

(2022) 02 BOM CK 0042

In the Bombay High Court

Case No : Criminal Appeal No.440 Of 2001

State Of Maharashtra

APPELLANT

Vs

Rajaram Sakharam Pawar And Others

RESPONDENT

Date of Decision : 21-02-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 504, 506(2)
Code Of Criminal Procedure, 1973 — Section 313, 417

Citation : (2022) 02 BOM CK 0042

Hon'ble Judges : S. S. Shinde, J;N. R. Borkar, J

Bench : Division Bench

Advocate : V. B. Konde Deshmukh, Imtiyaz Patel

Final Decision : Dismissed

Judgement

S. S. Shinde, J

1 The Appellant/State has preferred this Appeal against the judgment and order dated 15/03/2001 passed by the learned Sessions Judge, Sindhudurg-Oros acquitting the Respondents – original Accused Nos.1 and 2 of the offences punishable under Sections 302 r/w 34 & 504 and 506 (2) of the Indian Penal Code (For short "IPC").

2 The prosecution case, in nutshell, is as under :-

Both the Accused and deceased Madhukar are real brothers.

There was a joint drum sticks tree. On 16/01/2000 the deceased Madhukar had plucked the drum sticks at about 4.00 pm from the drum sticks tree. On that count, there was a quarrel between Accused No.1 and the deceased, and Accused No.1 had abused and threatened the deceased. On 17/01/2000 at about 11.30 pm while deceased was returning along with bullocks after giving water to them in the river, Accused Nos.1 and 2 went near him, and Accused No.1 raised quarrel with the deceased. Accused No.2 abused and threatened to the

deceased. At that time PW-3 Sundara - the wife of deceased was standing in her courtyard. She noticed the quarrel hence she went to the spot. It is alleged that Accused No.1 lifted the stone and gave a blow by it on the head of deceased due to which the deceased fell on the ground. Anil Kandalgaonkar (PW-2), Subhash Valanju (PW-4) and Sandip Rane, who were proceeding to watch the cricket, heard the shouts and quarrel, and hence they rushed to the spot and noticed the assault on the person of deceased by Accused No.1. They went near the deceased and saw the condition of the deceased. Tarabai Valanju and Anjali Valanju heard the shouts, hence they went to the spot and tried to give water and liquid food (Pej) to deceased Madhukar, however, they were not successful in doing so as the deceased was already succumbed to the injuries. Thereafter Anil Kandalgaonkar, Sandip Rane and Subhash Valanju went to Surabha Ghadigaonkar – the police patil of village Sonavade and informed about the incident to him. Thereafter Police Patil and Anil Kandalgaonkar went to Avalegaon Outpost and informed about the incident and then they went to Kudal Police Station, where Anil Kandalgaonkar lodged a complaint. The offence u/s. 302, 504, 506 of the IPC was registered.

3 Thereafter the police went to the spot and prepared the inquest report, the spot panchanama was also prepared, the stone and soil, soil mixed with blood and the articles were seized. The dead body was sent to the hospital for post mortem. The Medical officer of PHC Kadaval conducted the post mortem on the dead body of deceased and noticed that the deceased died due to the injuries on his person. The clothes of deceased were seized. The accused No.1 was arrested on 18/01/2000 and clothes on his person i.e. Articles 6 and 7 were attached. The clothes were stained with blood. The seized articles were sent to C.A. Pune.

4 After completion of investigation, charge-sheet was submitted against the accused in the court of Judicial Magistrate First Class, Kudal, who registered the case as Reg. Criminal Case No.32 of 2000. The learned Judicial Magistrate First Class committed the case to the Court of Sessions as the offences levelled against the accused are triable by the Court of Sessions.

5 Thereafter the learned Additional Sessions Judge framed charge against the accused. The charge was read over and explained to the accused. The accused pleaded not guilty and claimed to be tried. The defence of the accused was of total denial. The defence of both the accused is that there was long standing enmity between them and deceased Madhukar over the land and house properties, and that deceased was not assaulted by Accused No.1, nor the incident as disclosed took place, and false case is lodged against them by taking dis-advantage of accidental death of deceased.

6 To bring home the guilt of the accused, during the trial the prosecution has examined in all 10 witnesses in support of its case. The Trial Court has recorded statements of accused under Section 313 of the Criminal procedure Code. The learned Sessions Judge, after considering the entire evidence available on record, came to a conclusion that the evidence brought on record by the prosecution is

not sufficient to prove the case against the accused, and therefore, the prosecution has failed to establish the case against any of the accused beyond reasonable doubt and the benefit of doubt is given to the accused, and therefore, as stated herein above, acquitted both the accused by the impugned judgment and order. Hence this Criminal Appeal filed by the State against the said order of acquittal.

7 We have heard the learned APP for the Appellant – State and the learned counsel for the Respondents – Accused. With their able assistance perused the grounds taken in the Appeal Memo, the evidence led by the prosecution, the material produced on record, and the reasons recorded by the learned Sessions Judge in the impugned judgment.

8 It is submitted by the learned APP that the learned Additional Sessions Judge did not consider the evidence led by the prosecution in proper perspective. He submits that the order of acquittal passed by the trial court is not a reasoned order and it is contrary to law and ought to be quashed and set aside. He further submits that there are eye witnesses to the incident. The evidence of eye witnesses and the material brought on record are sufficient to establish that accused No.1 is the author of the injury on the head of deceased Madhukar. The medical evidence also supports the case of the prosecution. He, therefore, submits that the entire approach of the trial Court is improper and illogical one and contrary to the provisions of law. He lastly submits that the impugned judgment and order passed by the Trial Court is not legally sustainable and the same is liable to be quashed and set aside.

9 On the other hand, the learned counsel appearing for the Respondents-Accused invited our attention to the findings recorded by the trial Court and submitted that the findings recorded by the trial Court are in consonance with the evidence brought on record and there is no perversity as such. The learned counsel for the Respondents/Accused submits that there is contradictory evidence of the complainant and the wife of the deceased in respect of the blow given by accused No.1 to the deceased. He submits that the so called eye witnesses are interested witnesses. The evidence of PW-3 is not sufficient to establish that accused No.1 is the author of the injury given on the person of the deceased. He further submits that the prosecution has failed to bring on record the evidence of actual incident. That the deceased was not assaulted by Accused No.1, nor the incident as disclosed took place, and false case is lodged against them by taking dis-advantage of accidental death of deceased. There is absolutely no evidence against the accused No.2 in respect of any instigating by him to accused No.1 or any overtact at the time of incident. There is no iota of evidence to show that the accused had abused, intentionally insulted and threatened the deceased. He submits that the death of Madhukar is an accidental death. He lastly submits that the prosecution has miserably failed to prove the charges levelled against both the accused beyond all reasonable doubts. He, therefore, prays that the Appeal of the State against acquittal of the Accused may be dismissed.

10 The accused stand charged for causing the death of deceased Madhukar Sakharam Pawar, who was their real brother, and abusing him and his wife Sundara and threatening to deceased with injury on his person. The prosecution case is based on direct evidence and it has claimed that there are eye witnesses to the incident. However, according to the defence, the accused No.1 is not the author of the death of the deceased and the death of Madhukar is accidental death. The question that arises for consideration is, whether the death of Madhukar is homicidal or accidental? In the said context, it would be apposite to scrutinize the evidence of the witnesses particularly the evidence of eye witnesses in proper perspective.

11 The prosecution has examined Anil Chandrakant Kandalgaonkar (PW-2) – who is the complainant. He stated in his deposition that the house of deceased Madhukar Sakharam Pawar is situated in his Wadi. Accused Rajaram Sakharam Pawar, the real brother of deceased, was residing in the said house, but separately. Accused No.2 Atmaram Sakharam Pawar was residing along with wife and children at Naradave. PW-2 stated that there were disputes over the property between deceased Madhukar and Accused – Atmaram and Rajaram. He further stated that on the date of incident i.e. on 17/01/2000 at about 6.30 am he had been to the house of his paternal aunt at village Digavale and he returned to his house at about 8.30 a.m.. He stated that there were cricket tournaments, therefore, he, Sandip Rane and Subhash Valanju were proceeding towards Naradave by the side of house of deceased Madhukar Pawar. When they came near the river, they heard the quarrel in a loud tone from the house of deceased Madhukar. PW-2 stated that Accused Rajaram told Madhukar that he will kill him, and Rajaram lifted stone and thrown it on the person of Madhukar. Madhukar fell on the ground after the stone was hit to him. Sandip Rane, Subhash Valanju, Tarabai Valanju, wife of Madhukar viz. Sundarabai were present at the said time. Madhukar was taken to courtyard of his house. Shobha Chandrakant Kandalgaonkar gave boiled cooked rice (Pej). Madhukar was not able to swallow Pej. Taramati Sahadeo Valanju tried to give water to Madhukar. Thereafter PW-2, Sandip and Subhash went to the police patil of village Sonavade and met him and disclosed about the incident to him. Thereafter PW-2 and police patil went to Avalegaon out-post, and then to Kudal Police Station and lodged the complaint. PW-2 further deposed that Atmaram, Accused No.2 and his wife were present when the incident took place, and Accused No.2 Atmaram was abusing to deceased Madhukar.

In his cross examination, he stated that the tournaments were at Raie. However, he could not say that the said Raie is at a distance of 2 to 2 ½ kms from the river. He stated that 5 minutes required to reach to the house of Atmaram from Rai. He further stated that, it did not happen that after the tournaments, they were returning from Raie and they heard the shouts of quarrel. He stated that one has to go by the side of house of Madhukar if he has to go to the river from his house. He admitted that there is a Ghalan in front of the house of deceased Madhukar. However, he denied the suggestion of defence that deceased

Madhukar was lying in Ghalan, when he saw him. He admitted that he had not heard the quarrels while they were passing from the house of Madhukar. He stated that Taramati Valanju came to the spot after the stone was hit to Madhukar and after Madhukar fell on the ground, and Shobha Chandrakant Kandalgaonkar came after Madhukar fell down. PW-2 stated that Sundarabai w/o Madhukar raised shouts after Madhukar fell on the ground. PW-2 further stated that there were property disputes between accused No.1 and deceased Madhukar. However, he denied the suggestion that he (PW-2), Mahadeo Rane and Subhash Valanju took the side of Madhukar and, accused No.1 Rajaram was abusing him (PW-2) under the influence of liquor. PW-2 also denied the suggestion that there was enmity between him and Rajaram. PW-2 stated that he was on the spot for 2 minutes after Madhukar was injured. The information regarding incident was given to Avalegaon Police out-post and then they went to Kudal Police Station. PW-2 could not assign any reason why it is not appearing in his complaint that accused No.2 was abusing to deceased Madhukar. PW-2 categorically denied the suggestion that, he and Sundara w/o deceased Madhukar conspired and involved the accused due to property dispute. He also categorically denied the suggestion that Madhukar fell in Ghalani and he roll down 15 to 20 feet and sustained the injuries due to stones in Ghalani.

On careful perusal and reading of the evidence of PW-2, it is abundantly clear that that though PW-2, Sandip Rane, and Subhash Valanju (PW-4) were proceeding by the side of the house of deceased Madhukar Pawar, this witness (PW-2) did not hear the quarrels while they were passing from road nearby the house of Madhukar. He stated that on 17/01/2000 i.e. on the date of incident, he returned to his house from village Digavale at about 8.30 am and thereafter went to village Naradave for the cricket tournament. However in his complaint, he has specifically stated the incident had happened at around 11.30 am. According to PW-2, they came near the river and they heard the quarrels in a loud tone from the house of deceased Madhukar. He admitted that there were property disputes between accused No.1 and the deceased Madhukar, and there is a Ghalan in front of the house of deceased. Madhukar was taken to the courtyard of his house.

12 The next eye witness examined by the prosecution is the wife of deceased viz. Sundara Madhukar Pawar as PW-3. She deposed that deceased was her husband. Accused No.1 is real brother of her husband and he was residing separately in the same house where they were residing. Atmaram accused No.2 is residing at Naradave and Mahadeo one brother of her husband is residing at Mumbai. There were quarrels between Rajaram and them over the land since four years prior to the incident. There were quarrels between them due to the said disputes, and chapter case was lodged against accused No.1 by police.

PW-3 further deposed that on 16/01/2000 her husband had plucked drumsticks. The accused No.1 quarreled with her husband and abused him. Accused No.1 remained in the house by locking the door. She further deposed that on the next

day Atmaram accused No.2 and his wife came to her house at about 9.00 and 9.10 pm and told her that she (PW-3) was disclosing to the neighbours hence there are conflicts. PW-3 beg pardon with accused No.2. PW-3 further deposed that her husband had taken animals i.e. bullocks. He returned with the bullocks. Accused No.1 and wife of accused No.2 came in the Panand while her husband was taking bullocks. Accused No.1 abused to her husband, and told her husband that he had plucked the drum sticks and he will kill him. Accused No.1 Rajaram gave stone blow on the person of her husband. He threw the stone on the person of her husband. She raised shouts. She was near her husband at the time of said incident. Subhash Valanju, Sandip Rane, Anil Kandalgaonkar came there, Tarabai Valanju and Shobha Kandalgaonkar also came there. Her husband was taken in the courtyard. Shobha and Taramati gave Pej and water to her husband. PW-3 further deposed that her husband was not able to swallow the same. Her husband was dead. PW-3 identified the stone (Article 3) before the Court by which her husband was injured. She also identified the clothes articles 4 and 5 which were on the person of her husband at the time of incident. She also identified the accused before the Court.

In her cross examination, PW-3 Sundara stated that after hitting of the stone Madhukar fell and died and thereafter I raised shouts. She raised shouts, after Madhukar fell on the ground. She also stated that Subhash Valanju, Anil Kandalgaonkar, Sandip Rane, Tarabai Valanju and Shobha Kandalgaonkar came to the spot after she shouted. She stated that there were quarrels over the land and trees between her husband and accused No.1. Rajaram, accused No.1 is addicted to liquor. PW-3 denied the suggestion of defence that there is enmity between accused No.1 and resident of her wadi. However, on the next breath she admitted that there is enmity between accused No.1 and resident of her wadi. She admitted in her cross that Subhash Valanju, Sandip Rane, Taramati Valanju, Narayan Gavathe were taking their side and, Bhambhat had been to beat accused No.1 Rajaram on the previous day of the incident. She also admitted that there were quarrels between accused No.1, Subhash Valanju, Sandip Rane and Anil Kandalgaonkar. She further stated that Atmaram abused to her and her husband at about 11.30. The quarrels between her and Rajaram was for one hour. She denied the suggestion that accused No.2 pacified the quarrels. She could not say that 15 to 20 minutes required to come from the river to her house. She knows the Raie in Naradave. She stated that one hour is required to go to Rai from her house. She stated that Ghalan is at the depth from her house. However, she denied that one cannot see from the path-way towards her court-yard. She also denied the suggestion that, one cannot see from Ghalan to her court-yard. She denied that the said spot was not visible from her house and vice-versa. She categorically denied the suggestion that her husband fell in the Ghalan from upper side and the stone hit to him due to fall and he died. She further denied that she is deposing falsely due to enmity with the accused and they are involved due to property dispute. She also denied that she is deposing falsely that accused No.1 abused on drumsticks on 16/01/2000 and, on 17/01/2000 accused

No.1 abused at the first instance and thereafter accused No.2 abused and threatened to kill her husband. She categorically denied the suggestion of defence that she is deposing falsely that accused threw the stone on the person of her husband and, that she has not seen any incident.

From the evidence of this witness Sundara (PW-3), who is the wife of deceased and was present at the time of incident, it is clear that there were quarrels between them and accused Rajaram over the land since last four years prior to the incident and the chapter case was lodged against the accused No.1 by police. She stated that on 16/10/2000 there was a quarrel between her husband and accused No.1 on the ground of plucking of drumsticks by the deceased. It is also clear from her evidence that Accused No.2 Atmaram and his wife had been to the house of PW-3 to explain her that because she was disclosing to neighbours, there were conflicts. Upon this, PW-3 begged pardon with accused No.2. While deposing PW-3 gave two different versions, at one stage she stated that Accused No.1 Rajaram gave stone blow on the person of her husband, and immediately on the next breath she stated that he threw the stone on the person of her husband and raised shouts. She also stated that Subhash Valanju, Anil Kandalgaonkar, Sandip Rane, Tarabai Valanju and Shobha Kandalgaonkar came to the spot after she shouted. Even in her cross she specifically admitted that after hitting of the stone Madhukar fell and died and thereafter she raised shouts. It is abundantly clear from her evidence that, after deceased Madhukar fell down, she raised shouts. It creates doubt about the presence of other witnesses on the spot of incident at the time of actual incident. It appears from her evidence that, there is enmity between accused No.1 and resident of her wadi, and Subhash Valanju (PW-4), Sandip Rane, Taramati Valanju and Narayan Gavathe were taking the side of deceased and his wife, and there were quarrels on the previous day of the incident between accused No.1 and these witnesses. According to her Atmaram abused to her and her husband at about 11-30. Accordingly her, till 11.30 nothing serious had happened. However, according to PW-2 Anil, he came to his house at 8.30 am and thereafter proceeded to Naravade for cricket tournament. Therefore so far as timing of incident, there is a variance in the evidence of these two witnesses. PW-3 also admitted that there is Ghalan in front of her house and the said Ghalan is at the depth from her house. She also stated that her husband i.e. deceased was taken in the court-yard. However, she has not specifically stated that from what spot the deceased was taken in the court-yard.

The next eye witness is Subhash Sahadeo Valance (PW-4).

He deposed that there were property disputes between accused and deceased Madhukar. On 16/01/2000 deceased Madhukar had plucked drumsticks, and Accused No.1 quarreled over plucking of drumsticks. He deposed that on 17/10/2000 at about 8.30 am he along with Anil Kandalgaonkar (PW-2) and Sandip Rane were proceeding to watch cricket match at Naradave. They passed by the side of house of Madhukar. They came near about the river and heard the

quarrels in loud tone from the side of house of Madhukar. They all three proceeded towards the house of Madhukar. Madhukar was in Panand. Sundarabai – wife of Madhukar was by the side of Madhukar, Rajaram and Atmaram, the accused were also there. Wife of accused No.2 was also there. Accused No.1 abused Madhukar. He asked why drumsticks were plucked. Accused No.1 threatened to kill Madhukar. Accused No.1 lifted a stone and thrown stone on the person of Madhukar which hit on the head of Madhukar. Madhukar fell on the ground. Sundara w/o Madhukar raised shouts and Tarabai Valanju and Shobha Kandalgaonkar came there. They lifted Madhukar and took him in the court-yard of Madhukar. The water was given to Madhukar but he was not able to swallow it. Madhukar was dead. Thereafter Anil (PW-2), Sandip and this witness had been to police Patil of village Sonavade, and then went to Avalegaon police out-post along with police patil. PW-4 returned back to his village and Anil, Nandkishor Gavade and police patil went to Kudal. PW-4 identified the stone article No.3 before the court by which accused No.1 hit the deceased. PW-4 also identified the articles 4 and 5 which were on the person of deceased at the time of incident. He also identified the accused before the Court.

In his cross examination, PW-4 stated that 5 minutes required to go to river from the house of Madhukar. He stated that the quarrels were going on when they were proceeding by the said of house of Madhukar. They returned back as wife of Madhukar raised shouts. PW-4 denied the suggestion that there is enmity between accused No.1 and resident of the locality. He further stated that there is no specific identification on the stone article No.3 and there are such types of stones in the Panand. He denied the suggestion that, Madhukar was lying unconscious when he reached to the spot of the incident. He denied that he has not seen how the injuries were on the person of deceased Madhukar. He also denied that they conspired and lodged false complaint against the accused due to enmity. PW-4 denied the suggestion of the defence that he is deposing falsely that on 17/10/2000 accused No.1 abused and threatened to kill Madhukar and threw stone on the person of Madhukar and hit on the head of Madhukar. PW-4 stated that he waited on the spot for about two minutes after Madhukar fell on the ground.

As per the evidence of this witness (PW-4), on 17/10/2000 at about 8.30 am, they were proceedings to watch cricket match at Narvade and when they came near about the river, they heard the quarrels in loud tones from the side of house of Madhukar. In his cross examination, he stated that when they were proceeding by the side of house of Madhukar, the quarrels were going on. Hence this is the contradiction in the evidence of this witness PW-4. This witness specifically stated that Madhukar was in Panand and his wife Sundarabai (PW-3) was by the side of Madhukar. Accused No.1 threatened to kill Madhukar, and lifted a stone and thrown it on the person of Madhukar which hit on the head of Madhukar due to which Madhukar fell on the ground. Sundara raised shouts. Thereafter they lifted Madhukar and took him in the court-yard. It is clear from the evidence of this witness Madhukar was in Panand. Both the witnesses i.e. PW-2 and PW-4 in

clear terms stated that Madhukar fell on the ground and, the deceased was taken to the court-yard. If according to this witness (PW-4) Madhukar was in panand and, they lifted Madhukar and taken to the Court-yard, then reasonable inference can be drawn that Madhukar fell down in Panand and then taken to court-yard.

If the evidence of the PW-2 and PW-4 read together with the evidence of PW-3, it can safely infer that PW-2 and PW-4 were not present at the time of actual happening of incident. There are omissions and contradictions in their evidence as regards the timing of the incident, hearing of quarrels, and spot of the incident.

14 In the context of the aforesaid evidence of eye witnesses, the medical evidence is required to be dealt with. The prosecution has examined Dr. Rupesh Bhaskar Dhuri as PW-7 who conducted the post-mortem on the dead body of Madhukar. PW-7 stated that on 17/10/2000 he received dead body of Madhukar Sakharam Pawar for post mortem at 7.40 pm. He has conducted the post mortem on the dead body from 7-55 pm to 9.30 pm. On external examination, the condition of the body was cold, rigor mortis was present, the body was averagely built and averagely nourished and cold. On external examination, the doctor (PW-7) noticed crushed and lacerated wound over right temporal region, 4 cm x 1 cm. The age of the injury was within 24 hours. PW-7 stated that the injury can be caused by hard blunt object. He noted down the said injury in column No.17 of the post mortem notes. Dr. Rupesh Dhuri (PW-7) deposed that the fracture of skull detected on a palpation and accordingly the same is mentioned by him in column No.18.

On internal examination, Dr. Rupesh Dhuri (PW-7) has noticed blood clot under the scalp. Doctor detected fracture of skull bone on right temporal region 2 cm x 1 cm. Doctor has noticed crushed and lacerated wound over right temporal lobe 2 cm. X 0.5 x 0.5 cm blood clot present over the brain.

Dr. Rupesh Dhuri (PW-7) deposed that all the injuries were ante-mortem. In his opinion, the cause of death is due to acute cardio-respiratory failure due to injury to vital organ brain and due to haemorrhage. PW-17 accordingly prepared detail post mortem notes.

On suggestion being put by defence in the cross examination of this witness (PW7), he stated that the injury mentioned by him is possible by a fall from 8 to 10 feet height and directly hitting on the stone. He stated that the stone article No.3 which was shown to him was not in sealed condition.

Perusal of the evidence of Medical Officer (PW-7), it is clear that injury was within 24 hours and can be caused by hard blunt object. However, in his cross examination PW-7 stated that the injury is possible by a fall from 8 to 10 feet height and directly hitting on the stone. It is also clear from his evidence the stone – article 3, which was seized during the course of investigation, was not in sealed condition.

15 The prosecution has examined Maruti Narayan Gavade as PW-1 who is the panch witness on the spot panchanama(Exh.10), Inquest panchanama (Ex.11), panchanama of seizure of clothes of deceased (Ex.12), Arrest Panchanama and seizure of clothes (Ex.13), and Panchnama of seizure of clothes of accused No.1 (Ex.14). He stated that Sundara Madhukar Pawar pointed out the scene of offence. The blood was on the soil. One stone stained with blood was also on the spot. The sample of earth mixed with blood and the earth was taken separately and the said samples were wrapped in paper. He also stated that one stone stained with blood were wrapped in paper, and the paper labels bearing signature of panchas and PSI were affixed on it. In so far as inquest of the body of Madhukar is concerned, this panch witness (PW-1) stated that there was one injury on the head of deceased. On the same day police constable A B Dhuri B No579 produced one full banian, one underwear, Articles Nos. 4 and 5, the said articles were seized under panchanama (Exhibit 12). On 18/10/2000 this witness (PW-1) was called by police in Kudal Police Station along with Nandkishor Vishnu Gavathe. The accused was present in police station. The accused was arrested and the clothes on his person were seized under Panchanama (Exh.13). On 18/10/2000 Rajaram Sakharan Pawar accused No.1 was present in the police station. The accused No.1 was arrested and the clothes on his persons articles 6 and 7 were seized under panchanama Exh.14).

In his cross examination he stated that On 17/01/2000 police had been to his wadi at 6.00 pm. They were in Wadi till 9.30 pm. The river is at a distance of 3 to 4 furlong from the house of deceased Madhukar. The zigzag path-way is from the house of deceased Madhukar up to the river, and one has to go downwards from hill if he wants to go to the river. He further stated that only one person can pass by the path-way, and 5 minutes required to go to river from the house of deceased Madhukar. He stated that the house of Madhukar is at height, but he cannot say if it is at the height of 20 feet. PW-1 admitted that there is a court-yard in front of house of Madhukar and after the court-yard there is a slope. There is a path-way from the said slope i.e. Ghalan. There are some stones by the side of Pathway. Some stones are in Ghalan. He stated that the path-way from the house of Madhukar turn in 90 degree angle after the slope, and one cannot see from the said portion to the house and the court-yard of Madhukar. He denied the suggestions that police had already written the panchanama and his signatures were taken on the panchanama. He also denied that nothing was seized in his presence.

From perusal of the evidence of PW-1, it is abundantly clear that the river is at a distance of 3 to 4 furlong from the house of deceased Madhukar, and the zigzag path-way is there from the house of Madhukar upto the river and only one person can pass by the path-way. He stated that there is Ghalan and some stones are in Ghalan.

16 Then the prosecution has examined Vaman Krishna Mohite (PW-5). PW-5 has deposed as regards the deceased Madhukar visiting his house on 16/01/2000

and telling this witness about the quarrels between deceased and Rajaram. The deceased Madhukar told PW-5 to pacify accused No.1. Therefore, PW-5 went to the house of Rajaram. Accused No.1 told the witness that he will kill him and thereafter he will kill Madhukar. PW-5 deposed that on 17/10/2000 he came to know that accused No.1 threw the stone on the person of Madhukar and killed him, but he was not present at the said time. However, in his cross examination, PW-5 denied the suggestion that he had not been to the house of accused No.1 to pacify him. He also denied that he is deposing falsely as he has good relations with Sundara and deceased Madhukar. This witness (PW-5) admitted that he has good relations with Sundara w/o Madhukar and deceased Madhukar.

Considering the evidence of PW-3, his evidence is hear-say evidence, because he was not present at the time of incident, and he is not material witness in this case.

17 The next witness is PW-6 Suraba Sitaram Ghadigaonkar – the Police Patil who went to Avalegaon out-post and then to police station, Kudal to lodge the complaint along with PW-2 Anil. He deposed that he knows the accused and deceased Madhukar. He knows about the quarrels and disputes between the accused and deceased Madhukar over the landed property. He stated that chapter cases were filed. PW-6 and Anil and Subhash proceeded towards Avalegaon and then to Kudal Police station and the complaint of Anil is recorded in Kudal Police Station.

In his cross examination, this witness (PW-6) stated that the chapter cases were against Madhukar as well as accused No.1. He stated that Anil Kandalgaonkar and Subhash Valanju are not the family members of Madhukar. Anil Kandalgaonkar and Subhash Valanju had been to me at about 2.40 to 3.00 pm.

Perusal of evidence of PW-6 it is clear that he knows the disputes between the accused and deceased Madhukar over the property and, chapter cases were filed by both the sides against each other.

18 Now coming to the evidence of police officers. The prosecution has also examined Police officers who investigated the crime. PW-9 is Manohar Yashwant More who recorded the complaint of Anil Kandalgaonkar (PW-2) as per his say. PW-9 prepared the printed FIR, and registered the CR No.8 of 2000 under Sections 302, 504, 506 and the Station Diary Entry No.17/42 was entered, and put his endorsement on the complaint (Exh.16). He, thereafter, handed over the investigation to PSI Shri Bane.

19 PW-8 in his cross examination stated that the complainant had been to police station at about 5.00 pm and he has registered the offence at 5.40 pm. PW-8 deposed in his cross examination that the complainant has not stated in his complaint that Atmaram accused No.2 had abused to deceased Madhukar. The complainant has stated to this Witness (PW-8) that the incident took place at 11-30 am on 17/01/2000.

20 The next police witness is Mohan Balawant Bane (PW-9) who stated that on 17/01/2000 he received the further investigation in Kudal Police Station CR No.8 of 2000. He prepared the inquest panchanama (Exh.11) in the presence of panchas, and sent the dead body for post mortem to primary health centre, Kadaval. As Shri Todkar PSI was in-charge of Kudal Police Station, therefore, he took the further investigation.

21 Then the prosecution has examined PSI Rajendra Mahadeo Todkar as PW-10, who carried out further investigation in the CR No.8 of 2000. He prepared spot panchanama in the presence of panchas, collected the sample of earth, earth mixed with blood and wrapped the samples in a separate paper. He found one stone article No.3 stained with blood. He has attached the same and sealed it. The witness also attached the clothes of deceased Article Nos.4 and 5. On 18/1/2000 Rajaram Sakharam Pawar was arrested and the banian and half pant on his person were seized. On the same day he arrested Atmaram Sakharam Pawar the accused No.2. The chocolate coloured half pant and shirt and one sando banian on his person were attached in the presence of panchas. He sent the seized articles to C.A. Pune along with letter. During the course of investigation, PW-10 recorded the statement of Vaman Krishna Mohite and others. PW-10 also obtained the certificate of accused Nos 1 and 2 regarding the blood group.

In his cross examination PW-10 admitted that the occurrence report has to be written down if the complaint is reported in out-post. He denied the suggestion that all the panchanamas are prepared in the police station.

22 In so far as C.A. report is concerned, it is at Exhibit 29. In the CA report, result regarding blood group on Exhibit 1 and 3 is "Inconclusive, on Ex.4 and 5 "Group A", and on Exhibits 6, 9 and 10 "Inconclusive". Results of Blood of deceased (Exhibit 1) is of "A" Group. As per CA report the Exhibit 3 i.e. the stone is stained with blood, however, the result of grouping is "Inconclusive".

23 As stated herein above, on the basis of the prosecution evidence and material brought on record, the trial Court acquitted both the accused. At this stage, it would be apt to visit the observations made by the trial Court. The trial Court has observed that the possibility to see the incident from the river is not possible and the eye witnesses rushed to the spot after hearing the quarrels. According to complainant, the accused No.1 lifted the stone and threw it on the person of the deceased and hit on the person of the deceased, but as per the evidence of wife of deceased Sundara, the accused No.1 gave a stone blow on the person of deceased. Thus there is contrary evidence in respect of blow given by accused No.1 to the deceased. The evidence of all the 3 witnesses is contrary to each other. Thus the evidence regarding actual hitting is different on the record. There is a distance of 2-3 furlongs between the river and house of deceased. Considering the said distance, Kandalgaonkar and Valanju must not have reached the spot when the blow was given. Considering all these circumstances, the doubt arises whether really Kandalgaonkar and Valanju were present at the time

of actual incident in question. As Sundara the wife of deceased admitted that there is a long standing enmity between him and the accused over the property dispute as well as incident of plucking of drum sticks took place on the previous day of the incident in question, therefore, in the said circumstance the evidence of all the three eye witnesses is not sufficient to establish that the accused No.1 is the author of the injury on the person of the deceased. Considering the admissions given by the medical officer that the injury on the person of deceased can be accidental, the deceased might have fallen due to slip and sustained the injury as many stones were on the way. There is variance in the prosecution evidence and the doubt arises regarding the genuineness of the seizure of the stone. Considering the previous day quarrel it is not relevant to the present incident as the enmity cuts in both ways. The evidence on record regarding the actual incident will be the material evidence as the present case is based on direct evidence and not on the circumstantial evidence. As per complainant the alleged incident took place at about 11.30 am on 17/12/2000, and as per the evidence of 3 eye witnesses, the incident took place at about 9.00 am, then how the same is mentioned as 11.30 am in the complaint, is not explained by the prosecution. Thus, doubt arises whether really any incident took place of hitting of stone or throwing of stone by accused No.1. Except the presence of accused No.2 at the time of incident in question, no overtact is alleged by the prosecution witnesses. The spot panchanama Exhibit-10 disclosed that the alleged incident took place at a distance of 10 feet from the house of Tarabai Valanju and on the pathway and not in the courtyard. The deceased was lifted to the courtyard after the incident in question as the inquest panchanama Exh.11 was prepared in the Padavi of house of complaint. Considering all these aspect, there is possibility of not noting the incident by all the prosecution witnesses. The trial Court further observed that the blood stains should have been on the person of accused No.1 as he has hit the stone from a short distance, but no C.A report is in respect of the blood stains. The version of the eye witnesses is not similar to each other and contradictions as such evidence is not reliable. On the basis of the evidence and material on record, the trial court came to a conclusion that the evidence on record is not sufficient to prove the case against the accused. The evidence is not reliable, therefore, the prosecution failed to establish the case against any of the accused beyond reasonable doubt and the benefit of doubt is given to the accused.

24 We have minutely scrutinized the evidence of all the witnesses herein above. From the evidence on record it is abundantly clear that the deceased and both the accused are real brothers and there was a long standing disputes between the deceased and the accused over the property. It is also required to be noted that, there are chapter cases filed by the Accused No.1 Rajaram and deceased Madhukar against each other. Though PW-2 – Anil Kandalgaonkar, PW-3 – Sundara Madhukar Pawar and PW-4 Subhash Valanju are the star witnesses of the prosecution, there are contradictions and omissions in their testimony and their evidence does not inspire confidence. PW.2 Anil Kandalgaonkar admitted in

his cross examination that he had not heard the quarrels while they were proceeding from the side of house of Madhukar. However, PW-4 Subhash Valanju stated in his cross examination that the quarrels were going on when they were proceeding by the side of house Madhukar. This is a contradiction in their evidence. Another important aspect is that and Sundarabai w/of Madhukar raised shouts after Madhukar fell on the ground and she was near her husband at the time of incident. In her cross examination she stated that after hitting of the stone Madhukar fell down and died and thereafter she raised shouts. PW-4 himself admitted that he, PW-2 Kandalgaonkar and one Sandip Rane returned back as the wife of Madhukar raised shouts. It is clear from this evidence that first Madhukar fell down on the ground and then the other two witnesses reached at the spot of incident. The timing of proceeding from the side of house of deceased stated by both the eye witnesses is around 8.30 to 9.00 am, however, PW-2 Anil in his complaint before police has specifically mentioned that the incident had happened at 11.30. These facts creates doubt about the presence of these witnesses i.e. PW-2 and PW-4 at the time of incident.

25 In our opinion, one more aspect which cannot be lost sight of is, these witnesses have stated that, Madhukar was lifted and taken in the Court-yard. The prosecution has not come with a clear case indicating the specific spot of the incident. The defence has brought on record through cross examination of eye witnesses that there is enmity between accused No.1 and resident of wadi and Subhash Valanju (PW-4), Sandip Rane, Taramati Valanju, Narayan Gavathe were taking side of deceased and his wife (PW-3). Even PW-3 Sundara admitted in her evidence that there were quarrels between accused No.1 Subhash Valanju (PW-4), Sandip Rane and Anil Kandalgaonkar (PW-2). Even in the statement recorded under Section 313 of the Cr.P. C. a question being asked to them why the witnesses are deposing against them, they answered that there were quarrels between them and witness Sundara over the house property and hence false case is lodged against them and they were falsely involved in the crime. Considering all these facts, in our considered view, the evidence of eye witnesses is not trustworthy.

26 We have discussed the evidence of all the witnesses herein above and have made necessary comments about the weaknesses of prosecution case. No evidence is brought on record by the prosecution to indicate the actual spot of incident, as according to all three eye witnesses, deceased Madhukar was lifted and taken to the Court-yard. PW3- Sundara admitted in her cross examination that Subhash Valanju (PW-4), Sandip Rane, Taramati Valanju, Narayan Gavathe were taking their side and, Bhambat had been to beat accused No.1 Rajaram on the previous day of the incident. She also admitted that there were quarrels between accused No.1, Subhash Valanju (PW-4), Sandip Rane and Anil Kandalgaonkar (PW-3). She also admitted that she raised shouts, after Madhukar fell on the ground, and Subhash Valanju (PW-4), Anil Kandalgaonkar (PW-3), Sandip Rane, Tarabai Valanju and Shobha Kandalgaonkar came to the spot after she shouted. Considering this evidence of PW-3, it creates doubt about the

presence of PW-2 and PW-4 on the spot of incident. The prosecution case on the face of it appears to be imaginary in absence of any cogent, clinching evidence showing involvement of the accused in the commission of crime.

It is noteworthy to mention that, there is no corroboration to the version of PW-3 Sundarabai about happening of actual incident. We are dealing a case against acquittal and on shaky evidence acquittal order cannot be reversed.

27 All the three eye witnesses have admitted in their deposition that there is a Ghalan in front of the house of deceased, which according to PW-3 is at the depth from her house. PW-1 Panch in his cross has stated that the river is at a distance of 3 to 4 furlong from the house of deceased. The zigzag path way is from the house of deceased Madhukar up to the river. One has to go downwards from hill if he wants to go to the river, and only one person can pass by the path-way. The path-way from the house of Madhukar in 90 Degree angle after the slope and one cannot see from the said portion to the house and the court-yard of Madhukar. He further stated that the house of Madhukar is at height. There is a court-yard in front of house of Madhukar and after the court-yard there is a slope. He further stated that there is a path-way from the said slope i.e. Ghalan. There are some stones by the side of path-way and some stones are in Ghalan. PW-4 Subhash Valanju stated that there is no specific identification on the stone article 3 and there are such types of stones in the panand. Even the Medical officer stated in his deposition that the stone is not in sealed condition. In the results of Chemical Analysis, in so far as Exh.3 i.e. stone, Exhibits 6, 9 and 10 i.e. Banian, full shirt and banian of the accused are concerned, it is mentioned against the aforesaid Exhibits as "Inconclusive".

28 In so far as presence of accused No.2 Atmaram is concerned, PW-2 and PW-3 have stated in their evidence that Accused No.2 Atmaram was present at the time of actual incident and he was abusing deceased Madhukar. However, PW-4 did not utter a word about the presence of Accused No.2 Atmaram at the time of incident. However, there is absolutely no evidence against the accused No.2 in respect of any instigating by him to accused No.1 or any overtact at the time of incident. The Trial Court has, therefore, rightly observed that, there is no evidence against accused No.2 in respect of any instigating by him to accused No.2 or any overtact at the time of incident. Both the accused in their statements under Section 313 of Cr.P.C. stated that false case is filed against them and they have been falsely involved in the case.

29 As stated herein above, the Trial Court in depth has scrutinized the evidence adduced by the prosecution in support of its case and reached a conclusion that the evidence produced by the prosecution is not sufficient and reliable to prove the case against the accused. We have noticed that the Trial Court has meticulously dealt with the entire evidence of the prosecution and reached to a correct conclusion. The law is well settled that the view taken by the Trial Court thereby acquitting the accused cannot be lightly interfered into, unless the Appellate Court on re-appreciation of evidence comes to a conclusion that the

findings recorded by the Trial Court are perverse and the view taken was not plausible at all.

30 The Hon'ble Supreme Court of India in the case of Murlidhar @ Gidda vs. State of Karnataka, 2014 (5) SCC 730 : 2014 (2) SCC (Cri) 690 while considering criminal appeals, underscored the fundamental principles to be kept in mind by an appellate court while hearing an appeal against acquittal. Paragraphs 10, 11, and 12 are relevant and read thus:-

"10. Lord Russell in Sheo Swarup [Sheo Swarup v. King Emperor, (1933-34) 61 IA 398 : (1934) 40 LW 436 : AIR 1934 PC 227 (2)] , highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said : (IA p. 404)"... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses." The opinion of Lord Russell has been followed over the years.

11. As early as in 1952, this Court in Surajpal Singh [Surajpal Singh v. State, AIR 1952 SC 52 : 1952 Cri LJ 331] while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed : (AIR p. 54, para 7)

"7. ... the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."

12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu [Tulsiram Kanu v. State, AIR 1954 SC 1 : 1954 Cri LJ 225] , Madan Mohan Singh [Madan Mohan Singh v. State of U.P., AIR 1954 SC 637 : 1954 Cri LJ 1656] , Atley [Atley v. State of U.P., AIR 1955 SC 807 : 1955 Cri LJ 1653] , Aher Raja Khima [Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217 : 1956 Cri LJ 426] , Balbir Singh [Balbir Singh v. State of Punjab, AIR 1957 SC 216 : 1957 Cri LJ 481] , M.G. Agarwal [M.G. Agarwal v. State of Maharashtra, AIR 1963 SC 200 : (1963) 1 Cri LJ 235] , Noor Khan [Noor Khan v. State of Rajasthan, AIR 1964 SC 286 : (1964) 1 Cri LJ 167] , Khedu Mohton [Khedu Mohton v. State of Bihar, (1970) 2 SCC 450 : 1970 SCC (Cri) 479] , Shivaji Sahabrao Bobade [Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033] , Lekha Yadav [Lekha Yadav v. State of Bihar, (1973) 2 SCC 424 : 1973 SCC (Cri) 820] , Khem Karan [Khem Karan v. State of U.P., (1974) 4 SCC 603 : 1974 SCC (Cri) 639] , Bishan

Singh [Bishan Singh v. State of Punjab, (1974) 3 SCC 288 : 1973 SCC (Cri) 914] , Umedbhai Jadavbhai [Umedbhai Jadavbhai v. State of Gujarat, (1978) 1 SCC 228 : 1978 SCC (Cri) 108] , K. Gopal Reddy [K. Gopal Reddy v. State of A.P., (1979) 1 SCC 355 : 1979 SCC (Cri) 305] , Tota Singh [Tota Singh v. State of Punjab, (1987) 2 SCC 529 : 1987 SCC (Cri) 381] , Ram Kumar [Ram Kumar v. State of Haryana, 1995 Supp (1) SCC 248 : 1995 SCC (Cri) 355] , Madan Lal [Madan Lal v. State of J&K, (1997) 7 SCC 677 : 1997 SCC (Cri) 1151] , Sambasivan [Sambasivan v. State of Kerala, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320] , Bhagwan Singh [Bhagwan Singh v. State of M.P., (2002) 4 SCC 85 : 2002 SCC (Cri) 736] , Harijana Thirupala [Harijana Thirupala v. Public Prosecutor, (2002) 6 SCC 470 : 2002 SCC (Cri) 1370] , C. Antony [C. Antony v. K.G. Raghavan Nair, (2003) 1 SCC 1 : 2003 SCC (Cri) 161] , K. Gopalakrishna [State of Karnataka v. K. Gopalakrishna, (2005) 9 SCC 291 : 2005 SCC (Cri) 1237] , Sanjay Thakran [State of Goa v. Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] and Chandrappa [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] . It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

- (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;
- (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;
- (iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and
- (iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

[emphasis supplied]

31 The principles laid down in Murlidhar @ Gidda (supra) were reaffirmed by the

Hon'ble Supreme Court of India in Suman Chandra vs. Central Bureau of Investigation, LL 2021 SC 758 : Criminal Appeal No. 1645 of 2021 wherein the Apex Court held that the if the view taken by a trial court is a possible view, which was neither perverse nor unreasonable, then it ought not to be interfered with or reversed by an appellate court.

32 In the light of discussion in foregoing paragraphs, if the prosecution case is considered in its entirety, an irresistible conclusion is that the prosecution has not proved its case beyond reasonable doubt against the accused. The findings recorded by the trial Court are in consonance with the evidence brought on record and there is no perversity as such. We are of the considered view that the Trial Court has taken a plausible view and has rightly acquitted the Respondents – accused. No case is made out for interference in the impugned judgment and order. There is no merit in the Appeal. Hence the following order :-

:ORDER:

Criminal Appeal No.440 of 2001 stands dismissed.

Bail bonds of the Respondents/Accused, if any, stand cancelled.