Motiram Padu Joshi vs The State Of Maharashtra on 10 July, 2018

Equivalent citations: AIR 2018 SUPREME COURT 3245, 2018 CRI LJ 3736, 2018 ALLMR(CRI) 3572, (2018) 191 ALLINDCAS 136 (SC), (2018) 105 ALLCRIC 626, (2018) 191 ALLINDCAS 136, (2018) 2 UC 1439, 2018 (3) ABR(CRI) 101, (2018) 3 ALLCRIR 2213, (2018) 3 BOMCR(CRI) 622, (2018) 3 CRILR(RAJ) 825, (2018) 3 CRIMES 208, (2018) 3 CURCRIR 150, (2018) 3 JLJR 314, (2018) 3 PAT LJR 349, (2018) 3 RECCRIR 998, 2018 (3) SCC (CRI) 738, (2018) 4 ALLCRILR 792, 2018 (4) KCCR SN 460 (SC), (2018) 4 MAD LJ(CRI) 79, (2018) 71 OCR 951, (2018) 8 SCALE 704, 2018 (9) SCC 429, 2018 CRILR(SC MAH GUJ) 825, 2018 CRILR(SC&MP) 825, (2019) 1 ALD(CRL) 369, (2019) 2 MH LJ (CRI) 767

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Bench: Chief Justice, R. Banumathi, Navin Sinha

REPORTAB

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1479 OF 2015

MOTIRAM PADU JOSHI AND OTHERS …Appellants

Versus

THE STATE OF MAHARASHTRA ...Respo

JUDGMENT

R. BANUMATHI, J.

This appeal arises out of the judgment dated 30.07.2015 passed by the High Court of Judicature at Bombay in Criminal Appeal No.174 of 1994 in and by which the High Court reversed the judgment of the acquittal of the appellants/accused Nos. 3, 5, 7 and 8 and convicted them under Sections 147, 148, 302 read with 149 IPC and sentenced them to undergo life imprisonment.

2. Briefly stated case of the prosecution is that PW-2-Anant Budhaji Joshi is the brother of deceased Machindra Budhaji Joshi. Both Anant and Machindra were doing the work of electric fitting. PW-3-Kesarinath Bhagat and PW-4-Vasudeo Gaikar were also doing the same work. Appellant Motiram

Padu Joshi (A3), Ratan Maruti Vaskar (A5), Devidas Maruti Vaskar (A7), Ramnath @ Ram Padu Joshi (A8), deceased-Machindra and prosecution witnesses are residents of village Owa-peth, Taluka Panvel, District Raigad. Appellants/accused were belonging to congress party and the deceased and the prosecution witnesses were from Shiv-sena party. In the election of Zilla Parishad in 1992, both parties became inimical to each other.

3. On 26.04.1992, deceased Machindra had gone to village Nandgaon for electric fitting work along with PWs 3 and 4 and they returned at about 08.30 pm to the house of deceased. All three of them had their dinner and were sitting on the cot in the courtyard. PW- 2 was thereafter taking his dinner inside the house. At about 09.30 pm, appellants along with other accused being armed with deadly weapons like swords, knife, sticks and motor-cycle chain came to the courtyard of the house of deceased Machindra. Appellant Motiram (A3) was carrying sword in his hand and assaulted the deceased on his head. Appellant Ratan (A5) attacked the deceased with the sword on the legs of the deceased. Appellant Ramnath (A8) also attacked the deceased with the sword on his head. Appellant Devidas (A7) attacked the deceased with knife on his foot and legs. Other accused against whom the appeal is abated assaulted the deceased with motor-cycle chain and sticks. On seeing the accused armed with deadly weapons, PWs 3 and 4 got frightened and went inside the house and stood near the window of the house and witnessed the occurrence. Due to the assault, the deceased fell down from the cot having sustained grievous injuries and PW-2 took the deceased in the truck of his brother PW-5-Eknath Joshi to Taloja police station. Considering the serious conditions of the deceased, he was sent to the Municipal Dispensary at Panvel along with police constable Mhatre. PW-15-Atmaram, Head Constable recorded the statement of PW-2, based on which, FIR in Crime No.44/92 was registered under Sections 147, 148, 149 and 307 IPC. On the same night at about 11.30 pm, deceased Machindra succumbed to injuries and the FIR was altered from Section 307 IPC to Section 302 IPC.

4. Sub-Inspector Mr. Laxman Shejal (PW-16) had taken up the investigation and he visited the spot and prepared the rough sketch (Ex.A42). From the spot, he collected blood-stained quilt (Article No.3) and also blood-stained soil and sample mud. The body was sent to autopsy and PW-14-Dr. Ramrao Kendre conducted the post-mortem and noticed as many as twenty-six injuries in the nature of incised wounds, contusions on the head, legs, right arm and all over the body of the deceased. Dr. Ramrao Kendre opined that the cause of death was “shock secondary to celebral contusion due to blood trauma over occipital area”.

5. The accused were arrested on 27.04.1991. Based on the disclosure statement of appellant Motiram, one sword (Article No.8) was recovered on 09.05.1992. Swords (Article No.9) also came to be recovered at the instance of appellants Ratan and Ramnath on 11.05.1992 and 10.05.1992. The motor-cycle chain and sticks also came to be recovered from the other accused. The Chemical Analysis Report disclosed that ‘A’ group blood was found on Article No.8 (sword recovered at the instance of appellant Motiram) and Article No.12 (Motor-cycle chain). On completion of investigation, charge sheet was filed against all the nine accused under Sections 147, 148, 302 read with 149 IPC.

6. To prove the charges against the accused, the prosecution has examined as many as sixteen witnesses and also produced material objects and exhibited documents. The accused were questioned under Section 313 Cr.P.C. about the incriminating evidence and circumstances and the accused denied all of them and stated that they have been falsely implicated. Upon consideration of evidence, the trial court pointed out that PW-2 has a criminal record and that his evidence is improbable. The trial court also held that the presence of PWs 3 and 4 was doubtful and their evidence is untrustworthy and cannot be relied upon to convict the accused. The trial court further held that the prosecution has not proved the guilt of the accused beyond reasonable doubt and acquitted all the accused.

7. On appeal by the State, the High Court held that the evidence of PWs 2 to 4 as to the overt act of the accused is consistent and corroborated by the medical evidence and recovery of weapons. The High Court held that the trial court erred in disbelieving the evidence of eye witnesses and the reasonings of the trial court suffers from perversity. Observing that prompt registration of FIR lends credence to the prosecution case which is also strengthened by medical evidence and recovery of weapons, the High Court reversed the judgment of the trial court and convicted the appellants as aforesaid in para (1). The High Court maintained the acquittal of accused Baburao (A2).

8. During the pendency of the appeal before the High Court, accused Ragho Dharma Koli (A1), Rohidas Balram Joshi (A4), Satyawan Balu Waskar (A6) and Dnyandeo Sakharam Joshi (A9) died and the appeal against them stood abated.

9. We have heard Mr. Y.P. Adhyaru and Mr. Sidharth Luthra learned senior counsel appearing on behalf of appellants and the learned counsel appearing on behalf of State of Maharashtra. We have perused the impugned judgment and carefully considered the rival contentions and the evidence and materials placed on record.

10. There are three eye witnesses namely Anant, brother of deceased (PW-2), Kesarinath (PW-3) and Vasudeo (PW-4). PWs 2 to 4 have consistently stated that on the date of incident, after having dinner, deceased was lying on the cot in the courtyard and PWs 3 and 4 were sitting near him. PW-2 went inside and was taking meal. At about 09.30 pm, the appellants and other accused armed with weapons came there shouting and running. On seeing the accused armed with deadly weapons, PWs 3 and 4 got frightened and went inside the house. Appellant Motiram attacked the deceased with sword on his head, appellant Ratan attacked the deceased with sword on his legs, appellant Ramnath attacked the deceased with sword on his head and appellant Devidas attacked the deceased with knife on his foot and legs. On hearing the alarm raised by deceased Machindra, PW-2 came out and raised shouts and on seeing the neighbours, the accused ran away from the spot. PWs 2 to 4 have consistently spoken about the overt act of the appellants as mentioned above.

11. Evidence of PW-2 and his credibility is attacked by the appellants contending that:- (i) PW-2 though present in the house did not go to the rescue of his brother Machindra and remained mute spectator; and (ii) PW-2 has a criminal record. Just prior to the incident, PW-2 went inside the house and was taking meals. On hearing the alarm raised by his brother Machindra, PW-2 came outside. As the accused were many in numbers and armed with deadly weapons like swords, knife,

motor-cycle chain and sticks etc., PW-2 being unarmed would have naturally become frightened and may not have dared to interfere. Evidence of a witness is not to be disbelieved simply because he has not reacted in a particular manner.

12. Likewise, the relationship of PW-2 with the deceased cannot be the reason for doubting the testimony of PW-2. It is fairly well-settled that relationship is not a ground affecting the credibility of a witness. In Mohabbat v. State of M.P., (2009) 13 SCC 630, this Court held as under:-

> "11. Learned counsel for the respondent State on the other hand supported the judgment of the High Court.
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> "12. Merely because the eyewitnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. We shall also deal with the contention regarding interestedness of the witnesses for furthering the prosecution version.

13. '5. ... Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible. ..... To the same effect are the decisions in State of Punjab v. Jagir Singh (1974) 3 SCC 277, Lehna v. State of Haryana (2002) 3 SCC 76 (SCC pp. 81-82, paras 5-9) and Gangadhar Behera v. State of Orissa (2002) 8 SCC 381." The above position was also highlighted in Babulal Bhagwan Khandare v. State of Maharashtra (2005) 10 SCC 404, Salim Sahab v. State of M.P. (2007) 1 SCC 699 and Sonelal v. State of M.P. (2008) 14 SCC 692 (SCC pp. 695-97, paras 12-13)." As held in various decisions, judicial approach has to be cautious in dealing with such evidence. It is unreasonable to contend that evidence given by related witness should be discarded only on the ground that such witness is related.

13. Evidence of PWs 3 and 4 is sought to be assailed on the ground that their names were not mentioned in the First Information Report (FIR) and that they are interested witnesses. Of course, names of PWs 3 and 4 were not mentioned in the FIR. Deceased Machindra was critically injured and when he was taken to the police station, on seeing his serious condition, deceased was sent to the hospital along with police constable Mhatre. PW-2 remained in the police station to lodge the complaint and his statement was recorded. His brother having been critically injured, PW-2 must have been in a disturbed mind and must have been in a hurry to rush to the hospital to save his brother. Non-mention of the names of eye witnesses (PWs 3 and 4) in the FIR should be examined in the situation in which PW-2 was placed.

14. Furthermore, as pointed out by the High Court, FIR is not an encyclopedia which should contain all the details of the incident. FIR is not an encyclopedia which is expected to contain all the details of the prosecution case. It may be sufficient if the broad facts of the prosecution case about the

occurrence appear. Omission as to the names of the assailants or the witnesses may not all the times be fatal to the prosecution, if the FIR is lodged without delay. Unless there are indications of fabrication, the court cannot reject the prosecution case as given in the FIR merely because of omission. In the present case, FIR was registered without delay and prompt registration of FIR itself lends assurance to the prosecution case. The object of the FIR is to set the law in motion. Omission to give the names of assailants or the names of witnesses in the FIR is not fatal to the prosecution case. The High Court was right in observing that non-mention of the names of eye witnesses in the FIR can hardly be fatal to the prosecution case.

15. Evidence of PWs 3 and 4 is assailed on the ground that PWs 3 and 4 have not gone to the rescue of the deceased and it is quite unbelievable that on seeing the accused who were armed with weapons, both of them went inside the house. It is further submitted that the trial court righty held that their evidence is not trustworthy and the High Court was not right in intervening such finding and basing the conviction on the evidence of PWs 3 and 4. In their evidence, PWs 3 and 4 have stated that on seeing number of accused armed with deadly weapons got frightened and went inside the house and stood near the window and saw the occurrence. Their evidence cannot be doubted on the ground that they did not intervene in the attack nor made attempts to save the deceased. On witnessing a crime, each person reacts in his own way and their evidence cannot be doubted on the ground that the witness has not acted in a particular manner. The evidence of PWs 3 and 4 cannot be doubted merely because they have not acted in a particular manner.

16. We may usefully refer to the case in Rana Partap v. State of Haryana, (1983) 3 SCC 327 as under:-

> "6. Yet another reason given by the learned Sessions Judge to doubt the presence of the witnesses was that their conduct in not going to the rescue of the deceased when he was in the clutches of the assailants was unnatural. We must say that the comment is most unreal. Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way."

17. While appreciating the evidence of witness, approach must be whether the evidence of witness read as a whole appears to have a ring of truth and consistent with the prosecution case or to find out whether it is against the general tenor of the case. Their evidence cannot be doubted merely because they belong to opposite faction. All that is required is that their evidence is to be scrutinized with care and caution. On testing the evidence of PWs 2 to 4, the High Court found that their evidence is consistent and credit worthy. We find no reason to take a different view.

18. The evidence of PWs 2 to 4 is corroborated by medical evidence. Further, PW-14 opined that nineteen to fourteen injuries could have been caused by swords (Articles 8 and 9). Oral evidence of PWs 2 to 4 is thus corroborated by the medical evidence. PW-14- Dr. Ramrao who conducted the post-mortem has noticed that "half of the stomach with rice is not digested". PW-14 opined that the deceased died within two hours of his last meal which again is consistent with the evidence of PWs 2 to 4. Medical evidence of PW- 14 lends assurance to the evidence of PWs 2 to 4.

19. Prosecution case is further corroborated by recovery of weapons from the accused. Based on the disclosure statement of appellant Motiram, one sword (Article No.8) was recovered and another sword at the instance of appellant Ratan (Article No.9) was recovered and another sword was also recovered on the disclosure statement of appellant Ramnath. Chemical Analysis Report (Ex. A32) showed that the blood-stained found on the quilt seized from the scene of occurrence was that of 'A' group. 'A' group blood was also detected on swords which were recovered, based on the disclosure statement of appellants Motiram (Article No.8) and Ratan (Article No.9). The presence of 'A' group blood (Blood Group of deceased) on the weapons recovered is yet another piece of evidence corroborating the evidence of PWs 2 to 4 and strengthening the prosecution case.

20. PW-14-Dr. Ramrao noticed that the thighs and legs of the deceased was smeared with mud. Learned senior counsel for the appellants submitted that in view of the presence of mud on the body of the deceased, serious doubts arise as to the time and place of occurrence and that there is no possibility of the occurrence having taken place in the courtyard of the house of deceased Machindra. This submission does not merit acceptance for more than one reason. Firstly, as pointed out earlier, PW-16-Laxman Shejal, Investigating Officer had recovered blood-stained quilt (Article No.3) from the scene of occurrence i.e. courtyard of house of the deceased and also blood- stained mud and sample mud. Chemical Analysis Report (Ex. A32) showed presence of 'A' group blood in the quilt. While narrating the occurrence, eye witnesses have stated that after the attack, the deceased had fallen down from the cot; in that course, thighs and legs of the deceased might have been smeared with mud. The presence of mud on the thighs and legs therefore does not raise doubts about the prosecution case. This aspect of submission advanced by the appellants has been elaborately considered by the High Court in para (42) of its judgment. As rightly observed by the High Court, this is too insignificant a fact to give importance so as to disbelieve and discard the entire prosecution case as such.

21. Learned senior counsel for the appellants then contended that only when there are compelling and substantial reasons, the High Court can interfere with the order of acquittal and in the present case, there were no such compelling circumstances or glaring mistakes in the judgment of the trial court to reverse the order of acquittal.

22. It is fairly well-settled that in an appeal against the order of acquittal, the appellate court would be slow to disturb the findings of the trial court which had the opportunity of seeing and hearing the witnesses. In an appeal against the order of acquittal, there is no embargo for reappreciating the evidence and to take a different view; but there must be strong circumstances to reverse the order of acquittal. In the appeal against order of acquittal, the paramount consideration of the appellate court should be to avoid miscarriage of justice.

23. While considering the scope of power of the appellate court in an appeal against the order of acquittal, after referring to various judgments, in Chandrappa v. State of Karnataka, (2007) 4 SCC 415, this Court summarised the principle as under:-

> "42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:
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> (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
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> (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
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> (3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion. (4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused.

Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

24. In Kallu alias Masih and others v. State of M.P., (2006) 10 SCC 313, this Court held as under:-

> "8. While deciding an appeal against acquittal, the power of the appellate court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further, if it decides to interfere, it should assign reasons for differing with the decision of the trial court."

25. In the present case, as held by the High Court, the trial court has not properly appreciated the evidence and its findings are perverse. When the approach of the trial court is perverse, in an appeal against the order of acquittal, a duty is cast upon the High Court to reappreciate the evidence. The deceased had sustained as many as twenty-six injuries. PWs 1 to 3 have consistently spoken about the incident and that the appellants were armed with deadly weapons and the overt acts of the appellants which is corroborated by the medical evidence and also by recovery of weapons from the appellants/accused. As observed by the High Court, the trial court gave importance to insignificant aspects like "smearing of the thighs and legs of the body with mud" and the conduct of the witnesses as to why they have not reacted in a particular manner and while doing so, the trial court failed to appreciate the substratum of the prosecution case. The High Court on being satisfied that the conclusion reached by the trial court was erroneous reversed the order of acquittal recorded by the trial court. We do not find any good ground to interfere with the judgment of the High Court.

26. In the result, the conviction of the appellants under Section 302 IPC read with Section 149 IPC is confirmed and the sentence of life imprisonment imposed upon each of them is confirmed and this appeal is dismissed.

.....J. [RANJAN GOGOI] ..... J. [R. BANUMATHI] New Delhi;

July 10, 2018