



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPEAL NO. 738 OF 2023**

Pushpa Ramesh Neharkar,
Age 41 years, Occ. Agriculture and household
R/o. Behind Deshmukh Petrol Pump,
Barabhai Galli, Dharur Road,
Kaij, Tq. Kaij, Dist. Beed.

.. APPELLANT

VERSUS

1. The State of Maharashtra
2. Bhagwat Sandipan Chate,
Age 20 years, Occupation
R/o. Tambva, Tq. Kaij, Dist. Beed.
3. Shivshankar Haribhau Ingale,
Age 28 years, Occupation
R/o. Ingale Vasti, Kaij,
Tq. Kaij, Dist. Beed.
4. Rameshwar Narayan Lange,
Age 35 years, Occ.
R/o. Jahagir Moha, Tq. Dharur,
Dist. Beed.

..RESPONDENTS.

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Mr. A.D. Patil, Advocate h/f. Mr. S.J. Salunke, Advocate for appellant,
Mr. S.R. Wakale, APP for State
Mr. R.G. Hange, Advocate for respondent No.2
Mr. Aadish S. Hazari h/f. Mr. Amol B. Chalak for respondent No.3.

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

DATE : 9th October, 2025.

JUDGMENT [PER MEHROZ K. PATHAN, J.] :-

The appellant has filed the present appeal thereby praying for quashing and setting aside the impugned judgment and order of acquittal dated 6th June, 2023, passed by the Additional Sessions Judge, Ambejogai, Dist. Beed, in Sessions Case, No. 87 of 2022.

2. This Court was pleased to call for the record & proceedings vide order dated 6.8.2025. After receipt of records the matter is taken up for final hearing with the assistance of the counsel for the appellants Shri A.D. Patil holding for Mr. S.J. Salunke, Shri R.G. Hange, Advocate for respondent No.4 Mr. Aadish Hazari h/f. Mr. Amol B. Chalak for respondent No.3 and Mr. S.R. Wakale, APP for State.

3. The basic contention of the appellant Pushpa Neharkar, who happens to be the wife of the deceased Ramesh Neharkar is that, deceased Ramesh Neharkar was done to death by respondent Nos. 4 to 6 herein on the trivial issue of publishing a photograph of the daughter of the deceased on the social media website Facebook. The contention of the appellant is that despite the eye witness as stated by PW-3 Prakash Gaokar. The trial court has disbelieved the testimony of eye witness only on the ground that he had resiled from his earlier statement. Thus, the submission of learned counsel for appellant is that perusal of the testimony of PW-3 Prakash Gaokar (eye witness) would show that he has partially supported the prosecution, inasmuch as, he states about presence of all the 3 accused on the spot of incident. PW-3 further states about the quarrel that has taken place with the deceased and that the assailant Bhagwat took a rod out of his vehicle and exhorted "Hana Hana" i.e. "Assault the deceased". This much of the testimony of the PW-3 could have been relied upon by the trial court. The trial court has not even considered the deposition of PW-3 worthy enough to rely upon. It is the submission that the entire testimony of the hostile witness is not to be discarded and so much of his deposition which accrues to the benefit of the prosecution can be relied upon by the trial court. It is, therefore, submitted that the entire evidence of eye witness - PW-3 has been wrongly disbelieved, resulting into miscarriage of justice as the same has resulted in acquittal of the respondents herein.

3. The further submission of the learned counsel for appellant is that PW-2 Amol Neharkar, son of the deceased had been to the spot after the incident. It is stated by PW-2 in his testimony that his father deceased Ramesh has given an oral dying declaration stating the name of the appellants who had assaulted him, resulting into grievous injuries. It is further stated that he had admitted deceased Ramesh to the hospital for treatment when he succumbed to the injuries.

4. It is submitted that testimony of PW-2 is denied only on the ground that PW-5 Pushpa Neharkar, mother of PW-2 has stated about the oral dying declaration given to her brother in law (real brother of the deceased) and not to PW-2 Amol. The said finding can be said to be perverse to the record inasmuch, PW-5 Pushpa also speaks about son i.e. PW-2 meeting the deceased at the spot of incident apart from his brother in law – Satish Neharkar. The argument therefore is, that PW-2 who happens to be an important witness to the oral dying declaration is also wrongly disbelieved by the learned trial court.

5. Another submission of the learned counsel for appellant is that PW-5 Pushpa is also wrongly disbelieved mentioning her to have made a contrary statement in her deposition as compared to deposition of PW-2 Amol – son of the deceased. The argument is, therefore, that the learned trial court has arrived at an erroneous finding which is apparent on the face of record and is therefore calls for interference, by this Court under its appellate jurisdiction under Section 372 of Cr.P.C.

6. As against this, Mr. Hange, learned counsel for respondent Nos. 2 and 4 submits that the learned trial court has rightly found that the prosecution has failed to establish the guilt of the respondent Nos. 5 to 7 beyond reasonable doubt. The learned trial court has stated about

the material variance in the deposition of PW-2 and PW-5 and therefore, rightly discarded their testimony. The learned counsel further argues that PW-3 Prakash who was the eye witness has been declared hostile by the prosecution. However, the examination in chief of the PW-3 hostile witness Prakash would show that there is variance in so far as role of the accused in assault carried out upon the deceased. The PW-3 states in his deposition that he has witnesses accused Shivshankar to have assaulted the deceased, whereas, PW-2 Amol stated in his deposition that it is accused Bhagwat who had taken iron rod and assaulted the deceased. The learned counsel therefore, submits that the discrepancy in so far as attributing the role of assailant is itself sufficient enough to disbelieve both the witnesses and therefore, requires no interference by this Court.

7. The learned counsel for respondent No.2 argues that PW-8 Santosh Misale, (Investigating Officer), has failed to examine an important witness – Satish Neharkar, brother of the deceased. PW-3 Santosh Misale also failed to examine Babasaheb Chate, who happens to be the person, who has shown the place of occurrence. It is submitted that the spot of incident is shown as Ganji phata, whereas, the spot panchanama would show that the spot of incident mentioned is Bobdewadi Phata. Thus, there is discrepancy in the spot of incident which is later changed by the prosecution to somehow prove the guilt of the accused. The counsel for respondents, therefore, submits that the clothes of the accused seized by prosecution also did not show any blood stains on the clothes and as such, the CA report are also not corroborating the prosecution story and the same may be discarded.

8. It is further submitted that the learned trial court has applied its mind to the evidence led by the prosecution and has taken a possible view in the matter, resulting into acquittal of the respondents. He, therefore, prays that the appeal may be dismissed.

9. Learned APP appearing on behalf of the State informs that the State has not filed any appeal challenging the acquittal of the respondents herein.

10. We have considered the submissions advanced by the learned counsel for the appellant and respondents. After going through the evidence led by the prosecution and the record available for our perusal with the assistance of learned counsel, we find that the prosecution has failed to establish the guilt of the appellants beyond reasonable doubt. The prosecution has left a serious lacuna in not examining the prime witness, namely, Satish Neharkar, who was the real brother of the deceased Ramesh, to whom deceased Ramesh is alleged to have given oral dying declaration. Statement of Satish Neharkar was recorded by the I.O. under Section 164 of Cr.P.C. but still, the prosecution did not think it fit to examine the said witness. Further discrepancy in the case of prosecution could be seen from the testimony of PW-2 Amol. PW-2 states that his father has informed to him about the assailants and specifies that it was accused Bhagwat who had taken an iron rod and assaulted the deceased. The PW-3 Prakash Gaokar the main eye witness of the incident by the prosecution, has lateron turned hostile, however, has supported the prosecution in examination in chief. However, the assault is attributed to Shivshankar instead of accused Bhagwat. Thus, looking to the material variance in the role of the accused persons, it was found to be unsafe to base conviction upon such evidence led by the prosecution, which is a possible view taken by the trial court.

11. The further lacuna in the prosecution story is about the delay in recording the statement of witnesses. It could be seen that the statements of the eye witnesses PW-2 and PW-3 and the un-testified witness Satish Neharkar, were recorded at least 8 to 10 days after the

incident. As such, there is considerable delay which was at the disposal of the prosecution to create a story and which eventually creates a doubt in the prosecution story. Corroborative evidence also does not support the prosecution case. CCTV footage seized by the I.O. does not reveal any incriminating material so as to convict the appellants. The CA report also shows that there was no blood stains found on the clothes of the appellants seized by the I.O. Thus, in the absence of any cogent evidence which would unerringly point out towards the guilt of the accused, it would be unsafe to interfere into the possible view taken by the trial court.

12. It is a settled law that scope of interference in the appeal against judgment of acquittal is very limited. The Honourable Apex Court in the matter of ***H.D. Sundara & Ors. v. State of Karnataka(2023) 9 SCC 581*** summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to re appreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after re-appreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

Thus, looking to the limited scope of interference in an appeal against acquittal, we do not find sufficient evidence to interfere in the finding of acquittal. Hence, we pass the following order :-

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O R D E R

The appeal against acquittal is hereby dismissed. There shall be no orders as to costs.

[MEHROZ K. PATHAN]
JUDGE

[SANDIPKUMAR C. MORE]
JUDGE.

grt/-