2025 INSC 216

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.127 OF 2014

MEHATAR ...APPELLANT(S)

VERSUS

THE STATE OF MAHARASHTRA ...RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. 126 OF 2014

J U D G M E N T

B.R. GAVAI, J.

1. These appeals challenge the judgment and order passed by the learned Division Bench of the High Court of Judicature at Bombay, Nagpur Bench dated 17th July 2012, thereby dismissing the criminal appeals being Criminal Appeal Nos.569 of 2007 and 8 of 2008 preferred by the present appellants. The criminal appeals filed before the High Court assailed the judgment and order dated 24th October 2007 passed by the Court of Additional Sessions Judge, Bhandara (hereinafter referred to as "trial court") by which

the trial court convicted the appellants namely, Rajkumar Baburao Lade (Accused No.1) and Mehatar (Accused No.9) for the offences punishable under Sections 147, 148, 452 and Section 302 read with Section 149 of the Indian Penal Code, 1860 (for short, 'IPC') and sentenced them to suffer rigorous imprisonment for life.

2. The story of the prosecution in a nutshell is that the complainant/PW.1-Sindhubai had previous enmity with the accused Rajkumar. It is her case that the she-goats of Rajkumar and other accused persons used to enter her garden and damage her mango trees and leaves of beans. It is her case that on this account, there used to be constant quarrels between them. It is further her case that her brother-in-law Shyamrao, who was residing in village Sitasawangi, had given a piece of land to accused Baburao (accused No.2), wherein he had constructed a hut. It is her case that Shyamrao used to rear pigs in the said plot and on account of this Baburao had dispute with deceased Shyamrao.

2.1 It is the prosecution case that, on a day prior to the date of the incident i.e. 19th December 2005, Shyamrao, brother-

in-law of Sindhubai (PW-1) had come to her village and stayed with them. It is the further case that on 20th December 2005 at around 10:00 o'clock in the morning, her husband Diwaru and her brother-in-law Shyamrao were sitting in the house, at which time appellant Rajkumar arrived there and started hurling abuses at her husband-Diwaru and her brother-in-law Shyamrao. It is her version that when the said quarrel was going on, one Tekaram Rahagadale was passing in front of her house for going to answer nature's call. When Tekaram tried to intervene, appellant Rajkumar threatened him with dire consequences. Thereafter, Tekaram ran away from the spot. It is her case that, apprehending that there would be danger to her life as well as the life of her husband, she went to the Police Station Tumsar and lodged a complaint with regard to her apprehension. It is her case that when she came back from Tumsar after making some purchases, her brother-in-law and husband were sitting in the *varandah* of the house. Thereafter, she lit a lamp and also ignited a camp fire in the courtyard since it was winter. She states that in the meantime five persons, who were nephews of Baburao

(accused No.2), came to her house from village Sitasawangi. On seeing them, Shyamrao rushed inside the house to save himself. However, they forcibly entered into the house by kicking the door. They dragged her brother-in-law Shyamrao out of the house and started assaulting him with sticks.

2.2 According to her, thereafter appellant Rajkumar holding axe and Kartik (accused No.3) and Baburao (accused No.2) holding sticks came to the spot. All the nephews of Baburao (accused No.2) started assaulting her brother-in-law Shyamrao. When her husband intervened by saying "why are you assaulting Shyamrao", they started assaulting her husband as well. In the meantime, Babibai (accused No.6) also came on the spot and joined the other accused. Similarly, Dashrath Nagre (accused No.4) and his son Ramesh (accused No.5) also came near the chhapri (varandah) and started assaulting her husband and brother-in-law with the sticks.

2.3 It is her further version that she ran away from the spot to save her life, in spite of resistance from the Babibai (accused No. 6). She went to the house of Sitabai. According to her, the accused followed her, however, she managed to

save herself by hiding under the cot in the house of Sitabai. It is her further version that Sitabai was also threatened by the accused persons. It is her version that thereafter Sitabai went to the house of Sarpanch (Vasanta Tarte) and narrated the incident to him. Thereafter the Sarpanch arrived at the house of Sitabai. According to her evidence, she was taken to the house of Police Patil Narendra Katre (PW-4) by the Sarpanch on his motorcycle. Sindhubai (PW-1) narrated the incident to Police Patil Narendra Katre (PW-4), who telephonically gave information to the police station Tumsar. The FIR came to be registered on the basis of the oral report of Sindhubai (PW-1).

3. Upon completion of the investigation, charge-sheet came to be filed against ten accused persons.

4. Since the case was exclusively triable by the Court of Sessions, it was committed to the learned Sessions Judge, Bhandara.

5. The trial court, at the conclusion of the trial, convicted all the ten accused.

6. Being aggrieved thereby, all the ten accused persons preferred criminal appeals before the High Court. The High

Court acquitted six accused persons. One of the accused died during the appeal before the High Court. The remaining three accused are Rajkumar, Baburao and Mehatar. Insofar as accused No.1/Rajkumar, accused No.2/Baburao and accused No.9/Mehatar are concerned, the High Court dismissed their appeals and confirmed their conviction and sentence.

7. Being aggrieved thereby, the said accused persons approached this Court.

8. Since accused No.2/Baburao died during the pendency of the present appeal, this Court vide order dated 6th February 2025, disposed of his appeal being Criminal Appeal No. 125/2014 as having become abated. As such, we are now concerned with the cases of accused Rajkumar and Mehatar only.

9. Shri Sanjay Jain, learned counsel appearing on behalf of both the accused/appellants, submits that the High Court has grossly erred in dismissing the appeals of the appellants Rajkumar and Mehatar. He submits that the High Court has disbelieved the evidence of Sindhubai (PW-1) insofar as six accused persons are concerned. He submits that on the

basis of the very same evidence, the High Court has acquitted six accused persons finding her testimony to be unreliable insofar as those six accused persons are concerned. He, therefore, submits that the High Court was not justified in maintaining the conviction of the appellants herein on the basis of the sole testimony of Sindhubai (PW-1). He further submits that there are various lacunae in the case of the prosecution. He submits that it is doubtful, as to whether the FIR is genuine or not, inasmuch as it is recorded at 9:45 p.m., whereas the entry in the station diary is of 3:00 a.m., of the next morning. Learned counsel therefore submits that conviction of the appellants herein is not maintainable. As such, he submits that the appeals deserve to be allowed.

10. Shri Adarsh Dubey, learned counsel appearing on behalf of the respondent/State submits that the High Court has rightly confirmed the conviction of the appellants. He submits that Sindhubai (PW-1) has given detailed narration as to how the incident has taken place. He submits that insofar as appellant-Rajkumar is concerned, he has been attributed the role of assaulting the deceased with an axe. It

is submitted that the post-mortem report would corroborate the oral testimony of Sindhubai (PW-1). Shri Dubey further submits that the FIR is not an encyclopedia of the entire event. He further submits that minor omissions and contradictions would not be relevant, specifically since Sindhubai (PW-1) is a rustic villager. Learned counsel further submits that the evidence of Sindhubai (PW-1) is duly corroborated by PW-4-Police Patil (Narendra Katre).

11. With the assistance of learned counsel for the parties, we have perused the material placed on record.

12. The perusal of the judgment of the learned trial court as well as the learned Division Bench of the High Court would reveal that they basically rely on the testimony of Sindhubai (PW-1). Insofar as the trial court is concerned, the trial court finds the testimony of Sindhubai (PW-1) to be fully trustworthy. However, the Division Bench of the High Court finds the testimony of Sindhubai (PW-1) to be partly reliable and partly unreliable. The High Court has attempted to separate the chaff from the grain so as to maintain the conviction of the appellants herein along with the appellant/Baburao, who died during pendency of the present

appeal.

13. In that view of the matter, it will be necessary for us to examine the testimony of Sindhubai (PW-1). Admittedly, Sindhubai (PW-1) is wife of one of the deceased and sister-in-law of the other deceased. As such, she would be an interested witness. No doubt that the conviction can also be based on the testimony of an interested witness. However, for doing so, the testimony of such a witness will have to be examined with greater caution and circumspection. If the evidence of such a witness is found to be reliable, then only the conviction could be maintained. Equally, even in a case of a sole witness, the conviction could be maintained if the evidence of such a witness is of sterling quality. However, when the evidence of a sole witness is found to be doubtful, then the Courts would always seek for some corroboration while maintaining the conviction. In view of the above, we will have to examine the testimony of Sindhubai (PW-1).

14. Undoubtedly, testimony of Sindhubai (PW-1) is full of omissions and contradictions. No doubt that she is a rustic villager and therefore minor contradictions in her evidence will have to be ignored. However, it is to be noted that the

Division Bench of the High Court has itself scrutinized the evidence of Sindhubai (PW-1). In paragraphs 15 and 16 of the impugned judgment, the High Court has clearly observed as under:-

> "**15.** .....Sindhubai at the relevant time had locked the door of house of Sitabai from inside and had concealed herself beneath a cot. Obviously, PW 1 Sindhubal could not be in a position to state as to who were the accused who had come to the house of Sitabai. Prosecution has also not examined Sitabai in respect of the accused who had come to the scene of the incident. In such circumstances, therefore, according to us, apart from the overt act attributed to accused no.3 Kartik and accused no.6 Bebibai of having gone to the house of Sitabai and had asked Sitabai to handover Sindhubai to them, there is no other overt act attributed to them. In such circumstances, therefore, according to us, the presence of accused is also render doubtful and accused no.3. Kartik and accused no.6 Bebibai would be entitled to be given the benefit of doubt.
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> **16.** PW 1 Sindhubai has stated that accused No.5 Ramesh was armed with an axe. However, this omission has been duly proved that Sindhubai had not stated in the report at Exh.76 that accused no.5 Ramesh was armed with an axe. Apart from this, no other overt act is attributed to accused no.5 Ramesh and therefore, according to us, accused no.5 Ramesh would also be entitled to be given benefit of doubt."

15. While acquitting Kartik (accused Nos.3) and Babibai (accused No.6), the High Court raised a doubt on the part of the testimony of Sindhubai (PW-1) wherein she had deposed

that once she had gone to the house of Sitabai, Baburao (accused No.1), Kartik (accused Nos.3), Babibai (accused No.6) and Mehatar (accused No. 9) had gone there and asked Sitabai to handover Sindhubai (PW-1) to them. The High Court held that Sindhubai (PW-1) could not have been in a position to state who had come to the house as she was hiding under a cot. The High Court further observed that Sindhubai (PW-1) had failed to attribute any other overt act to Kartik (accused Nos.3) and Babibai (accused No.6), apart from their presence at Sitabai's house. Considering the circumstances, the High Court found that the presence of Kartik (accused Nos.3) and Babibai (accused No.6) at Sitabai's house was doubtful. Accordingly, they were given the benefit of doubt and were acquitted.

16. While acquitting the Ramesh (accused No.5), the learned Judges of the High Court have relied on the omission about Ramesh (accused No.5) carrying an axe and further relied on the fact that she had not stated about overt act of Ramesh (accused No.5). It is thus clear that the High Court itself found that it is doubtful as to whether Sindhubai (PW-1) could have witnessed the incident or not. If the learned

Judges of the High Court find the testimony of Sindhubai (PW-1) to be doubtful on the issue as to whether she could have witnessed the incident or not, then it is difficult to appreciate as to how the High Court believed that she could witness the assault by other three accused.

17. This Court in the case of ***Vedivelu Thevar v. State of Madras***[1]**,** has held as under:-

> "**11.** In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act, has categorically laid it down that "no particular number of witnesses shall, in any case, be required for the proof of any fact". The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in *Sarkar's Law of Evidence*— 9th Edn., at pp. 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in Section 134 quoted above. The section enshrines the well recognized maxim that "Evidence has to be weighed and not counted". Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of

1 **1957 SCC OnLine SC 13**

only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(*1*) Wholly reliable.

(*2*) Wholly unreliable.

(*3*) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category

of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution."

18. It could thus be seen that this Court has held that when the witness is found to be wholly reliable, then there is no difficulty, inasmuch as the conviction could be based on the testimony of such a witness. The Court has further found that equally when the testimony of a witness is found to be

wholly unreliable again the difficulty would not arise because such an evidence will have to be discarded. The difficulty arises when a witness is found to be partly reliable and partly unreliable. In such a case, the conviction could not be maintained unless there is some corroboration to the testimony of such a witness. The law laid down in the case of ***Vedivelu Thevar*** (supra) is consistently followed by this Court in a catena of judgments.

19. In the present case, even accepting the view of the High Court that Sindhubai (PW-1) would fall within the category of partly reliable and partly unreliable, in such an event the High Court should have insisted upon some corroboration to the testimony of such a witness. However, the High Court has itself found that the prosecution has not examined Sitabai and as such, there was no corroboration to her testimony. Apart from that, another witness who could have corroborated the prosecution version is Tekaram Rahagadale. Admittedly, he has also not been examined. Another witness, i.e. the Sarpanch (Vasanta Tarte) of the village has also not been examined. Insofar as Police Patil/PW-4 (Narendra Katre) is concerned, he has turned hostile. In his

cross examination at the behest of the accused he has given the following admission:

> "...I did not state in my statement that when I returned after informing the police on telephone about the incident Sindhubai was present at my home and that she informed me about the incident. I cannot assign any reason as to why this has not been recorded in my statement...."

20. As such, there is no corroboration to the testimony of Sindhubai (PW-1) from any other witness.

21. It is further to be noted that though Sindhubai (PW-1) stated that she had lodged a complaint at the Police Station about her apprehension with regard to Rajkumar's threat, no such complaint was placed on record.

22. We are, therefore, of the considered view that the High Court was not justified in resting the conviction of the appellants herein solely on the basis of the evidence of Sindhubai (PW-1) when her testimony was found to be largely unreliable. For doing so, the High Court should have insisted upon some corroboration.

23. In our considered view, there is no corroboration to the testimony of Sindhubai (PW-1). As such, the conviction would not be sustainable. The appellants would be entitled

to benefit of doubt.

24. In the result, we pass the following order:

(i) The appeals are allowed;

(ii) The judgments and orders of conviction and sentence passed by the High Court and the trial court are quashed and set aside;

(iii) The appellants are acquitted of all the charges charged with;

(iv) Insofar as appellant Mehatar is concerned, who is on bail, his bail bonds shall stand discharged; and

(v) Insofar as appellant Rajkumar is concerned, he is directed to be released forthwith, if his detention is not required in any other case.

25. Pending application(s), if any, shall stand disposed of.

.....J.
(B.R. GAVAI)

.....J.
(K. VINOD CHANDRAN)

NEW DELHI;
FEBRUARY 11, 2025.