act are broadly as under:

- (1) Discovery of fact in consequence of an information received from accused;
- (2) Discovery of such fact to be deposed to;
- (3) The accused must be in police custody when he gave information; and
- (4) So much of information as relates distinctly to the fact thereby discovered is admissible.

What is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and the prosecution that information given should be recorded and proved and if not so recorded,

¹⁰ 2022 LiveLaw (SC) 887

40

the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given.

54. In the present case, admittedly, the evidence of PW5 Bhaskar Sahare and PW11 Shiodas Munjewar nowhere states that the accused made voluntary statement and in pursuance of the said statement, he led them. Moreover, though it is the evidence that injured PW1 Shakti Mandal sustained bleeding injuries, no blood stains are found on the incriminating weapon. So, the evidence of discovery of the weapon at the

41

instance of the accused is also not helpful to the prosecution.

55. Thus, considering the entire evidence on record adduced by the prosecution, it shows that the evidence of injured and the eyewitness is not consistent as to the occurrence of the incident. It is also not corroborated by circumstantial evidence like recovery of the weapon and the chemical analysis certificate. As per the Chemical Analysis Certificates Exhibits-24 and 25, neither blood stains are found on the knife nor on clothes of the accused. Thus, circumstantial evidence also falls short to connect the accused with alleged offence. The medical evidence shows that the injured has sustained grievous injuries. Though the injured was taken immediately to the hospital, he has not narrated history of assault before the Medical Officer though assailants were known to him. As per the evidence of the prosecution, the injured was taken for further treatment at Nagpur. As to the further

42

treatment, no evidence was adduced by the prosecution. The injuries sustained by informant PW3 injured Gautam are possible by fall on ground also. Though Medical Officer PW8 Kusum Shete narrated that injuries are possible by the weapon like knife which was referred to her, she specially stated that she did not notice any blood stains on the weapon produced before her for examination. The letter Exhibit-54 shows that the weapon was referred to her on 4.4.1999 I.e. immediately after recovery of the weapon, however no blood stains were found on the said weapon. The evidence of PW5 Bhaskar Sahare, who acted as a pancha on the discovery and memorandum statement of the accused, shows that there was a blood stains on the weapon. The said memorandum statement was recorded on 4.4.1999 and the weapon was discovered on 4.4.1999, whereas the opinion was also sought on 4.4.1999. It is difficult to accept that though PW5 Bhaskar Sahare witnessed blood stains on the said weapon and the Medical Officer has not witnessed any

43

blood stains and blood stains are not appearing during the chemical analysis, makes the prosecution case doubtful.

56. For all above these reasons, the evidence adduced by the prosecution becomes doubtful and is sufficient to give benefit of doubt to the accused. It is well settled that while appreciating the evidence of witnesses, approach must be whether the evidence of the witness read as a whole inspires confidence. Once that impression is formed, then undoubtedly it is necessary for the court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether earlier evaluation of evidence is shaken as to render it unworthy. The material thing which is to be seen whether those inconsistencies go to the root of the matter. Each criminal trial is a quest for

44

search of the truth. Burden is on the prosecution to prove the charge beyond reasonable doubt.

57. Considering the quality of the evidence in the present case, it suffers from inconsistency. There is no corroboration by eyewitnesses as well as circumstances like blood stains weapon or blood stains clothes.

58. For all above those grounds, as the appeal succeeds and deserves to be allowed, following order is passed:

ORDER

(1) The Criminal Appeal is **allowed**.

(2) The judgment and order dated 23.7.2004 passed by learned 4th Ad hoc Additional Sessions Judge, Chandrapur in Sessions Case No.32/2000 is hereby quashed and set aside.

45

(3) The accused is acquitted of the offence for which he was charged.

Appeal stands **disposed of**.

In view of disposal of the appeal, criminal applications, if any, also stand disposed of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!