



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

CRIMINAL APPEAL NO. 322 OF 2023

The State of Maharashtra
Through Police Station, Kotwali
District Ahmednagar

.. Appellant

Versus

Shaikh Javed Moinuddin Bagwan
Age : 41 years, Occu.: Udayalpura,
Kamwada, Ward No.4, Juna Bazar, Beed.
At present R/o. Zareki Masjid, Ajijpura,
Ward No.10, Samibhai Ghadiwale,
Shirod Galli, Beed.

.. Respondent

- * **Mr. A. V. Lavte**
APP for the Appellant.
- * **Ms. Khan Sultana Rahim** (appointed)
Advocate for the Respondent

**CORAM : SANDIPKUMAR C. MORE AND
MEHROZ K. PATHAN, JJ..**

Date of Reserving the Order : 23rd September 2025

Date of Pronouncing the Order : 30th September 2025

FINAL ORDER [Per Mehroz K. Pathan, J.] :

1. The Appellant/State has filed the present appeal, thereby challenging the judgment dated 10.11.2017 delivered by the Additional Sessions Judge, Ahmednagar in Sessions Case No.133/2014, wherein the accused/Respondent - Shaikh Javed

Moinuddin Bagwan is acquitted for the offence punishable under Section 307 of the Indian Penal Code.

2. The case of the prosecution is that on 20.01.2024 at about 07:00 pm., the Respondent/accused had been to the office of the complainant - Rehana Nawab Bagwan, who is serving as a Chartered Accountant and demanded Rs.5000/- to go to his village, Udayalpura, Beed and threatened her that if she doesn't give him that amount, he would kill her. The office boys namely Mukhtar and Abed had come on the spot and therefore he had ran away. The complainant - Rehana Nawab Bagwan had her office in Parshah Khut on first floor of Bakkar Kasab Masjid since 15 years. After the incident on 20.01.2014 at 07:00 pm., the complainant and her brother Aftab went to the office of the complainant on their motorcycle Karizma bearing registration no. MH-16-AR-125 and reached the office on 21.01.2014 at about 11:15 am. When the complainant was about to get down from the motorcycle, one stone fell on the petrol tank of motorcycle from the gallery of the office of the complainant. When Aftab saw towards the gallery, the accused hurled second stone towards the motorcycle which hit on the head of Aftab and resulted into causing bleeding injury. When the accused was about to throw the third stone towards the complainant, persons nearby had gathered on the spot and caught hold the accused. The complainant took Aftab to the City Care Hospital as he had become unconscious after receiving bleeding head injury. The complainant had thus prayed for appropriate action against the accused persons, for attempt to kill the complainant which hit her brother Aftab resulting into serious

head injury. The crime no. I-24/2014 for the offence punishable under Section 307 IPC was registered against the accused and after completion of investigation, charge-sheet was filed under Section 307 IPC. The prosecution had in all examined six witnesses to prove their case and had also relied upon some documents of seizure, spot panchanama and medical certificate of injured Aftab. The learned trial court had also recorded statement of the Respondent/accused under Section 313 of the Code of Criminal Procedure and after going through the evidence led by the prosecution, was pleased to acquit the Appellant of the charges of attempt to commit murder punishable under Section 307 of IPC. The State has thus filed the present appeal, challenging the acquittal of the accused/Respondent herein, inter alia on several grounds, including the ground of perverse findings arrived at by the learned trial Court contrary to the evidence led by the prosecution.

3. The learned APP vehemently contends that there was no discrepancy in the testimony of PW-1/Rehana and PW-2/Aftab who were the victims of the assault carried out by the Respondent/accused. The testimony of PW-1 and 2 was also corroborated by the deposition of PW-3/Muntazir who runs a tailoring shop near the spot of the incident and that complainant's office is situated nearby his shop. The said witness had identified the accused in Court which is an admissible identification and as such there was no reason to disbelieve such an independent eye-witness.

4. The learned APP has further relied upon the statement of

PW-5 – Dr. Sandip Surana who had stated to have examined the injured PW-2/ Aftab and found injury CLW over left parietal region which was grievous injury. The learned APP therefore submits that the attempt to commit murder of PW-1/Rehana can be established from the said injury.

5. The last witness relied upon by the prosecution is PW-6/Deepak Barde who was the Investigating Officer, who had conducted the investigation and filed the charge-sheet. The learned APP Mr. Lavte therefore submits that the finding arrived at by the learned trial Court is perverse to the evidence led by the prosecution. Moreover, the accused has failed to provide any plausible explanation in the Section 313 statement recorded by the learned Magistrate. As such, the cumulative effect of the evidence collected by the prosecution ought to have resulted in the conviction of the accused, which provides for a maximum sentence of life imprisonment.

6. As against this, the learned appointed Counsel Ms. Sultana Rahim Khan, has vehemently argued that the scope of interference in the matters of appeal against the acquittal is very limited. The learned trial Court has noted the serious lacuna in the prosecution case and as such has recorded an order of acquittal, thereby giving a finding that no case is made out under Section 307 of IPC as against the Appellants. She further states that the possible view is taken by the learned trial Court and therefore the same may not be interfered with by this Court.

7. We have considered the submissions made by the learned

APP and the learned appointed Counsel Ms. Sultana Rahim Khan and have also gone through the record and proceeding alongwith judgment passed by the learned trial Court.

8. The prosecution witness no.1 - Rehana Nawab Bagwan had stated in a statement that on 20.01.2014 i.e. prior to one day of the incident, the Respondent/accused had threatened to kill her if she doesn't pay an amount of Rs. 5000/- to go Beed from Ahmednagar. If such was the case, complainant/Rehana not filing complaint by approaching the nearest police station, is found to be unnatural by the learned trial Court. The learned trial Court has also observed that after a lapse of twelve years of their marital discord, it was difficult to believe that the complainant demanding Rs.5000/-. The learned trial Court further disbelieved the evidence led by the prosecution on the ground that the motorcycle on which the stone had first fallen causing damage to the motorcycle, was not seized neither any photograph of the damaged petrol tank of the motorcycle was brought on record. This according to the learned trial Court, is a serious lacuna in the prosecution case which could have corroborated to the testimony of the PW-1 and PW-2.

9. The learned trial Court has also considered that though there was allegation about three stones being used by the accused, only one stone was seized from the spot. The Investigating Officer has further failed to seize the blood stains clothes of Aftab and a false reason stated in Exhibit-20 that the blood stains clothes of Aftab came to be washed. The seizure panchanama of clothes of Aftab is on 22.01.2014. The complaint is filed by Rehana on

21.01.2014 at 06:45 pm. The accused is also shown to be arrested on 21.01.2014. The Investigating Officer thus ought to have taken precaution of seizing the blood stains clothes of victim Aftab, to corroborate the evidence of PW-1 and PW-2. The conduct of the part of the complainant is found to be suspicious and therefore disbelieved.

10. The learned trial Court took note of the fact that the people who were gathered on the spot allegedly caught hold of the accused who was throwing stones from the office, were not examined by the police. The evidence of PW-3/Muntazir had also stated that some people had gathered on the spot. However PW-3/Muntazir admitted in his cross-examination that he did not apprehend the accused going on the gallery of the accused of the complainant. The prosecution witness no.3 had also stated in the statement that the police had called him on phone to come to police station to record his statement. This fact of the police automatically knowing about the eye-witness ready to depose about the incident is found to be a suspicious circumstance and PW-3/Muntazir is believed to be a got up witness of the complainant.

11. The medical evidence relied upon by the prosecution is that of PW-5/Dr. Sandip Surana who had mentioned about the injuries. However in the medical certificate at Exhibit-35, there is no mention about whether the injury sustained by Aftab was simple or grievous. The learned trial Court has therefore found the non-mentioning of the nature of injury in Exhibit-25 to be a defect and shrouded with clouds of doubt.

12. Moreover PW-5/Dr. Sandip Surana has stated in his cross-examination that if a stone falls on the petrol tank of motorcycle and comes in reverse and hit a head of a person than the injury found on the person of PW-2/Aftab is possible. The learned trial Court has therefore found defects in the prosecution case.

13. The learned trial Court has further taken into consideration the serious lacuna left on the part of the Investigating Officer in not examining the nearby shop owners, also failing to examine the persons who had apprehended the accused allegedly and also not seizing the motorcycle and stone from the spot and therefore did not find any substance in the allegation of the complainant that after 12 years, the Respondent/accused had made a demand of Rs.5000/- to go to Beed from the complainant. The complainant has also not placed on record to show that she had taken Talaq from the accused. The defence taken by the accused is that the complainant as well as her relatives are pressing him for Talaq and or to reside at Ahmednagar as Ghar Jamai to which the accused has denied which has resulted into filing of the false case. The learned trial Court has therefore disbelieved the prosecution witnesses and acquitted the accused.

14. The parameters for scope of interference in the appeal against acquittal, is that the judgment of acquittal shall suffer from patent perversity or that the same should be based upon misreading of material evidence on record. It is also one of the important principles entertaining appeals against acquittal that if two views are possible, the Appellate Court may not over turn the

order of acquittal only on the ground that another view is also possible.

15. In our view, therefore the view taken by the learned trial Court in the backdrop of the evidence led by the prosecution and 313 statement and relevant documents produced by the prosecution on record, is a possible view which calls for no interference.

16. The appeal against the acquittal filed by the State, challenging the judgment dated 10.11.2017 delivered by the Additional Sessions Judge, Ahmednagar in Sessions Case No.133/2014, is hereby dismissed.

17. The fees of the appointed Counsel Ms. Khan Sultana Rahim is quantified as Rs. 15000/-.

[MEHROZ K. PATHAN]
JUDGE

[SANDIPKUMAR C. MORE]
JUDGE

NAJEEB..