IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.5661-5676 OF 2024

RAMESH MARUTI GONDHALI **APPELLANT(S)**

VERSUS

THE STATE OF MAHARASHTRA & ANR. **RESPONDENT(S)**

WITH

CRIMINAL APPEAL NOS.5677-5678 OF 2024

O R D E R

1. **In all these appeals, the appellant is the informant, namely PW-1. The private respondents were charged for the offences punishable under Sections 302, 307, 324, 325, 504 read with Section 149 of the Indian Penal Code, 1860 (for short, the IPC) along with the provisions of Section 135 of the Bombay Police Act, 1951.**
2. **The case of the prosecution in a nutshell is that the complainant along with 7 others were playing cricket on 29.10.2008 – date of occurrence. The accused persons came and made an attempt to play on the very same ground. There was an altercation that ensued, as they were prevented**

from doing so by the deceased due to paucity of adequate space. Under rage, the accused persons, namely the private respondents before us came to the place of occurrence and allegedly committed the offence which led to the death of the informant's cousin and injuries suffered by others. In total, there are about 35 accused persons. The trial Court after considering the evidence on record, was pleased to acquit 19 of them and convicted 16 persons.

3. **Appeals have been filed before the High Court by both sides, including the State. The High Court, by an elaborate judgment, after reassessing the evidence available on record was pleased to dismiss the appeals filed against the acquittal and allowed the appeals filed against the conviction rendered by the Trial Court. Aggrieved, the appellant, who is the informant, has filed the present appeals.**

4. **Learned counsel appearing for the appellant submitted that there are injured eye-witnesses whose evidence ought to have been placed by the High Court at a higher pedestal. The High Court has committed an error in disbelieving the recovery. The motive for the crime has been proved, as there was a prior dispute. Merely because the witnesses who have been examined are related to the deceased, is not a reason to disbelieve their testimony. The mere delay in recording the statement or reading the complaint per se**

cannot be a ground to disbelieve the prosecution's version of events. Between the existence of ocular evidence and medical evidence, the former will have to be given preference. Both the Courts have not considered the evidence in its correct perspective, as there are ample materials available on record to implicate all the private respondents.

5. **Learned counsel appearing for the respondents would submit that there are material discrepancies between the oral testimonies of the prosecution witnesses, which have rightly been taken note of by the High Court in its judgment. Apart from the same, the oral evidence adduced by the eye-witnesses do not concur with the nature of the alleged injuries suffered by them, as revealed by the medical report. The High Court has rightly disbelieved the recovery, particularly, in light of the witnesses turning hostile and the recoveries having been made from the open spaces. Motorcycles which were present in the scene of occurrence have not been seized and the owners have not been identified by the Investigating Officer. The weapons allegedly used to commit the offence do not tally with the nature of injuries suffered, as revealed by the medical evidence. The injuries suffered do not correspond with the statement made by the eye-witnesses. Hence, it is not safe to rely upon the testimony of the eye-witnesses,**

especially, in the light of apparent discrepancies in the same. In such view of the matter, there is no reason to interfere with the impugned judgment.

6. **We are dealing with a case involving Section 149 of the IPC. While convicting a person charged with the aforesaid provision, which creates a vicarious liability, the Courts will have to be extra cautions. In the instant case, about 35 persons have been charged. The High Court has rightly found that there are serious discrepancies in the evidence adduced on behalf of the prosecution. Though the provisions governing *falsus in uno, falsus in omnibus* may not have a strict application to the Courts in India, the evidence will have to be assessed with a higher degree of care, especially when a witness deposes differently and the Courts find that a part of the statement is not correct. This is more so when we are dealing with a case involving Section 149 of the IPC. Other than this, the High Court has taken into consideration various factors before rendering the order of acquittal. This includes the fact that the witnesses have turned hostile and the recovery under Section 27 of the Indian Evidence Act, 1872 cannot be accepted, as the material objects have been recovered from the open space. The nature of injuries attributed to the injured eye witnesses do not correspond with the weapons which have allegedly been recovered.**

There is a clear discrepancy between the statement made by the medical officer and the injured eye-witnesses.

7. **We take note of the fact that the trial Court had already acquitted 19 accused persons, which has been confirmed by the High Court. As far as the other 16 accused persons are concerned, since the High Court has rendered an acquittal by overturning the conviction rendered by the Trial Court, this Court will have to be very slow in interfering with the said decision made, unless an apparent perversity is shown. If the view expressed by the High Court is a plausible view, then the benefit will have to be extended to the accused persons. The presumption of innocence would get strengthened in such a case.**

8. **After going through the judgment of the High Court, we find that the entire evidence available on record has been discussed at length before rendering an order of acquittal.**

9. **In such view of the matter, we find no perversity or reason to interfere with the same. The appeals are dismissed accordingly.**

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

……J.
[M.M. SUNDRESH]

……J.
[SATISH CHANDRA SHARMA]

NEW DELHI;
27th FEBRUARY, 2025

ITEM NO.112 COURT NO.8 SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 5661-5676/2024

RAMESH MARUTI GONDHALI **Appellant(s)**

VERSUS

THE STATE OF MAHARASHTRA & ANR. **Respondent(s)**

WITH
Crl.A. No. 5677-5678/2024 (II-A)

Date : 27-02-2025 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.M. SUNDRESH
HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA

For Appellant(s) Mr. Nitin Tambwekar, Adv.
Mr. Bijo Mathew Joy, AOR

For Respondent(s) Mr. Bharat Bagla, Adv.
Mr. Siddharth Dharmadhikari, Adv.
Mr. Aaditya Aniruddha Pande, AOR

Mr. Sunil Kumar Verma, AOR

Mr. Kunal Cheema, AOR
Ms. Kirti, Adv.

Ms. Rashmi Singhania, AOR
Mr. Sarad Singhania, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the signed order.

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

(SWETA BALODI) **(POONAM VAID)**
ASTT. REGISTRAR-cum-PS **ASSISTANT REGISTRAR**
(Signed order is placed on the file)