IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.748 OF 2004

1. Pandharinath s/o Shankar Deshmukh,
Age : 55 years, Occ : Agri- Ex-Military man,
R/o Bhanadewadi, Tq. Karjat,
Dist. Ahmednagar.

2. Dattu s/o Manik Deshmukh,
Age : 50 years, Occ : Agri,
R/o Deshmukhwadi, Tq. Karjat,
Dist. Ahmednagar.

...Appellants/
Accused Nos.1 and 3.

-VERSUS-

The State of Maharashtra.

...Respondent

…

Ms. Madhaveshwari Mhase, Advocate for the appellants.
Mr. A.A.A. Khan, APP for the respondent/ State.

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CORAM : SUSHIL M. GHODESWAR, J.

Reserved on : 08 October 2026
Pronounced on : 02 November 2026

JUDGMENT :-

1. Heard the learned advocate appearing for the appellants and the learned APP appearing for the respondent/State.

2. This appeal is directed against the judgment and

order dated 30.10.2004 passed by the learned IIIrd Ad-hoc Additional Sessions Judge, Ahmednagar, in Sessions Case No.88 of 2004, thereby convicting the appellants for the offences punishable under Sections 395, 337 read with Section 34 and 342 read with Section 34 of the Indian Penal Code. The appellants are sentenced to suffer rigorous imprisonment for three years each and to pay fine of Rs.500/- each and in default, to suffer rigorous imprisonment for six months each, for the offence punishable under Section 395 of the IPC. They are further sentenced to suffer rigorous imprisonment for one month each for the offence punishable under Section 337 read with Section 34 of the IPC and rigorous imprisonment for two months each for the offence punishable under Section 342 read with Section 34 of the IPC. The substantive sentences are directed to run concurrently. The appellants were acquitted of the offence punishable under Section 397 of the IPC.

3. The prosecution case, in brief, is as under:-

(a) PW-1 Digambar Shankar Deshmukh is the informant. Appellant No.1 Pandharinath Shankar Deshmukh is his real brother. PW-2 Kalyan Deshmukh and Hanumant are the

sons of the informant. There was partition dispute between the informant and appellant No.1 in respect of their ancestral property. The informant had dug a well in his separate share. However, appellant No.1 was demanding share in the said well, resulting in dispute between them. There were also complaints filed by both sides against each other.

(b) On 19.06.1991, at about 1.30 a.m., the informant, his family members and PW-3 Buvasaheb Shankar Deshmukh were sleeping in their house. The informant heard some noise and tried to open the door, but it was found closed from outside. The persons who had entered the house allegedly broke open the door by using an iron rod. In the light of kerosene lamp, the informant allegedly noticed that the persons had covered their faces with cloth. They were armed with knives. They assaulted the informant and his family members. PW-2 Kalyan sustained injuries in the incident. It is further alleged that the assailants robbed marriage material, two wristwatches and cash of Rs.1,000/-. The prosecution further alleged that the assailants committed theft in other houses also.

(c) On the following morning, the informant lodged the

complaint, on the basis of which the offence came to be registered. The injured persons were referred for medical examination. During investigation, the police drew the spot panchnama and recorded statements of witnesses. The prosecution further relied upon certain discoveries of articles allegedly made at the instance of absconding accused persons. After completion of investigation, the charge-sheet came to be filed.

(d) The learned Magistrate committed the case to the Court of Sessions. The charge at exhibit 23 was framed against the accused for the offences punishable under Sections 395, 397, 337 read with Section 34 and 342 read with Section 34 of the IPC. The accused pleaded not guilty and claimed to be tried.

(e) To prove its case, the prosecution examined 11 witnesses. PW-1 Digambar Shankar Deshmukh is the informant. PW-2 Kalyan Digambar Deshmukh and PW-3 Buvasaheb Shankar Deshmukh are the witnesses to the incident. PW-4 Dnyandeo Modale is the spot panch witness. PW-5 Kisan Deshmukh is a hearsay witness. PW-6 Dr. Laxman Narayan Jambhale examined the injured persons. PW-7 Janardhan

Shankar Shelkar is the Police Head Constable, PW-8 Dyandeo Raut is the seizure panch witness, PW-9 Machhindra Padale is the Circle Inspector, PW-10 Ramkrushna Nekte is the seizure panch and PW-11 Subhash Gorakh Pagare is the Investigating Officer.

(f) The learned Trial Court, after appreciating the evidence, convicted the appellants i.e. accused Nos.1 and 3 for the aforesaid offences. The other accused persons were acquitted. Being aggrieved by the said judgment and order of conviction, the present appeal is filed.

4. The learned advocate appearing for the appellants submitted that the judgment of conviction recorded by the learned Trial Court is not sustainable in law or on facts. The witnesses examined by the prosecution are interested witnesses and are closely related to the informant. There was an admitted dispute between the informant and appellant No.1 regarding partition of ancestral property. There were also civil and criminal proceedings between them prior to the incident. Therefore, the possibility of false implication of the appellants cannot be ruled out.

5. The learned advocate further submitted that the prosecution alleged that about 20 to 22 persons participated in the incident. However, the trial was conducted only against four accused persons, as the remaining accused were absconding. The witnesses have stated that the incident took place during the night, when there was no electricity. There was also rain on the date of the incident. Therefore, according to the learned advocate, the possibility of correctly identifying the assailants in such circumstances is doubtful.

6. It is further submitted that PW-5 Kisan is not an eyewitness to the incident and his evidence is hearsay in nature. The medical evidence also does not fully support the version of PW-2 regarding the injuries allegedly sustained by him. The learned advocate further submitted that no incriminating article was recovered at the instance of the present appellants. The recoveries relied upon by the prosecution are attributed to the absconding accused persons. The learned advocate, therefore, submitted that the prosecution has failed to establish the involvement of the appellants beyond reasonable doubt and prayed that the appeal be allowed.

7. *Per contra*, the learned APP strongly opposed the appeal. He submitted that the learned Trial Court has properly appreciated the evidence of the informant and the eyewitnesses. Their evidence is supported by the medical evidence and the evidence regarding the spot of the incident. The incident involved a large number of persons who entered the house during the night, assaulted the occupants and committed robbery. The learned APP further submitted that the evidence regarding the discoveries of stolen articles gives support to the prosecution case. According to the learned APP, the learned Trial Court has rightly believed the prosecution witnesses and convicted the appellants. He, therefore, prayed for dismissal of the appeal.

8. I have carefully considered the submissions advanced on behalf of the respective parties and have gone through the evidence available on record and the judgment passed by the learned Trial Court. There is no dispute that the prosecution case is based mainly upon the evidence of PW-1 Digambar, PW-2 Kalyan and PW-3 Buvasaheb. It is also an admitted position that PW-1 and PW-3 are related to the appellants. Their evidence, therefore, requires careful scrutiny,

particularly in view of the admitted previous disputes between the parties.

9. PW-1, in his cross-examination, has admitted that there was dispute regarding partition between him, PW-3 and appellant No.1. He has also admitted that appellant No.1 had filed partition suit against him and PW-3. It has further come on record that the complaints were being filed by both sides against each other. PW-1 has also admitted that the present proceedings were pending against appellant No.1 and that, two to three days prior to the incident, he had lodged the complaint against appellant No.1 at Karjat Police Station.

10. Similarly, PW-3 (Buwasaheb) has admitted that appellant No.1 had asked him that the land should be purchased in his name till the return of the hand loan amount of Rs.3,000/-. PW-3 has also admitted that he had initiated proceedings before the Civil Court against appellant No.1 for declaration. Thus, the evidence on record clearly indicates that there was dispute between the parties regarding ancestral property and monetary transactions.

11. It is true that merely because the witnesses are

related to the informant, their evidence cannot be discarded. However, in the present case, the admitted previous enmity and the pending disputes between the parties are relevant circumstances while appreciating their evidence. The possibility of exaggeration or false implication, therefore, requires consideration in the light of the other evidence available on record.

12. Another important circumstance is the manner in which the assailants were allegedly identified. According to the prosecution, the incident occurred at about 1.30 a.m. The informant PW-1 has stated that he noticed the assailants in the light of a kerosene lamp. The defence has pointed out that there was no electricity at the relevant time and that there was rainfall on the date of the incident. PW-3 (Buwasaheb) has also admitted the circumstances regarding rain. The prosecution case itself indicates that the persons who entered the house had covered their faces with cloth. In these circumstances, the evidence regarding identification of the assailants assumes importance. The prosecution has alleged the participation of about 20 to 22 persons. However, only four accused persons faced the trial and

the remaining accused were absconding. The prosecution was required to establish the specific involvement of the present appellants through reliable evidence. The mere fact that the appellants were known to the informant and the other witnesses would not remove the doubt arising from the circumstances in which the incident allegedly took place.

13. The evidence of PW-2 Kalyan Deshmukh also requires consideration. He is the son of PW-1 informant and the nephew of appellant No.1. Though he is stated to be an injured eyewitness, the defence has pointed out that he described having sustained head injury requiring seven stitches and an injury to his right leg. However, the medical certificate does not record the injuries in the manner stated by him. The medical officer examined injured persons and described the nature of the injuries as simple. Thus, the medical evidence does not fully support the description of injuries given by PW-2. This circumstance assumes significance while appreciating his evidence as a whole.

14. The prosecution has also relied upon the evidence of PW-5 Kisan Deshmukh. However, from the material placed on record, it appears that he is not an eyewitness to the actual

incident. His evidence is based upon what was allegedly disclosed to him by his wife. Therefore, his evidence cannot be treated as direct evidence regarding the participation of the appellants in the incident.

15. The prosecution has further relied upon the recovery of certain articles during the investigation. However, the material indicates that the discoveries of the alleged stolen articles were made at the instance of absconding accused persons. No recovery of the alleged stolen property has been shown to have been made at the instance of the present appellants. The recovery of articles at the instance of other accused persons, in the absence of other reliable evidence connecting the present appellants with the incident, cannot be treated as sufficient proof of their involvement. It is also relevant to note that the prosecution has alleged that the incident was committed by a large group of persons. However, the evidence must establish beyond reasonable doubt that the appellants were members of that group and had participated in the commission of the offence. The fact that an incident involving assault and robbery may have taken place does not establish the guilt of the present appellants.

16. The learned Trial Court has relied upon the evidence of the prosecution witnesses and the circumstances of recovery while recording the finding of guilt. However, the admitted previous disputes between the parties, the circumstances prevailing at the time of the incident, the nature of the identification evidence and the absence of any recovery from the appellants are material circumstances which required careful consideration. On an overall appreciation of the evidence, I find that the prosecution has not established the involvement of the appellants beyond reasonable doubt. It is well settled that suspicion, however strong it may be, cannot take the place of proof. The prosecution is required to establish its case beyond reasonable doubt. In the present case, the evidence available on record does not inspire sufficient confidence to sustain the conviction of the appellants. The benefit of the doubt, therefore, deserves to be extended to them.

17. In view of the above discussion, I am of the considered view that the learned Trial Court has not properly appreciated the evidence available on record while recording the finding of guilt against the appellants. The judgment and order of

conviction and sentence, therefore, cannot be sustained and deserves to be set aside. Hence, the following order:

ORDER

(a) The Criminal Appeal is allowed.

(b) The judgment and order dated 30.10.2004 passed by the learned IIIrd Ad-hoc Additional Sessions Judge, Ahmednagar, in Sessions Case No.88 of 2004, convicting the appellants for the offences punishable under Sections 395, 337 read with Section 34 and 342 read with Section 34 of the Indian Penal Code, is quashed and set aside.

(c) The appellants are acquitted of the offences punishable under Sections 395, 337 read with Section 34 and 342 read with Section 34 of the Indian Penal Code.

(d) The bail bonds of the appellants, if any, stand cancelled and their sureties, if any, are discharged.

(e) Fine amount, if paid, be refunded to the appellants.

(f) The record and proceedings be sent back to the Trial Court.

kps (SUSHIL M. GHODESWAR, J.)