IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.405 OF 2002

Azharali Jaferali Qureshi .. Applicant

Versus

The State of Maharashtra
(through Ghatkopar Police Station) .. Respondent

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- Mr. Kartik Garg, appointed Advocate for Applicant.
- Ms. Dhanlaxmi S. Krishnaiyar, APP for State.

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CORAM : MILIND N. JADHAV, J.
DATE : OCTOBER 14, 2024.

JUDGMENT:

1. This Criminal Revision Application ("**CRA**") takes exception to twin judgments dated 31.08.2001 passed by the 31st Metropolitan Magistrate's Court, Vikhroli, *inter alia*, convicting the Revision Applicant (accused No.2 therein) for the offence punishable under Sections 332 r/w 34 of the Indian Penal Code, 1860 (for short "**IPC**") and sentenced to suffer R.I. for a period of one year and to pay fine of Rs.3,000/-, in default to suffer further R.I. for a period of three months and dated 05.08.2002 passed by the Sessions Court, Mumbai thereby upholding the conviction awarded by the Trial Court. By virtue of the judgment passed by the learned Metropolitan Magistrate's Court, accused No.1 and accused No.3 in the same offence have been acquitted. The Sessions Court has dismissed the Appeal of Applicant - accused No.2 and directed him to surrender on 06.09.2002 before the

Trial Court for undergoing the sentence.

2. Present CRA is filed on 17.09.2002. On 19.09.2002, Rule was granted in the present CRA by this Court and since then Applicant - accused No.2 is on bail as this Court directed continuation of bail on the same day on furnishing a fresh bond.

3. By order dated 25.03.2021, Advocate Mr. Kartik S. Garg is appointed as Legal Aid Counsel to represent and espouse the cause of the Applicant. CRA is opposed by the learned APP Ms. Krishnaiyer on behalf of the State.

4. Thus, it is prosecution's case that Applicant prevented a public servant from carrying out his duty, resulting in the assault on PW-2. That PW-2 and PW-4 immediately left the spot of incident and went to the hospital for medical care. PW-1 and PW-3 alongwith other staff of the Corporation went to the police station to lodge a complaint. PW-5 is the doctor who examined and treated the wound on the lip of PW-2. PW-6 is the investigating officer who visited the spot of incident at about 1:15 p.m. On the basis of prosecution's evidence, learned Magistrate convicted the Applicant for having given the fist blow on the face of PW-2 while giving benefit of doubt and acquitting accused Nos.1 and 3, for preventing a public servant from carrying out his duty and interfering with the administration of justice.

5. Prosecution led evidence of 6 witnesses as delineated herein above. PW-1, PW-2 and PW-3 are Marketing Inspectors employed in the Corporation. PW-4 is a peon in the Vigilance Department of the Corporation.

6. Mr. Garg, learned Advocate appearing for Applicant would broadly submit that in the present case, prosecution case is based on the oral testimony of four prosecution eye witnesses viz. PW-1 to PW-4 who are officers / employees of the Brihanmumbai Municipal Corporation (for short "**the Corporation**"). Briefly stated, he would submit that it is prosecution case that on 30.09.1992 at about 10:30 a.m. or thereabout PW-1 to PW-4 alongwith their office staff visited the shop / premises of Applicant – accused No.2 where he was allegedly selling unauthorisedly slaughtered mutton (meat) without licence. He would submit that when PW-1 to PW-4 asked the Applicant– accused No.2 to produce his licence, he was unable to produce the same resultantly PW-1 to PW-4 attempted to seize the slaughtered mutton (meat). At that time, a skirmish took place which is evident from prosecution's case and according to them, Applicant gave a fist blow on the mouth (lip) of PW-2 which resulted into a contused lateral wound of ¾ x ¼ inches on his lip. Prosecution led evidence to prove that a mob had gathered at the then time, that accused Nos.1 and 2 were involved in the skirmish with PW-1 to PW-4 and other staff members and the mob which gathered gave stick blows leading to occurrence of the incident.

7. He would submit that if the evidence of PW-1 to PW-4 is perused by the Court, there is complete variance and dichotomy in respect of the version of the incident narrated by them as to what exactly transpired on the date of the incident. He would submit that if it was the case of prosecution that they had gone to raid the shop premises of Applicant – accused No.2 because he was selling unauthorisedly slaughtered mutton (meat) without valid licence then under the provisions of Section 476B of the Mumbai Municipal Corporation Act, 1888 (for short "**MMC Act**"), there ought to have been appropriate action initiated by the Municipal officers which ought to have been brought on record before the Trial Court by the prosecution.

7.1. He would submit that in the present case, the foundational facts, *inter alia*, pertaining to statutory action initiated by the Corporation pertaining for unauthorised sale of slaughtered mutton (meat) without licence have not been proved by prosecution beyond reasonable doubt. He would submit that it is the defence case that employees of the Corporation approached the Applicant – accused No.2 in his shop premises for seeking illegal gratification and on being denied and refused, they indulged in attempting to illegally seize the slaughtered mutton (meat) and the instruments / equipments in the said premises.

7.2. He would submit that in the present case, according to prosecution there are four eyewitnesses who have deposed i.e. PW-1 to PW-4. While drawing my attention to the deposition of prosecution witnesses, he would submit that deposition of PW-4 in so far as the occurrence of the incident and its nuances is concerned is completely contradictory and at variance with the deposition of the other three prosecution witnesses. He would submit that at the center of controversy is the prosecution's allegation which has been upheld by the learned Magistrate that Applicant - accused No.2 resisted the attempt of prosecution witnesses to seize the goods by landing a fist blow on the lip of PW-2. He would submit that the extent of injury caused is also crucial so as to relate to the alleged fist blow. He would submit dimension of the injury is ¾ x ¼ inches only and such an injury could be caused either during the commotion and resistance offered by all 3 accused or others present or even when PW-2 fell to the ground while trying to retract from the incident spot.

7.3. He would submit that PW-4 is a peon working in the vigilance squad of the Corporation. He was present on the incident spot and has categorically deposed at three places in his cross-examination when repeatedly asked and confirmed that the fist blow which landed on the face of PW-2 was by accused No.1. Incidentally in so far as PW-2 is concerned, in his examination-in-chief he has stated that Applicant - accused No.2 landed a fist blow whereas two other persons caught him and thereafter he fell to the ground. But in his cross examination, he has stated that it was the accused No.1 who gave one fist blow on his mouth. The learned Trial Court has given the benefit of doubt to this by holding that it may be a typographical mistake.

7.4. He would draw my attention to the deposition and cross-examination of PW-2 and more specifically paragraph No.3 thereof to contend that it is prosecution's case that Applicant - accused No.2 was running a mutton shop unauthorisedly and hence he seized the instruments and the slaughtered mutton (meat) from the shop. He would therefore argue that if such a step was to be taken, then under the provisions of Section 476B of the MMC Act, such a power of seizure is vested only with the Commissioner of the Municipal Corporation and not with the Marketing Inspectors and peon of the Vigilance Department. Hence, he would submit that it was imperative for the prosecution to prove its case by proving the foundational facts for the seizure action against a person / unit indulging in sale of unauthorisedly slaughtered mutton (meat) which has not been laid at all in its evidence.

7.5. Next, he would submit that there is a clear dichotomy in the deposition of the four prosecution eye witnesses, firstly on the timing of the occurrence of incident, secondly on the issue of ownership of the shop premises, thirdly as to whether it was accused No.1 or accused No.2 who landed the fist blow on the mouth of PW-2 and lastly with respect to the number of persons present at the spot of incident i.e. gathering of the mob at the spot of incident and their role. He would submit that all four prosecution eye witnesses namely PW-1 to PW-4 are interested witnesses as they are employees of the Corporation. He would submit that prosecution ought to have proved its case to the hilt and most importantly beyond all reasonable doubts. He would submit that in view of the variance in the deposition of the four prosecution eye witnesses viz. PW-1 to PW-4, there is a clear dichotomy and the chain of circumstances of the incident do not stand proved and in that view of the matter the prosecution witnesses fall under the category of 'wholly unrealiable witnesses' as envisaged by the Supreme Court in the case of ***Vedivelu Thevar Vs. State of Madras***[1] which has been followed in the case of ***Balaram Vs. State of Madhya Pradesh***[2].

7.6. In support of his submissions, he would refer to and rely upon the following decisions of the Supreme Court:-

(i) ***Ram Singh Vs. State of Uttar Pradesh***[3];

(ii) ***Nababuddin alias Mallu alias Abhimanyu Vs. State of Haryana***[4];

(iii) ***Raj Kumar Vs. State (NCT of Delhi)***[5]; and

1 2023 SCC Online SC 609
2 2023 SCC Online SC 1468
3 (2024) 4 SCC 208
4 2023 SCC Online SC 1534
5 2023 SCC Online SC 609

(iv) ***Jai Prakash Tiwari Vs. State of Madhya Pradesh***[6].

7.7. While taking me through the aforementioned citations, he would submit that there is acute discrepancy and inadequacy in the evidence tendered by the four prosecution eye witnesses which suffers from serious lacunae and hence their evidence is not credible. He would submit that there is absence of drawing up of spot panchanama by the Investigating Officer in the present case, when admittedly at the time of incident, apart from accused Nos.1, 2 and 3, there were 3 / 4 other customers present in the shop premises and most importantly the commotion and skirmish led to a large gathering of a mob. He would submit that on this issue, PW-2 has deposed that there was a gathering of more than 20 to 25 persons on the spot of incident, PW-3 has deposed that there was a gathering of near about 200 persons on the spot of incident whereas PW-4 has deposed that there was a gathering of about 60-70 persons at the spot of incident. He has drawn my attention to the cross-examination of PW-1 who has stated that there was a big gathering at the spot of incident and the admission given by him that he has not seen as to who gave fist blow to whom. Hence, he would submit that the ratio in the case of *Ram Singh* (*3rd supra*) ought to be applied in the present case as the evidence tendered on behalf of prosecution is not foolproof to convict Applicant - accused No.2 when accused Nos.1 and 3 have been acquitted by the learned Trial Court.

6 2022 SCC Online SC 966

7.8. Finally, he would draw my attention to the 313 statement of Applicant – accused No.2 which is appended at Exhibit “E” - Page No. 54 of the CRA and more specifically to question No.3 thereof and would contend that the elaborately verbose question No.3 framed by the Court is infact only the deposition of PW-2, but it has been made attributable to be the evidence of PW-1 to PW-4. He would submit that question No.3 put by the learned Trial Court is an omnibus question and not related to the deposition of the four prosecution eye witnesses and hence there is a complete failure of justice in putting the specific circumstances alleged against the Applicant - accused No.2 while recording his 313 statement.

7.9. He would submit that as held in the case of *Nababuddin* (*4th supra*) the Trial Court has not followed the principles of consistency laid down by the Supreme Court in the case of *Raj Kumar* (*5th supra*) that it is the duty of the Trial Court to put each material circumstance appearing the evidence against the accused specifically, distinctively and separately (*emphasis supplied*).

7.10. On the basis of the above submissions, he would submit that both decisions of the Courts below suffer from a grievous infirmity and deserve to be interfered with by this Court in its revisional jurisdiction by acquitting the Applicant – accused No.2 from the offence on parity with accused Nos.1 and 2.

8. ***PER CONTRA***, Ms. Krishnaiyar, learned APP appearing for the Respondent – State in her response, at the outset would submit that there is a very narrow timeline and difference in the time stated by the four prosecution eye witnesses pertaining to the incident. She would submit that Applicant – accused No.2 cannot make any capital out of it so as to question the credibility of the witnesses. She would submit that one common thread which runs through the deposition of all four prosecution eye witnesses is that on the morning of 30.09.1992 at 10:30 a.m. or thereabout the incident took place, *inter alia*, leading to an injury caused on the body (lip - mouth) of PW-2 – Marketing Inspector of the Corporation by a fist blow. She would submit that the said injury was examined and treated by a medical doctor who has also deposed as PW-5 and the same cannot be denied by Applicant – accused No.2. Hence she would submit that when atleast two of the prosecution eye witnesses namely PW-2 and PW-3 have categorically deposed that it was accused No.2 i.e. Applicant who gave the fist blow on the mouth of PW-2 and the injury having been examined and treated, the accused No.2 i.e. Applicant cannot deny causing the same. She would submit that such an act on the part of Applicant – accused No.2 amounted to obstructing a public servant form carrying out his statutory duty in accordance with law and therefore the learned Metropolitan Magistrate's Court has duly considered the deposition of the eye witnesses to convict the Applicant – accused No.2.

8.1. She would draw my attention to the deposition of PW-1 at page No.42 of the CRA to contend that PW-1 has named the Applicant-accused No.2 along with one Mr. Samad (owner of the shop) to have assaulted PW-2. She would submit that similarly PW-2 has in his deposition stated and identified the Applicant – accused No.2 to have restrained him from carrying out his duty and having landed the fist blow on his mouth. Next, she would draw my attention to the deposition of PW-3 who has stated that it was the Applicant – accused No.2 who gave fist blow to PW-2.

8.2. On the basis of the above depositions, she would submit that there is consistency in the evidence of the first three prosecution eye witnesses which has been considered by the Courts below in view of the fact that the incident is not denied by the defence. In her usual fairness, she has drawn my attention to the deposition of PW-4 and would contend that though there is a dichotomy and contradistinction as to who had assaulted and landed the fist blow on PW-2 as emanating therefrom, she would assert that since there is consistency in the deposition of the first three prosecution eye witnesses, deposition of PW-4 even though at variance on the above issue should be ignored.

8.3. She would submit that all other circumstances which are deposed by PW-4 with respect to sale of unauthorisedly slaughtered mutton (meat) without licence, Applicant– accused No.2 running the shop without a licence, the search and raid by the municipal officers / staff on the said date, the act of seizure of instruments and the slaughtered mutton (meat), the assault by a fist blow on PW-2, gathering of the mob at the incident spot, examination and treatment of injury sustained by PW-2 by the doctor who has also deposed and the gathering of a mob armed with sticks and some of them giving blows by sticks is consistent in the prosecution case and therefore occurrence of incident cannot be denied.

8.4. She would draw my attention to the medical certificate issued by the doctor - PW-5 to contend that it is the Applicant – accused No.2 responsible for causing the said injury and hence he has been rightly convicted by the Courts below.

8.5. She would draw reference to the provisions of Section 4 of the Indian Evidence Act, 1872 with respect to the facts that may be presumed by the Court to mean the facts which would stand proved unless disproved. In the instant case, she would submit that the defence has not led any evidence to the contrary and therefore the fact that Applicant – accused No.2 has committed the act stands proven. She would submit that similarly provisions of Sections 5 and 6 of the Indian Evidence Act, *inter alia*, pertaining to relevancy of facts would apply in the present case since it is the prosecution which has proved its case of assault committed by Applicant – accused No.2 causing hurt to a public servant while on duty.

9. In so far as the present case is concerned, Applicant - accused No.2 has been implicated by the testimony of PW-1 to PW-4. PW-1 to PW-4 are the eye witnesses to the incident. Though that testimony needs to be considered independent of each other, it needs to be reiterated that these eye witnesses are all employees of the Corporation. PW-1, PW-2, PW-3 are Marketing Inspectors whereas PW-4 is a peon working in the Vigilance Department of the Corporation who accompanied the Marketing Inspectors in their squad alongwith other staff on the date of incident.

10. The law laid down in the case of *Vedivelu Thevar* (*first supra*) is consistently followed by the Courts in so far as testimony of witness action is concerned. As laid down by the Supreme Court in this case, there are three types of witnesses which are categorised as wholly reliable, wholly unreliable and neither wholly reliable nor wholly unreliable. If the witness is wholly reliable there can be no difficulty in relying on even the solitary testimony of such a witness. Similarly in the case of a witness who is wholly unreliable, his testimony can be discarded. It is only in the case of the third category of witnesses that the Court faces difficulties and the Court is required to separate the shaft from the grain to find out the true genesis of the incident. Mr. Garg has argued that the testimony of PW-1 to PW-4 falls entirely in the category of 'wholly unreliable witness'. However learned APP would disagree. Hence, let us examine the testimony of these four eye witnesses so as to consider sustaining the conviction of Applicant – accused No.2 or otherwise.

11. The entire case revolves around the testimony of the four eye witnesses itself. At the outset, it needs to be noted that if Statutory officers of the Corporation are required to visit any shop premises for the purpose of ascertaining unauthorised slaughter of mutton (meat) and consequential seizure, then under the provisions of the MMC Act there has to be some statutory notice / process or panchnama that is required to be issued / carried out. Such is not the case here which is borne out from the testimony of all four eye witnesses to the incident.

12. It is seen that the entire case of the prosecution is based upon the evidence of the injured Marketing Inspector who has deposed as PW-2 before the Trial court. It would be of assistance to therefore begin with his deposition to see whether the same aligns with the deposition of the other prosecution witnesses. Submissions made on behalf of the Applicant- accused No.2 and the facts emanating from the deposition of the witnesses have been noted while recording the submissions of Mr. Garg. Hence, the endeavour would be to determine any contradictions therein.

13. It is seen that prosecution's case is that officers of Corporation had seen the Applicant – accused No.2 selling unauthorisedly slaughtered mutton (meat) without licence and therefore they approached him to seize the slaughtered mutton (meat) and instruments / equipments. Incidentally, version of the four prosecution eye witnesses regarding this foundational fact itself is at crossroads with each other. PW-1 in his deposition has stated that his duty was to have watch on unauthorised slaughtering of animals and he alongwith other staff was in the BMC squad. PW-2 - the injured witness has stated that his duty was to apprehend persons selling unauthorisedly slaughtered mutton (meat) whereas PW-3 has stated that the nature of his work was to seize unauthorisedly slaughtered mutton (meat). All three prosecution eye witnesses i.e. PW-1 to PW-3 are Marketing Inspectors working for the Corporation and were in the same vigilance squad. Hence, if their duty was to contain unauthorised slaughter and sale of mutton (meat), they ought to have followed the due process of law. At the outset, there is no iota of evidence or material placed on record by the prosecution about any action taken against Applicant – accused No.2 or for that matter against accused Nos.1 and 3 for the aforementioned act / ommission under the MMC Act. These officers of the Municipal Corporation directly approached the Applicant – accused No.2 at his shop and enquired about his license. It is their case that he did not have the licence and in that view of the matter, whether it was justified on their part to direct seizure of the instruments / equipments and the unslaughtered mutton (meat) in the shop of Applicant – accused No.2 is the question to be answered. Incidentally it is prosecution's own case that the shop belonged to one Samad who was also present at the time of incident.

14. When the entire episode was unfolding, the four eye witnesses of prosecution were present but they have given four different versions. Their admissions in the examination-in-chief and cross-examination are their respective versions of the incident. In cross-examination, PW-1 has stated that persons who gathered on the spot started pelting stones and he did not see as to who punched whom. As against this, PW-2 has stated in his cross-examination that there may be a gathering of more than 20 to 25 persons on the spot when the incident took place, but there was no stone pelting on the vehicle. Rather, he has further stated that he did not know what was the reaction of the mob. Thus deposition of specific admissions by PW-1 and PW-2 about the incident is different. As against this, PW-3 has given admissions of completely different dimension. He has stated in his cross-examination that there was a gathering of near about 200 persons on the spot but there was no stone pelting from the mob. He has stated that persons from the mob assaulted the injured i.e. PW-2 and PW-4. Thus, it is seen that deposition and specific admissions given by the three main prosecution eye witnesses, all working as

Marketing Inspectors for the Corporation who were present at the spot of incident is full of contradictions. Their versions do not match at all.

15. Once this is the case, then the question arises as to how PW-2 got injured and who injured whom. Before the version of these three prosecution witnesses is further looked into, it would help to see the evidence of PW-4 - the peon whose evidence has been led by the prosecution. He is a peon working in the Vigilance Department of the Corporation. He was a part of the vigilance squad. His deposition and evidence is material because, it is diametrically different as opposed to the version given by the other three prosecution eye witnesses. He also claimed to be an injured witness. He has in his examination-in-chief stated that on the previous night i.e. 29.09.1992, the entire squad started their duty at about 10:30 p.m. from Mahim and while patrolling in the suburbs on the following day i.e. 30.09.1992 at about 10:30 a.m. (12 hours later), the squad reached Narayan Nagar in Ghatkopar. He has further stated that at Narayan Nagar, they saw unauthorised sale of bakara mutton (goat meat) and hence their in-charge went to the shop to enquire about the licence requisite for sale of slaughtered mutton (meat). He has in his deposition stated the name of the in-charge of Vigilance squad as Mr. S.S. Kadam. Thereafter he has stated that the in-charge enquired about the licence and because the licence was not shown, the in-charge asked him and the other prosecution witnesses to seize the instruments and the mutton (meat). However, thereafter chaos and commotion took place during which he stated that accused No.1 assaulted PW-2 when they were about to lift the articles from the shop. He has critically described the incident as it unfolded in his examination-in-chief. He stated that one other peon namely Ashok Shinde caught hold of accused No.1 because of which he started shouting. He has stated that accused No.1 got himself released from the grip of Ashok Shinde and gave a fist blow on the mouth of PW-2, however he stated that at that time many persons gathered who were armed with sticks and gave stick blows on his back. He has stated that the persons who gave the stick blows were accused Nos.2 and 3. This version narrated by PW-4 is virtually different to the deposition of the other three prosecution eye witnesses. In his cross-examination, he has stated that there were unauthorised mutton (meat) shops in every lane of that area. Another admission in his cross-examination is crucial where he has stated at three places that it was the accused No.1 who assaulted PW-2 by a fist blow. The last admission given by him states that there was a gathering of 60 to 70 persons on the incident spot. In the entire version of PW-4, there is no indictment of Applicant – accused No.2 at all. Prosecution has chosen to lead evidence of PW-4, a peon from the Vigilance Department. He has critically described the entire incident as it unfolded and which is delineated herein above. As opposed to this, the version of PW-1 to PW-3 is full of contradictions and it is for that reason it cannot be believed.

16. The Investigating Officer did not carry out any spot panchnama or seizure from the said shop belonging to accused No.1 when it is prosecution's case that there was a mob gathering of persons at the spot, whether there was a gathering of 22 to 25 persons or 200 persons or 60 to 70 persons as deposed by PW-1 to PW-4 differently ought to have been ascertained. This is a crucial fact. The Investigating Officer visited the incident spot only after 1:15 p.m. in the afternoon despite being informed about the incident at 10:45 a.m. by PW-1 and PW-3.

17. In that view of the matter, the consideration of this evidence by the learned Trial Court to convict accused No.2 and acquit accused Nos.1 and 3 is not sustainable. In the commotion that occurred, it is clear from prosecution’s own evidence that the person who may have given the fist blow on the mouth of PW-2 could either be accused No.1 or accused No.3. The evidence on this is not beyond reasonable doubt. However, considering the nature of injury on the lip of PW-2 as described by PW-5 – doctor, it cannot be even ruled out that the said injury may have been caused due to the fall suffered by PW-2 at the incident spot about which he himself has deposed in his cross-examination or even due to the skirmish and the friction which took place at the incident spot between the parties. When it was the prosecution's specific case that there was a mob gathered at the incident spot, the Investigating Officer ought to have prepared a spot panchnama of the incident spot. This was required to be done in view of the reasons given by the accused about the Corporation staff seeking illegal gratification on the incident spot. There were 3 – 4 customers in the shop at that time as confirmed by the prosecution. The investigation and enquiry / panchnama would have unearthed the real truth. Having not done so, it cannot be said that it is not fatal to the case of the prosecution. The prosecution witnesses PW-2 and PW-4 immediately visited the doctor whereas PW-1 alongwith PW-3 and other staff of the Corporation visited the police station. If that be the case, nothing prevented the police authorities to swing into action immediately and arrive at the incident spot. Rather, it is seen that the police arrived at the incident spot after 1:15 p.m. on 30.09.1992.

18. Accepting the evidence on record as it is, the same cannot demonstrate that prosecution has proved its case beyond reasonable doubt. There has to be specific evidence to indict and convict the Applicant but however prosecution's evidence itself is to the contrary as deposed by PW-4.

19. In such a case, when the 313 statement of Applicant – accused No.2 was recorded by the Court, it was the duty of the Court to put each material circumstance appearing in the evidence against him specifically and distinctively to him. In the present case, if the 313 statement appended at page No.54 of the paper-book is seen, it will show that a combined composite case of all four prosecution eye witnesses has been put to the Applicant – accused No.2 when the said case which is put pertains to the version and deposition of PW-2 only. This is clearly against the tenets of the provisions of Section 313 of Cr.P.C. and the duty of the Court.

20. In view of my above observations and findings, the evidence recorded by the four prosecution eye witnesses and the admissions given by them cannot be held to be wholly reliable. Rather, as discussed above, the versions / depositions and admissions given by the four prosecution eye witnesses cannot be described as partly reliable or partly unreliable also. In the facts of this case, the depositions of PW-1 to PW-4 in considering indictment of accused No.2 – Applicant before me rather, falls into the category of wholly unreliable witnesses.

21. Once the Trial Court considers the entire material on record and concludes that there was a commotion leading to gathering of a mob of either 20 to 25 persons on the spot as is the case, there needs to be specific evidence that PW-2 was assaulted specifically by accused No.2 by a fist blow on his mouth. The evidence of PW-4 who was an eye-witness and having claimed that he received certain stick blows on his back at the incident spot is crucial. He has deposed that due to the shouting of accused No.1 who was held by his companion staff peon - Ashok Shinde, he started shouting and released himself from the grip of Ashok Shinde and it is he i.e. accused No.1 who gave the fist blow on the mouth of PW-2. With such specific and direct evidence on record, the learned Trial Court has discarded the same completely and accepted the version of PW-2 which is full of contradictions.

22. Hence, it is the duty of the prosecution to prove its case beyond all reasonable doubts. More so in the present case when PW-1 to PW-4 are all interested witnesses i.e. employees of the Corporation. All four eye witnesses have stated that there was a mob and gathering of either 20 to 25 persons, 60 to 70 persons or 200 persons at the incident spot. The entire episode lasted for not more than 15 minutes when the Municipal Corporation staff / officers left the shop premises.

23. In that view of the matter, there was also an issue of stone pelting stated by two out of the four prosecution eye witnesses. The injury suffered on the lip could even have been caused by stone pelting. In fact in the deposition of PW-5-doctor, he has categorically stated in his cross-examination that the injury sustained by the injured person is possible by a fall which did occur in the present case. It is PW-2's own admission in his cross-examination that as his pagdi fell on the ground, while lifting it, he fell on the ground. If such was the evidence before the Trial Court, the indictment of accused No.2 only and acquittal of accused Nos.1 and 3 by giving them benefit of doubt ought to have been done on correct appreciation of the evidence on record. Needless to state that, each of the prosecution witnesses have referred to a mob of several persons having gathered at the incident spot.

24. In view of the above observations and findings, the impugned judgment passed by the learned Trial Court dated 31.08.2001 deserves to be interfered with as it is passed on complete non-consideration and non-appreciation of the available evidence on record. It is not sustainable and is therefore quashed and set aside to the extent of convicting the Applicant – accused No.2.

25. Resultantly, the judgment and order dated 05.08.2002 passed by the Sessions Court will also have to be therefore quashed and set aside to the extent of upholding the conviction of accused No.2. Prosecution in the present case has failed to prove its case beyond all reasonable doubts. Benefit of doubt will thus have to be extended to the accused No.2 i.e. Applicant before me, just as the learned Trial court has extended the benefit of doubt to accused Nos.1 and 3 while acquitting them in the same offence.

26. Before parting, I would like to put in a word of appreciation for Mr. Garg, learned Advocate appointed through the High Court

Legal Services Committee, Mumbai to espouse the cause of the Applicant and Ms. Krishnaiyar, learned APP representing the State, both of whom have conducted the present case with erudition and in depth and ably assisted this Court. The High Court Legal Services Committee, Mumbai is directed to release the fees of Advocate Mr. Kartik S. Garg in accordance with law within a period of two weeks from the date of the server copy of this judgment being placed before it.

27. Rule is discharged. Bail bond of the Applicant stands discharged.

28. Revision Application is allowed in the above terms.

[MILIND N. JADHAV, J.]

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