

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINAL APPEAL NO. 338 OF 1997

The State of Maharashtra

...Appellant

VERSUS

- 1] Rama Sangram Malu, age 35 yrs.,
- 2] Prakash Rama Malu, age 25 yrs.,
- 3] Dnyanoba Sangram Malu, age 35 years,
- 4] Digamber Bhagwangir Gosavi,
age 35 years,
- 5] Narayan Pandu Malu, age 25 years,
- 6] Vishwambhar Kishan Kasar, age 19 years,
- 7] Shivaji Nivrutti Malu, age 20 years,
- 8] Atmaram Dhondiba Kalambere, age 30 years,
- 9] Gunwant Pandu Malu, age 20 years,
- 10] Tanaji Dnyanoba Malu, age 20 years,
- 11] Nilkanth Pandu Malu, age 29 years,
- 12] Kishan Baliram Kasar, age 65 years,
- 13] Bhanudas Kishan Kasar, age 19 years,
- 14] Bagwat Nivrutti Malu, age 25 years,

All r/o Borgaon, Tq.Udgir, Dist. Latur

...Respondents

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Shri K.S.Patil, A.P.P. for appellant/State

Shri S.S.Choudhari, advocate for respondent nos. 1 to 14

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WITH

CRIMINAL REVISION APPLICATION NO. 267 OF 1997

Ganpat s/o Shriram Antu,
age 30 years, occ. Agril.,
r/o Borgaon, Post Takali (Waghdari),
Tq. Udgir, Dist. Latur
...Petitioner

...Applicant

VERSUS

- 1] The State of Maharashtra,
- 2] Rama Sangram Malu, age 35 yrs.,
- 3] Prakash Rama Malu, age 25 yrs.,

- 4] Dnyanoba Sangram Malu, age 40 years,
- 5] Digamber Bhagwangir Gosavi,
age 35 years,
- 6] Narayan Pandu Malu, age 25 years,
- 7] Vishwambhar Kishan Kasar, age 19 years,
- 8] Shivaji Nivrutti Malu, age 20 years,
- 9] Atmaram Dhondiba Kalambere, age 30 years,
- 10] Gunwant Pandu Malu, age 20 years,
- 11] Tanaji Dnyanoba Malu, age 20 years,
- 12] Nilkanth Pandu Malu, age 19 years,
- 13] Kishan Baliram Kasar, age 65 years,
- 14] Bhanudas Kishan Kasar, age 19 years,
- 15] Bagwat Nivrutti Malu, age 25 years,

all r/o Borgaon, Tq. Udgir, Dist. Latur

...Respondents

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Shri S.V.Warad, advocate for applicant

Shri K.S.Patil, A.P.P. for respondent/State

Shri S.S.Choudhari, advocate for resp.nos. 2 to 15

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CORAM : A.B.CHAUDHARI & INDIRA K.JAIN, JJ.

DATED : 19th OCTOBER, 2015

ORAL JUDGMENT [Per A.B.Chaudhari, J.]

1] Being aggrieved by the judgment and order of acquittal, dated, recorded by the learned Additional Sessions Judge, Latur, in Sessions Case No. 9 of 1994, by which all the respondents/accused were acquitted of the offence punishable under Sections 147, 148, 302, 302 r/w 149, 452, 452 r/w 149, 325, 325 r/w 149, or 323 r/w 149 of the Indian Penal Code. The present appeal was filed by the appellant/State against the said order of acquittal. Original complainant has also filed Criminal Revision bearing Criminal Revision Application No. 267 of 1997 challenging the order of acquittal of the respondents.

2] In support of its case, learned A.P.P. vehemently contended that the trial court appears to have adopted perverse approach while recording the reasons for acquittal of the respondents/accused. As a matter of fact, the offences which which the appellants were charged show that they committed serious offence of murder of Shriram Antu, the deceased. Learned A.P.P. has submitted that the incident even of free fight in the field due to dispute over nala was not sufficient to acquit the accused/persons. He submitted that the trial court gave benefit of doubt to the respondents/accused when no case was made out for doing so.

3] Per contra, leaned counsel for the respondents supported the judgment and order of acquittal and submitted that the learned trial Judge has recorded the detailed judgment with reasons upon appreciation and marshaling of evidence, which cannot be said to be perverse, if the findings are read in correct perspective. He, therefore, prayed for dismissal of the appeal as well as Revision.

4] We have seen the impugned judgment and order of acquittal recorded by the learned Additional Sessions Judge, Latur acquitting the respondents/accused. We have seen the reasons recorded by the trial court in its judgment paragraphs 88, 89 and 90. We find that the reasons for acquittal in the judgment recorded by the trial court are not perverse and the defence having been found probable, the learned trial Judge has committed no error in recording the order of acquittal. We quote paras 88, 89 and 90 from the judgment of the trial court, which read thus : -

“88) Then from the statement of Venkat Baliram it is pointed out from Exhibit No.112 that his father had given a complaint against four persons only. This also shows that names of more than four persons was not taken at the initial stage and then from previous statement of witness Baliram recorded by Police it is further pointed out from Exhibit No. 113-A that some one has beaten his son Venkat and he haed given the application against some persons by incorporating their names. These contradictions thus therefore duly bring it to the surface that even assuming that some scuffle had taken place, number of persons were not more than 3, the number was subsequently increased to 7 and afterwards to 14. And then witness Bhagwat Baware who had recorded the complaint of Baliram has stated that, Ganpat has not stated that he was sitting with his wife, father at the time of sun-set in his house and that they heard shouts at that time. Ganpat Shriram also had not stated that Accused-Prakash was having Aagal or that he uttered threats to his father or pulled his father or took him out. He also did not tell that he then came out and saw other Accused viz. Rama, Digambar, Narayan, Atmaram, Dnyanoba, Shivaji, Bhagwat, Tanaji and Kishan. Prosecution's witness Bhagwat Baware has further deposed that witness Ganpat has also not stated before him while recording his statement that, to have given the story that he had seen accused outside the house, and that all accused were addressing threats and they took his father upto Laxmi Temple and beat him there. He also had not stated that he i.e. Ganpat and his wife requested the accused not to beat his father, but accused did not listen to them. He had not told that Accused-Prakash inflicted the blow of wooden weapon i.e. “Aagal” on the head of his father at Laxmi Temple. He did not tell that the condition of him was not well and his father died. He did not tell that, accused Rama, Narayan, and Atmaram met his father there. He had also nt stated that the incident of beating to his father took place on the Laxmi's Temple, Oata. This witness Bhagwat Baware has stated that, he had recorded the contents that the iron bar was used. This portion is correctly recorded by him and it has been duly proved and place at Exhibit No.96/A. And with these circumstances, it can be found that though prosecution has examined some witnesses claiming them to have been the eye witnesses their evidence does not appear to be the true and

trustworthy material. On the other hand the entire story of prosecution appears to have been concocted and improved material prepared deliberately, after the death of deceased Shriram. It however can be seen that the falsehood is disclosed, since the Medical evidence is contrary to the alleged story it falsifies the infliction of blow of Aagal by Accused-Prakash on the head of deceased. The story in respect of recovery of articles claimed to have been as per the provisions of S. 27 of Indian Evidence Act is not reliable. On the other hand it gives some different story of infliction of blows by number of persons on the head of deceased.

89) It can then further be found that at the initial stage it was not the story of prosecution at any point of time when complainant had lodged his complaint or Baliram had given the information that more than three persons had come to their house or had made attack. No Crime of cognizable nature like that of forming an unlawful assembly was reported even in the complaint of Ganpat Antu, no more names than 7 persons were disclosed and at the same time the story that accused had entered into the house of deceased is false and improved story, prepared afterwards, it was nowhere complained of even by Baliram that accused had entered into their house. He on the other hand states that he was sitting outside of his house, when the neighbours had come there. The panchanama does not disclose the place of Laxmi's Temple as place of incident, on the other hand it mentions that there was loose stone wall and stones were lying there adjacently to the house of Baliram and at the same time the testimony of witness Ganpat, Venkat, Baliram and Sangram and Bhagwat however have strongly been shaken through their examination. The evidence of Bapurao Birajdar, Samsher Sheikh, Kewalbai, who are claimed to have gathered as neighbours is not brought on record. And there is no thus therefore independent corroboration to the alleged story of prosecution.

90) And with these discussions therefore, I came to the conclusion that the first concern of prosecution required to prove its case is not at all established in this matter. Moreover, the defence raised by accused also appears to be probable and substantial. It is not thus therefore established and or emerged out safely that accused had

gathered around in front of house of deceased or had entered the house or had committed house trespass with the intention to commit any crime. It is also not proved that accused had made attack on deceased or on any of the witness or used deadly weapons. It is also not proved that accused formed an unlawful assembly of more than five persons and in furtherance of their common intention of them they all exhibited violence or committed the alleged offences. It has also not brought home that the death of deceased is caused due to the blow inflicted or attack made by any of the accused nor is it established that any of the accused or their group had voluntarily caused hurt to any one, or caused grievous hurt to any one. “

5] Keeping in mind para 24 in the case of **State of Rajasthan Vs Darshan Singh [AIR 2012 SC 1973]**, we make following order.

ORDER

Criminal Appeal No. 302 of 1997 and Criminal Revision Application No. 267 of 1997 are dismissed.

[INDIRA K.JAIN, J.]

[A.B.CHAUDHARI, J.]

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