

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.560 OF 1992

The State of Maharashtra	]... Appellant
<i>Versus</i>	
1. Balaram Mirgya Bhagat, Age : 47 Yrs.	] (<i>Abated as per</i>
	] <i>Court Order</i>
	] <i>dt. 19/03/2015)</i>
	]
2. Atmaram Mirgya Bhagat, Age : 42 Yrs.	]
	]
3. Sitaram Mirgya Bhagat, Age : 36 Yrs.	] (<i>Abated as per</i>
	] <i>Court Order</i>
	] <i>dt. 19/03/2015)</i>
	]
4. Haribhau Shanwer Bhagat, Age : 42 Yrs.	]
	]
5. Dhanaji Chaya Patil, Age : 32 Yrs.	]
	]
6. Baliram Chaya Patil, Age : 24 Yrs.	]
	]
7. Manaji Chaya Patil, Age : 29 Yrs.	]
	]
8. Rohidas Gopal Chimane, Age : 24 Yrs.	]
	]
9. Hasha Ambo Bhagat, Age : 44 Yrs.	]
	]
10. Govind Damodar Chimane, Age : 34 Yrs.	]
	]
All residing at Village Juigaon,	]
Taluka Panvel, District Raigad.	]... Respondents

ALONG WITH
CRIMINAL REVISION APPLICATION NO.190 OF 1992

Lahu Ganpat Bhagat	]
Age : Major, Resident of Jui,	]
Taluka : Panvel, District : Raigad.	]... Applicant

Versus

- | | |
|--|---------------------------------|
| 1. Balaram Mirgya Bhagat, Age : 50 Yrs. |] (<i>Abated as per</i> |
| |] <i>Court Order</i> |
| |] <i>dt. 19/03/2015)</i> |
| 2. Atmaram Mirgya Bhagat, Age : 45 Yrs. |] |
| |] |
| 3. Sitaram Mirgya Bhagat, Age : 39 Yrs. |] (<i>Abated as per</i> |
| |] <i>Court Order</i> |
| |] <i>dt. 19/03/2015)</i> |
| 4. Haribhau Shanwer Bhagat, Age : 45 Yrs. |] |
| |] |
| 5. Dhanaji Chaya Patil, Age : 35 Yrs. |] |
| |] |
| 6. Baliram Chaya Patil, Age : 27 Yrs. |] |
| |] |
| 7. Manaji Chaya Patil, Age : 32 Yrs. |] |
| |] |
| 8. Rohidas Gopal Chimane, Age : 27 Yrs. |] |
| |] |
| 9. Hasha Ambo Bhagat, Age : 47 Yrs. |] |
| |] |
| 10. Govind Damodar Chimane, Age : 37 Yrs. |] |
| |] |
| All residents of Village Jui,
Taluka Panvel, District Raigad. |] |
| |] |
| 11. The State of Maharashtra |]... Respondents |

Mr. A.S. Shitole, A.P.P., for the Appellant/State in Cr. Appeal No.560 of 1992 and for Respondent No.11 in Cr. Revision Application No.190 of 1992.

Mr. Shirish Gupte, Sr. Counsel, a/w. Mr. Shreekant Gavand, for Respondent Nos.1 to 10 in Cr. Appeal No.560 of 1992 and in Cr. Revision Application No.190 of 1992.

Mrs. D.S. Mondkar, i/by Mr. S.B. Shetye,
for the Applicant in Cr. Revision
Application No.190 of 1992.

A.P.P., for the Respondent-State.

**CORAM : SMT. V.K. TAHILRAMANI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.**

DATE : 18TH JUNE, 2015.

ORAL JUDGMENT : [Per Dr. Shalini Phansalkar-Joshi, J.]

1. This Criminal Appeal and Criminal Revision Application, both are arising out of one and the same Judgment dated 11th June, 1992 delivered by the Additional Sessions Judge, Raigad-Alibag in Sessions Case No.185 of 1989. Hence, they are being decided by this common Judgment. By the said Judgment, Respondent Nos.1 to 10 herein are acquitted for the offences punishable under Sections 147, 148, 149, 302 and 307 of the IPC. Hence, being aggrieved by the said Judgment, the State has preferred Criminal Appeal No.560 of 1992, whereas, the father-in-law of deceased Vishnu Nathu Gawand has preferred Criminal Revision Application No.190 of 1992.

2. Facts, as are necessary, for deciding both these proceedings may be stated in brief as under :-

In Village Jui, there were two factions; one belonging to Namdeo Chimane and the other belonging to Accused No.1 Balaram. Deceased Vishnu and Prosecution Witnesses belong to the '*Chimane Party*', whereas, Accused belong to '*Bhagat Party*'.

3. Incident giving rise to this case took place on 22nd August, 1989 at about 5:45 pm to 6:00 pm. On that day, PW-3 Harischandra was proceeding on his bicycle towards the village by Jui-Kamothe Road, whereas, PW-2 Krishna was sitting on pillion seat of motor-cycle of deceased Vishnu and proceeding on the same road. Deceased Vishnu overtook PW-3 Harischandra. When they came near Dambar Factory, one truck was standing across the road. Hence, deceased Vishnu stopped his motor-cycle. At that time, the Accused persons got down from the truck. They were armed with various weapons, like, spade, sword, axe, sticks etc. With those weapons they started assaulting deceased Vishnu. Some of the Accused also rushed towards PW-3 Harischandra and assaulted him also with the weapons in their hands. Deceased Vishnu, having sustained the injuries, fell on the ground. PW-3 Harischandra and some persons, who were gathered there, took Vishnu to the hospital.

4. PW-1 Keshav, who had also witnessed the incident, went to the Police Station and gave information of the same by lodging complaint (Exhibit-37). On his complaint, C.R. No.101 of 1989 came to be registered against Accused at Kalamboli Police Station and investigation of the same was, initially, taken over by PW-6 PSI Vishnu Tambe. He conducted the Inquest Panchanama (Exhibit-32) and sent the dead body for postmortem examination. On the next day of the incident, he went to the spot and prepared Scene of Offence Panchanama (Exhibit-31). On the date of incident itself, he recorded the statement of injured PW-3 Harischandra and on the next day, he recorded the statement of PW-2 Krishna. On 24th August, 1989, further investigation of the case was taken over by PW-8 PI Nimbaji Khairnar. He took the search of the Accused and on 25th August, 1989, he arrested some of the Accused and remaining Accused came to be arrested on 26th August, 1989. He seized the blood stained clothes of injured PW-3 Harischandra under Panchanama (Exhibit-35) on 27th August, 1989.

5. During Police custody, on 29th August, 1989, at the instance of Accused No.7 Manaji, the weapons of assault; one sword, one

axe and one bamboo stick, came to be seized from his house. Whereas, from the house of Accused No.9 Hasha, one wooden handle of the spade, one bamboo stick and one sickle came to be seized under Panchanama (Exhibit-43). Further to completion of investigation, the Charge-Sheet came to be filed in the Court on 19th October, 1989.

6. On committal of the case to the Sessions Court, the Trial Court framed charge against the Accused vide Exhibit-14 for the various offences punishable under Sections 147, 148, 307 and 302 r/w. 149 of the IPC. The Accused pleaded not guilty and claimed trial, raising the defence of denial and false implication.

7. In support of its case, Prosecution examined in all eight witnesses and on appreciation of their evidence, the Trial Court acquitted all the Accused holding that Prosecution has failed to prove the guilt of any of them.

8. As aforesaid, this Judgment of the Trial Court is challenged in this Appeal and Revision Application, both, by the Prosecution and also by the father-in-law of deceased Vishnu.

9. At this stage, it may be stated that during pendency of the

Appeal and Revision Application, Accused No.1 Balaram and Accused No.3 Sitaram have expired. Hence, Appeal and Revision Application are abated against them. They are proceeded only against the remaining Accused.

10. In this Appeal, we have heard learned A.P.P. for the Appellant-State and learned Counsel for the Respondents at length, whereas, learned Counsel for the Applicant in Revision Application remained absent, though called out repeatedly. As his side is also ably argued by learned A.P.P., after going through the submissions and the record of the case, we are deciding, both, the Appeal and the Revision Application.

11. To prove its case, Prosecution has relied on the evidence of two eye witnesses; PW-1 Keshav, who has lodged the complaint (Exhibit-37), and PW-2 Krishna, who was proceeding on motor-cycle of deceased Vishnu. Prosecution has further placed reliance on the evidence of PW-3 Injured Harischandra. PW-1 Keshav has, however, not supported the Prosecution case and, hence, he was declared hostile. Though he has deposed that he was present at the time of incident and proceeding on his bicycle behind the motor-cycle of deceased Vishnu and PW-2 Krishna,

according to him, on account of one truck, which came from Jawahar Industries, at the spot of incident, he could not see the actual assault. Subsequently, when he was in the canteen at the Jawahar Industries Naka, he came to know that deceased Vishnu and PW-3 Harischandra were assaulted. Therefore, he went to the spot and took them in rickshaw to the hospital. He has denied that he has seen the Accused assaulting deceased Vishnu and PW-3 Harischandra with weapons in their hands, like, sword, axe, etc. He has made a categorical statement that he had not seen the actual assault either on deceased Vishnu or on PW-3 Harischandra. Though Prosecution has declared him hostile and cross-examined him, Prosecution has not succeeded in eliciting any material worth the name to prove its case. The evidence of PW-1 Keshav and the complaint (Exhibit-37) lodged by him, therefore, is absolutely of no help to the Prosecution.

12. In such situation, entire reliance of the Prosecution is on the evidence of PW-2 Krishna and PW-3 Harischandra. As per evidence of PW-2 Krishna, at the relevant time, he was proceeding on the motor cycle of deceased Vishnu. On the way, they were stopped by Accused No.2 Atmaram, by parking the

truck. All the Accused got down from the said truck and started assaulting deceased Vishnu. Accused No.2 Atmaram assaulted by means of sword; whereas, Accused No.3 Sitaram assaulted by axe. Accused No.1 Balaram assaulted by spade and Accused No.4 Haribhau assaulted by wooden handle of pick-axe. In evidence before the Court, he has identified Accused Nos.1 to 4 only.

13. It is pertinent to note that this witness has not uttered a single word as to the alleged assault by the Accused on PW-3 Harischandra. The conspicuous absence of another part of the incident in his evidence creates suspicion about the credibility of this witness. In his cross-examination, he has also admitted that he has no idea why deceased Vishnu was assaulted by the Accused.

14. Prosecution has, hence, relied on the evidence of PW-3 Harischandra, who has deposed that he was also injured in the said incident, due to the assault by the Accused. According to him, Accused got down from the truck and started assaulting deceased Vishnu. Accused were armed with weapons. Thereafter, some of the Accused came near him and assaulted

him also with spade handle and sword. He has attributed the blow by spade handle to Accused No.1 Balaram; sword blow to Accused No.5 Dhanaji and axe blow to Accused No.8 Rohidas. However, in his cross-examination, he has stated that all the ten Accused had assaulted him till he became unconscious.

15. Several omissions are also elicited from his cross-examination to the effect that he has not stated before Police that Accused No.1 Balaram was holding wooden handle of spade, Accused No.2 Atmaram was having sword, Accused No.3 Sitaram was having axe in their hands and with those weapons, they committed the assault. Further omission is also elicited that he has not stated before Police that, while Accused were assaulting deceased Vishnu, they noticed him and rushed on him and, therefore, he left bicycle on the road and started running. Fatal omission is also elicited to the effect that he has not stated before the Police that Accused No.8 Rohidas gave him an axe blow on his neck and, hence, due to the assault, he became unconscious. He also cannot say as to when his statement came to be recorded by the Police. In re-examination, he has admitted that he cannot identify any of the weapons with which accused

persons had assaulted him or deceased Vishnu. He even cannot say whether the bicycle seized from the spot of incident was belonging to him. His evidence, therefore, is also not of much assistance to the Prosecution to prove its case.

16. Though the Prosecution has examined PW-5 Dr. Deepak Purohit to prove the injuries sustained by PW-3 Harischandra in the said incident, like, that of fractures, his substantive evidence fails to inspire confidence in judicial mind, especially, when his evidence goes to prove that he had not recorded the history of the patient and, secondly, throughout this entire period, PW-3 Harischandra was treated in private hospital, without there being any Police requisition.

17. The evidence of PW-7 Dr. Ramrao Kendre proves that death of deceased Vishnu was on account of *“cardio respiratory failure, secondary to haemorrhagic shock due to multiple injuries”*. Real issue for consideration, however, before the Trial Court and this Court is *‘whether the involvement of the Accused is proved in the said incident?’*. Admittedly, the weapons of assault were not identified by any of the eye witnesses, even assuming that they were recovered at the instance of some of the Accused. Those

weapons were also not sent to the Chemical Analyzer to establish the connecting link. There is also no evidence that those weapons were sealed on recovery.

18. In the light of these fatal lacunae in the Prosecution case, the view taken by the Trial Court, which is arrived at after proper appreciation of evidence on record with sound reasoning given thereto, being the possible and most probable view in the matter, we are of the considered opinion that no interference is warranted in the Judgment given by the Trial Court. This Appeal and Revision Application, therefore, hold no merit.

19. Consequently, Criminal Appeal No.560 of 1992 and Criminal Revision Application No.190 of 1992 stand dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [SMT. V.K. TAHILRAMANI, J.]