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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
**CRIMINAL APPEAL NO. 2 OF 2005**

1. Anil Mahadev Shelar  
Age 18 years, Occ: Service  
R/p Patalipada, Ghodbunder Road,  
Thane (W).
2. Anand Ashok Pawar  
Age 20 years, Occ: Service,  
R/o Patalipada, Ghodbunder Road,  
Thane (W).
3. Deepak Kisan Khare  
Age 19 years, Occ: Service  
R/o Patalipada, Ghodbunder Road,  
Thane (W).
4. Santosh Lotan Baisane  
Age 23 years, Occ: Service  
R/o Patalipada, Ghodbunder Road,  
Thane (W).
5. Chandan Tejrao Gaikwad  
Age 20 years, Occ: Service,  
R/o Patalipada, Ghodbunder Road,  
Thane (W).
6. Bapu @ Ganesh Karna Devre  
Age 28 years, Occ: Service,  
R/o Patalipada, Ghodbunder Road,  
Thane (W).

.. Appellants  
(Org.Accd.Nos.1 to 6)

Vs.

The State of Maharashtra

.. Respondents

Mr. A. Majeed Menon a/w Mr. Parvez Menon a/w Mr. Subhash Kanse for  
appellant Nos.1, 2, 3, 5 and 6.

Mr. Rohan Nahar i/by Dr. Yug Mohit Chaudhary for appellant No.4.

Mr. H. J. Dedhia, APP for State.

CORAM: P. V. HARDAS &  
DR. SHALINI PHANSALKAR-JOSHI, JJ.

MARCH 30, 2015.

**ORAL JUDGMENT [ Per P. V. Hardas, J.] :**

1. The appellants, who stand convicted for offence punishable under Sections 302 read with 149, 307 read with 149 and 148 of the Indian Penal Code and sentenced to imprisonment for life and each accused to pay fine of Rs.500/-, in default of which to undergo further SI for one month, RI for three years and each accused to pay fine of Rs.500/-, in default of which to undergo further SI for one month and RI for six months and each accused to pay fine of Rs.100/-, in default of which to undergo further SI for one week, with a direction that the substantive sentence shall run concurrently by the 3<sup>rd</sup> Adhoc Additional Sessions Judge, Thane, by judgment dated 29/12/2004, in Sessions Case No. 18 of 2004, by this appeal challenge their conviction and sentence.

2. Facts, as are necessary for the decision of this appeal, may briefly be stated thus:

PW 15 – PI Shrimant Ghule, who, in June 2003, was attached to the Kapurbawadi Police Station, was entrusted with the investigation of Crime No. 160 of 2003 on 14/6/2003. The aforesaid crime had been registered on the basis of the report of PW 1 – Santosh Dhanore at Exh. 32. On being entrusted with the investigation, PW 15 – PI Ghule proceeded to the scene of the incident and drew the scene of the incident panchanama in the presence of panchas at Exh. 29. On the same day, he arrested accused – Anil, accused – Anand and accused – Deepak. He recorded the statements of the injured witnesses and on the next day recorded the statements of other witnesses. On 16/6/2003 also, he recorded the statements of other witnesses.

PW 7 – PSI Ashok Dhaule, who was also attached to the Kapurbawadi Police Station, seized the clothes of injured PW 3 – Ravi and clothes of accused no.4 – Santosh Baisane as well as the clothes of PW 1 – Santosh under seizure memo at Exh. 42.

During custodial interrogation, on 18/6/2003, accused – Deepak expressed his willingness to point out the place where a stump had been concealed. A memorandum to that effect was drawn in the presence

of panchas at Exh. 44. Accused – Deepak then led the police and the panchas to Patalipada and produced a stump from the bushes near the bus-stop. The said stump was seized under panchanama at Exh. 45. On 20/6/2003 accused – Anand, during custodial interrogation, expressed his willingness to point out the place where a hockey stick had been concealed. A memorandum to that effect was drawn at Exh. 46. Accused – Anand led the police and the panchas to Patalipada and produced one hockey stick from the roof of a cattle shed. The said hockey stick was seized under memo at Exh. 47.

On 23/6/2003, accused no. 4 – Santosh was arrested under panchanama at Exh. 48. The arrest panchanama at Exh. 48 reflects that accused no. 4 had sustained injuries on his right thigh and the wounds had been bandaged. The panchanama further reflects that accused no.4 had given an explanation that he had sustained the injuries in the incident. The clothes of accused no. 4 – Santosh were seized under seizure memo at Exh. 42 on 16/6/2003. Thus it appears that accused no. 4 – Santosh was in the hospital and after his discharge on 23/6/2003, he was arrested. On 24/6/2003, accused – Chandan and juvenile accused – Avinash Shirsat were arrested. During custodial interrogation, on 27/6/2003, accused no. 4 –

Santosh expressed his willingness to point out the trident which had been concealed. Accordingly, memorandum had been drawn at Exh. 65. Accused No.4 – Santosh led the police and the panchas to Patalipada and produced a trident which had been concealed between the wall and roof of the flour mill. The said trident was seized under panchanama at Exh. 34. On 2/7/2003, the seized articles were forwarded to the C.A. under requisition at Exh. 71. Statements of some witnesses were recorded and on 10/8/2003 accused – Babu was arrested. The reports of the C.A. are at Exhs.73 to 79. Further to the completion of investigation, a charge-sheet against the appellants was submitted.

Postmortem on the dead body of deceased Rahul was conducted by PW 11 – Dr. Suhaskumar Mohanalkar. PW 11 – Dr. Mohanalkar noticed the following external injuries on the dead body of deceased Rahul :-

- (i) Stab injury over right infra-mammary region of size 3 cm x 2 cm cavity deep, obliquely placed, medially lower end, nearly 1 cm below the nipple, margins are both sharp and medial to it-transversing inside the cavity and cutting the 5<sup>th</sup> and 6<sup>th</sup> rib and pleura and

incising the middle lobe of right lung with active bleeding for about 4 cm. The depth was 4 cm inside.

- (ii) Stab injury over right hypochondriac region in mid - clavicular line of size 3 cm x 2 cm x cavity deep, vertically placed, margins both are sharp, 13 cm below the right nipple and 10 cm below injury No.1 transversing deep, cutting to the 8<sup>th</sup> and 9<sup>th</sup> rib and cutting to the bare area of liver deep to about 5 cm as checked by probe, with active bleeding.
- (iii) Stab injury in mid axillary line in 9<sup>th</sup> and 10<sup>th</sup> intercostal space obliquely placed, upper end is towards the posterior aspect, margins are sharp, both convex of size 5 cm x 2 cm x cavity deep, transversing upwards and anteriorly cutting through the left lower lobe of lung for about 5 cm. with active bleeding.
- (iv) Stab injury over left hypochondray region of size 2 cm x 1 cm over upper pole being medially placed, 24 cm below nipple (left) in mid-clavicular line, penetrating till the peritoneum only. Not into the cavity to the depth of 0.5 cm.
- (v) Incised wound over right lateral and dorsal aspect of thigh of size 5 cm depth and 3 cm x 2 cm transversing

upwards posteriorly and backwards and 13 cm below the anterior superior illiac spine.

He, therefore, opined that cause of death was hemorrhagic shock due to injuries to vital organs i.e. lungs and liver due to hard and sharp object. The postmortem report is at Exh. 61.

On 14/6/2003, PW 11 – Dr. Mohanalkar had examined PW 3 – Ravi and had noticed the following external injuries :-

- (i) Incised (stab) wound on abdomen on left lumbar region of size 4 cm x 2 cm cavity deep.
- (ii) Incised wound over left forearm near elbow joint of size 5 cm x 4 cm x skin deep.

According to him, injury no.1 was a grievous injury, while second injury was a simple injury. The medical certificate is at Exh. 57. According to him, injury no.1 could have been fatal if medical aid had not been provided in time. He has further opined that injury no.1 was sufficient to cause death in ordinary course of nature.

On the same day, he had examined PW 1 – Santosh and noticed the following external injury :-

- (i) Incised wound on dorsal aspect of left arm/ axilla of size 7 cm x 3 cm x 3 cm x muscle deep bleeding was present for which he was admitted in surgical ward for observation.

According to him, said injury could be caused by hard and sharp object. The injury certificate is at Exh. 58.

On the same day PW 11 – Dr. Mohanalkar had examined PW 8 – Kapil and had noticed an injury i.e. stab incised wound over lower left abdomen (left hypochondriac region) of size 4 cm x 3 cm x cavity deep with bleeding present. Abdominal organ was protruding out. A friction abrasion over right side of upper chest of size 5 cm x 2 cm. According to him the first injury could be caused by hard and sharp object, while the second injury was due to hard and blunt object. The extract of the MLC is at Exh. 60.

Injured had been also examined by PW 14 – Dr. Mukund

Jhavar, who noticed that PW 8 – Kapil had sustained the following injuries:-

- (i) Incised wound over left hypochondriac region measuring 4 x 3 cms. with colon pointing out.
- (ii) Friction abrasion over right side of upper chest 5 cm x 3 cm in size.

The injury certificate is at Exh. 69.

3. On the case being committed to the Court of Sessions, trial court vide Exh. 5 framed charge against the appellants for offence punishable under Sections 143, 147, 148, 302 r/w 149 and 307 r/w 149 of the Indian Penal Code. The appellants denied their guilt and claimed to be tried. Prosecution in support of its case examined 15 witnesses. The entire prosecution case revolves around the testimony of the eye witnesses, namely, PW 1 – Santosh, PW 3 – Ravi, PW 4 – Sushma, PW 5 – Shauler, PW 8 – Kapil, PW 9 – Ravindra and PW 10 – Sanjay.

4. We have heard Mr. Menon, learned counsel for the appellant nos.1 to 3, 5 and 6 and Mr. Nahar, learned counsel for appellant no.4. We

have also heard the learned APP on behalf of the respondent – State and in order to effectively deal with the submissions advanced before us by the learned counsel for the parties, it would be useful to refer to the evidence of the prosecution witnesses.

5. PW 1 – Santosh deposes that he knew the appellants as the appellants were residing in the same locality in which he was residing. On 13/6/2003 at about 7.30 p.m. he had returned home from work and at about 8.30 p.m. had gone for meeting his friend Amol, who was residing at Dongripada. PW 1 – Santosh had gone for meeting his friend Amol in order to borrow money from him but Amol had informed him that he did not have money for advancing hand-loan to Santosh. Santosh, therefore, returned home and when he had reached Shukla Chowk, accused Anil, accused Anand, accused Santosh, accused Chandan, accused Bapu and one other accused by name Mallya assaulted him by giving fist blows. Santosh thereafter returned home and when he had reached his house, deceased Rahul, PW 8 – Kapil and PW 3 – Ravi came to his house and questioned him as to why he had been assaulted. PW 1 – Santosh then informed them to go away and accordingly his friends left the house of Santosh. Santosh thereafter went from his house with an intention to ask the accused as to

why they had assaulted him. On way, he met his friend Kailas, PW 10 – Sanjay, Satyam More and Abhijeet Sawant, deceased Rahul, PW 8 – Kapil. When PW 1 – Santosh along with his friends reached upto Ratandeeep Photo Studio at Patalipada, the accused who were present there started assaulting PW 1 – Santosh and others with choppers, sword-sticks, sword, hockey stick. Accused No. 4 – Santosh Baisane was armed with a sword-stick shaped like a trident, while accused Anand was armed with a stump. Accused Chandan was armed with a sword and accused Anil Shelar was armed with hockey stick. According to PW 1 – Santosh, accused no. 4 – Santosh Baisane assaulted him on his left hand and shoulder by a trident. Thereafter accused no.4 – Santosh Baisane assaulted Rahul on his stomach and chest. The other accused also assaulted the other prosecution witnesses who were present there. PW 1 – Santosh, therefore, went to the police station and was referred to the Civil Hospital at Thane. The Medical Officer, after examining him, administered treatment. The Medical Officer on examining Rahul, declared him dead. PW 8 – Kapil and PW 3 – Ravi were also admitted in the Civil Hospital at Thane. In the said hospital, the report of PW 1 – Santosh was scribed at Exh. 32.

6. In cross-examination, he has admitted as correct that Shukla

Chowk is located on the border of Patalipada and Dongripada. He has further admitted as correct that Ratnadeep Photo Studio is 10 ft. from the said Shukla Chowk. He has further admitted as correct that PW 8 – Kapil and Kailas were residing near the house of PW 1 – Santosh. Omissions have been elicited in his cross-examination that he had not stated that while returning from the house of his friend, accused Chandan, Bapu and accused Anand had also assaulted him. Omission is also elicited that he had not stated in his report at Exh. 32 that Anand was armed with stump, while accused Chandan was armed with a sword and accused Anil was armed with a hockey stick.

7. Prosecution has examined PW 3 – Ravi, who deposes that on 13/6/2003 at about 10.45 p.m. he, along with his friends deceased Rahul, PW 8 – Kapil, was standing near his house and at that time his other friends Kailas, PW 1 – Santosh, Satyam More, Ahijeet Sawant and PW 10 – Sanjay were proceeding towards Shukla Chowk. According to PW 3 – Ravi, he and his other companions also accompanied them to Shukla Chowk. When they had reached Shukla Chowk, accused – Ganesh exhorted the other accused to assault them. Accused No. 4 – Santosh assaulted Ravi with a trident on his stomach, while accused Deepak

assaulted Ravi on his left hand by a stump. Accused Anand who was armed with a hockey stick, assaulted PW 1 – Santosh. PW 3 – Ravi became unconscious and, therefore, could not state as to what happened thereafter. He regained his consciousness in the Civil Hospital at Thane where his statement was recorded.

8. In cross-examination, he has denied the suggestion that on the day of the incident, all the prosecution witnesses had gone to Shukla Chowk for questioning the accused as to why they had assaulted PW 1 – Santosh. When confronted with his previous statement, he has admitted that it was so stated. He has also denied the suggestion that when they had reached Shukla Chowk, one Kailas had asked PW 1 – Santosh as to why he had been assaulted by the accused. When confronted with his previous statement, he has admitted that he had stated so. He has also denied the suggestion that Kailas had questioned accused no.4 as to why they had assaulted Bhurya and thereupon Kailas had assaulted accused no. 4 – Santosh on his thigh. Omission has been elicited that he had not stated in his previous statement that accused Deepak had assaulted him on his left hand by a stump. Omission has also been elicited that he had not stated in his previous statement that accused Anand had assaulted PW 1 – Santosh

by a hockey stick. In further cross-examination, he has admitted that he had met PW 1 – Santosh at 10.45 p.m. and prior to 10.45 p.m. he had not met him.

9. Prosecution has examined PW 8 – Kapil, who deposes that on 13/6/2003 at about 10.15 p.m. he had gone to the house of his friend PW 3 – Ravi and he along with Ravi and deceased Rahul were standing outside, chit-chatting. When they were standing, they had noticed Satyam More, PW 10 – Sanjay, Abhijeet Sawant, Kailas and PW 1 – Santosh proceeding towards Shukla Chowk. PW 8 – Kapil states that he along with his companions also started proceeding towards Shukla Chowk. When they had reached Shukla Chowk, they noticed the accused standing there and at that time accused Ganesh exhorted the other accused to assault them. Accused No. 4 – Santosh, who was armed with a trident and the other accused who were armed with hockey stick and stump assaulted deceased Rahul. Accused No. 4 – Santosh Baisane then assaulted PW 1 – Santosh with a trident. Accused No. 4 also assaulted PW 3 – Ravi by the trident. Accused Ganesh held PW 8 – Kapil and thereupon accused no.4 – Santosh assaulted Kapil on his stomach by a trident. The other accused were assaulting the prosecution witness with hockey stick and stump. One

Laxman also assaulted Kapil by a bicycle chain. After assaulting the witnesses and the deceased, the accused then fled from the scene of the incident. According to Kapil, they were shifted to the Civil Hospital, Thane. Kapil was thereafter shifted to the Sion Hospital at Mumbai where he was an indoor patient for 10 to 12 days.

10. In cross-examination, he has admitted as true that Satyam More, PW 10 – Sanjay, Kailas and PW 1 – Santosh were going towards Shukla Chowk to question the accused as to why they had assaulted PW 1 – Santosh. Omission has been elicited in the cross-examination that he had not stated that accused Ganesh had held him. Omission is also elicited that he had not stated that one Laxman had assaulted him with a bicycle chain. In further cross-examination, he has admitted that he had not met PW 1 – Santosh prior to 10.45 p.m.

11. Prosecution has also examined PW 10 – Sanjay, who deposes that on 13/6/2003 at about 10.30 p.m. after taking his dinner, he had noticed PW 1 – Santosh, Abhijeet Sawant, Satyam More and deceased Rahul proceeding on the road. He questioned them as to where they were going and they replied that they were going to Shukla Chowk and,

therefore, PW 10 – Sanjay also followed them. When they had reached Shukla Chowk, they noticed the accused standing there and accused Ganesh exhorted the other accused to assault them. Accused No. 4 – Santosh Baisane assaulted deceased Rahul by a trident and also assaulted PW 3 – Ravi and PW 8 – Kapil and PW 1 – Santosh. The other accused who were armed with hockey stick and stump assaulted the prosecution witnesses. After assaulting the prosecution witnesses, the accused fled from the spot.

12. In cross-examination, he has admitted that his statement had been recorded by the police on 6/7/2003. He has admitted that he had not gone to the police station for giving his statement. Omission has been elicited that he had not stated that accused – Ganesh had exhorted the other accused to assault them. In further cross-examination, omission is elicited that he had not stated that accused Chandan had assaulted him by a hockey stick.

13. The learned counsel for the appellants have urged before us that according to PW 3 – Ravi, PW 8 – Kapil, deceased Rahul was in their company and seeing PW 1 – Santosh and others proceeding towards the

Shukla Chowk, they had followed them. It is urged before us that it is inexplicable that the other prosecution witnesses would just tag along with PW 1 – Santosh and others without questioning as to what had happened. The learned counsel, therefore, urged before us that no reliance can be placed on the testimony of the injured witnesses. The learned APP has supported the finding arrived at by the trial court.

14. PW 1 – Santosh claims that he had been assaulted by the accused and thereafter PW 3 – Ravi, PW 8 – Kapil and the deceased had come to his house and had questioned him as to why he had been assaulted. PW 3 – Ravi and PW 8 – Kapil do not support PW 1 – Santosh on this aspect. According to Santosh, he decided to go to Shukla Chowk for questioning the accused as to why they had assaulted him and had noticed his friends i.e. the other prosecution witnesses and they had accompanied him. Curiously, the other prosecution witnesses did not ask Santosh as to where he was going and for what purpose. It is extremely strange that the other prosecution witnesses just followed PW 1 – Santosh when Santosh was walking towards Shukla Chowk. If the evidence of PW 3 – Ravi and PW 8 – Kapil is to be accepted partly, it would mean that even they were unaware about the earlier incident. We thus find that these prosecution

witnesses are suppressing the genesis of the incident. These witnesses, in a group, would not proceed to Shukla Chowk just to question the accused and go there unarmed, particularly when the accused are alleged to have assaulted PW 1 – Santosh. The arrest panchanama of accused no. 4 – Santosh Baisane clearly discloses that accused no. 4 – Santosh Baisane had sustained injuries and in fact was in the hospital from the day of the incident till his arrest on 23/6/2003. All the injuries are allegedly caused by hard and sharp object and there are in fact no injuries caused to the deceased or the eye witnesses by any hard and blunt weapon like hockey stick or a stick. The assault, therefore, by all the accused appears to us to be a figment of imagination of these witnesses. The judgment of the trial court reveals that the prosecution witnesses were also facing a prosecution in a counter case which had been instituted by the accused.

15. It is apparent that these prosecution witnesses have suppressed the genesis of the incident as well as the assault on them. These witnesses have also suppressed the fact of original accused no. 4 receiving the injuries. These prosecution witnesses were being prosecuted in a counter case. The evidence of the Medical Officer indicates that injuries had been caused by hard and sharp weapon and there are no injuries, which are

caused by hard and blunt weapon like hockey stick etc. These witnesses have, therefore, by suppressing the genesis of the incident not projected before the court the true version of the incident. Suggestion made to the witnesses that one Kailas had stabbed accused no. 4 – Santosh has been denied by them and thus they are suppressing the injuries sustained by accused no. 4 – Santosh. We find that the witnesses are lying on a most vital aspect of the prosecution case. We further find that the explanation of the witnesses that on seeing PW 1 – Santosh proceeding towards Shukla Chowk, they had accompanied him, appears to be false. The accused would not be aware that PW 1 – Santosh and others would be coming to Shukla Chowk and, therefore, there could not be any common object of the accused to assault and commit murder of deceased Rahul. By no stretch of imagination can the knowledge be attributed to the accused that deceased Rahul would accompany PW 1 – Santosh. It was PW 1 – Santosh who had been assaulted by the accused earlier and there was no enmity with deceased Rahul or with the other prosecution witnesses. The accused cannot be said to have any motive for committing murder of deceased Rahul or for assaulting the other prosecution witnesses. All these, therefore, lead us to draw an inference that the prosecution witnesses have suppressed the genesis of the incident and on a most material aspect of the

prosecution case are stating falsehood.

16. Prosecution has also examined PW 4 – Sushma, sister of deceased who claims to have witnessed the incident. None of the prosecution witnesses referred to the presence of PW 4 – Sushma at the scene of the incident. Similarly, prosecution has examined PW 5 – Shauler, grand-father of deceased Rahul who claims that deceased had given an oral dying declaration to him. None of the prosecution witnesses, especially the injured who were at the scene of the incident deposed about any oral dying declaration or about the presence of PW 5 – Shauler.

17. Prosecution has examined PW 9 – Ravindra who deposes that on 13/6/2003 he was manhandled by one Mallya and was then sitting at the temple. Accused – Deepak and Mallya had asked the whereabouts of PW 1 – Santosh. Thereafter both the accused had gone away. On the same day, after taking his dinner at 10.30 p.m., he was sitting in front of his house and his neighbour Mirabai informed him that a quarrel was going on. He, therefore, went towards Shukla Chowk and noticed accused no. 4 – Santosh, who was armed with a trident and accused – Deepak, who was armed with stump and the other accused who were armed with hockey

sticks assaulting deceased Rahul, PW 1 – Santosh, PW 3 – Ravi and PW 8 – Kapil. He states that he was chased by accused Babasaheb and, therefore, rushed home. Omission has been elicited in cross-examination that he had not stated in his previous statement that accused no. 4 – Santosh assaulted on the chest of Rahul, on the stomach of PW 3 – Ravi and PW 8 – Kapil by a trident.

18. We thus find that for the reasons which have been stated by us above, implicit reliance cannot be placed on the testimony of the witnesses in respect of the incident of which these witnesses have suppressed not only the genesis of the incident but have presented before the court an incorrect and a false picture. The medical evidence rules out the assault by the accused and in this case the truth and the falsehood are so intermingled and intertwined that the exercise of separating the truth from the falsehood is not possible and in our opinion, therefore, no reliance at all can be placed on the testimony of the eye witnesses.

19. No reliance in our opinion can be placed on the report of the C.A. in respect of the blood stains on the weapons and the blood stains on the clothes of the accused as there is a total absence of evidence that the

clothes and the weapons had been sealed immediately on their seizure and remained in that sealed condition till they were examined by the C.A. If the report of the C.A. and the testimony of the eye witnesses are left out of consideration, there is no evidence which would prove the offence against the appellants beyond reasonable doubt. The appellants, therefore, in our opinion, are entitled to be given the benefit of doubt.

20. Accordingly, Criminal Appeal is allowed and the conviction and sentence of the appellants is hereby quashed and set aside and they are acquitted of the offence with which they were charged and convicted. Fine, if paid by the appellants, be refunded to them. Bail bonds of appellants/Original Accused Nos.1 to 3, 5 and 6, stand cancelled. Since the appellant/Original Accused No. 4 – Santosh Lotan Baisane is in jail, he be released forthwith if not required in any other case.

(DR. SHALINI PHANSALKAR-JOSHI,J.)

(P. V. HARDAS,J.)