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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 708 OF 1992

The State of Maharashtra

.. Appellant

Versus

1. Haribhau Rama Bhagat, age 37
2. Dasharath Ragho Bhagat, age 31
3. Gangaram Rama Bhagat, age 29
4. Pandurang Rama Bhagat, age 35
5. Anant Kana Bhagat, age 26
6. Balaram Alya Mundkar, age 38

- Appeal is abated by order dtd.
22/6/2015.

7. Anant Mahadeo Bhagat, age 28
8. Sharad Jama Bhagat, age 23
All of Naupada, Tal. Panvel,
Dist. Raigad.

.. Respondents
(Org. Accused)

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

Mr. Shirish Gupte, Senior Counsel a/w Mr. A.M. Shringarpure and Ms. S. Kale for respondent nos.1 to 5, 7 and 8.

CORAM: P. V. HARDAS &
A. S. GADKARI, JJ.

JUNE 22, 2015.

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

1. The State being aggrieved by the judgment of the Sessions Judge, Raigad – Alibag dated 3/9/1992, in Sessions Case No. 182 of 1987 acquitting respondents-accused for offence punishable under Sections 147, 148, 302 r/w 149, 324, 323 r/w 149 and 120-B of the Indian Penal Code, by this appeal challenges their acquittal.

2. Facts in brief as are necessary for the decision of this appeal may be stated thus:-

PW 8 – SDPO Mansing Pawar, who was Inspector in-charge of the Panvel Town Police Station in September 1987, recorded the report of PW 1 – Harishchandra on 13/9/1987 at Exh. 78. On the basis of the report of PW 1 – Harishchandra, an offence vide Crime No. 498 of 1987 was registered. PSI Thakur was entrusted with the investigation. PW 8 – SDPO Mansing Pawar took over the investigation from PSI Thakur on 14/9/1987. A panchanama of the scene of the incident at Exh. 32 had been drawn by PSI Thakur in the presence of PW 4 – Ashok. PW 8 – SDPO Pawar recorded the statements of witnesses and the vehicles involved in

the accident were got examined by the RTO officers. On 15/9/1987 and on 16/9/1987, the accused were not traced. On 20/9/1987, seven accused surrendered at the police station. During custodial interrogation, accused no. 2 – Dasharath expressed his willingness to point out the place where the weapons had been concealed. In the presence of the panchas, therefore, a memorandum of accused no.2 – Dasharath was recorded at Exh. 52. Accused – Dasharath led the police and the panchas and produced a wooden stump, which was seized. The clothes of the accused were seized on 23/9/1987. Blood sample of the accused was obtained through the Medical Officer, Panvel. Accused no.1 – Haribhau expressed his willingness on 24/9/1987 to point out the place where the weapons had been concealed. A memorandum was accordingly drawn in the presence of panchas at Exh. 53. Accused – Haribhau led the police and the panchas and produced a sword-stick, which was seized under panchanama. The seized property was referred to the Chemical Analyzer under requisition at Exh. 54. Further to the completion of investigation, a charge-sheet against the respondents-accused was filed.

3. At the time of the hearing, the learned Senior Counsel for the respondents produced death certificate of Original Accused No. 6 –

Balaram, who had expired on 20/12/2002. In the light of death of Original Accused No. 6 – Balaram, the present appeal was dismissed as abated against him.

4. Prosecution had examined PW 2 - Sambhaji and PW 3 – Atmaram as eye witnesses to the incident in respect of the murder of deceased Sitaram on 13/9/1987 at about 10.30 a.m. These two witnesses, however, did not support the prosecution and were declared hostile. Similarly, PW 5 – Subhash and PW 6 – Pandurang also did not support the prosecution and were declared hostile. The entire prosecution case, therefore, rested on the testimony of PW 1 – Harishchandra.

5. PW 1 – Harishchandra deposes that on 13/9/1987 he was accompanied deceased Sitaram, a Sarpanch and PW 3 – Atmaram to the market yard. Thereafter they started returning to the fish market and were proceeding in a rickshaw. The jeep belonging to accused no.1 – Haribhau was noticed parked near the Shridhar Garage. The jeep thereafter went ahead and while going ahead gave a dash to the rickshaw from behind. According to Harishchandra, the jeep was being driven by accused no. 2 – Dasharath. Due to the dash, the rickshaw turned turtle and the occupants

fell on the ground. The persons from the jeep i.e. accused – Pandurang, Anant and about 7 to 8 others alighted from the jeep and came near them and started assaulting with sticks, swords and sword-sticks. The accused assaulted deceased Sitaram and PW 3 – Atmaram. Harishchandra, on seeing the incident, was frightened and, therefore, rushed to the Panvel Police Station and informed the incident to the police. He returned to the scene of the incident, accompanied by police and on reaching the scene of the incident, noticed that Sitaram had died. PW 3 – Atmaram had also received head injuries and thereafter Atmaram and the rickshaw driver were taken to the Municipal Hospital by the police. According to PW 1 – Harishchandra, the accused were aggrieved on account of the raid of the police at the house of accused no. 4 and seizure of weapons. He thereafter lodged his report at Exh. 78.

6. In cross-examination, an omission has been elicited that he had not stated about going to the fish market about 9.30 to 9.45 a.m. He has denied to have stated portion marked “A” to the effect that he was started from the residence of Dasharath Thakur in the rickshaw at 10.30 a.m. He has admitted as true that he had gone to the police station and gave the information and then taken the police along with him to the scene

of the incident and thereafter had returned to the police station at about 11 a.m. He has denied that the police had taken entry in the diary at about 11.15 a.m. He then admitted as correct that the information was recorded at 11.15 a.m. at the police station and thereafter he had gone to the Municipal Dispensary. He has admitted that he had informed the names of the accused nos.4 and 5 to the police at 11.15 a.m. He could not explain the omission of the names of accused nos.4 and 5.

7. The learned trial Judge has referred to the documents at Exh. 47, which is the extract of the station diary of the Panvel Town Police Station. The extract shows that entries at Sr. Nos.21 and 22 were pertaining to the incident. The learned trial Judge came to the conclusion that the information contained in the said two entries amounted to First Information Report as it conveyed the commission of cognizable offence to the police. The first entry was at 10.45 a.m. which was made on the basis of information of PW 1 – Harishchandra that a jeep gave dash to a rickshaw and the people were assaulted deceased Sarpanch. Harishchandra further informed the police that in order to escape the assault, he rushed to the police station and requested the police for help. Entry No.22 discloses that it was recorded at 11.15 a.m. and the police had found that deceased –

Sitaram, Sarpanch, had succumbed to his injuries. According to the learned Trial court, entry no. 21 was conspicuous by the absence of the name of the assailants as well as the other details of the assault which were subsequently described in the report. According to the learned trial court, the aforesaid entries and the FIR were at variance and the erasures and the overwriting could not be explained by the Investigation Officer.

8. Mr. Shirish Gupte, learned Senior Counsel for the respondents-accused, has urged before us that the conviction of the respondents was sought for on the basis of the solitary testimony of PW 1 – Harishchandra and the evidence of PW 1 – Harishchandra was not of such a quality as would inspire confidence of the court for its implicit acceptance. The learned APP has submitted that the evidence of PW 1 – Harishchandra has been erroneously discarded by the trial court.

9. It is true that a conviction of the accused can be based on the sole testimony of a witness and the law does not require quantity but insists on quality. We have also referred to the findings recorded by the trial court which is in respect of the two entries in the station diary register. The entry at Sr. No. 21 did not disclose the names of the assailants. Thus very

identity of the assailants appears to be doubtful and the FIR, which was lodged subsequently, can be said to overcome the infirmities in the earliest information, which was communicated to the police. The evidence of PW 1 – Harishchandra cannot be categorized as the testimony of a wholly reliable witness and, therefore, in the absence of any other corroborative evidence, in our opinion, implicit reliance cannot be placed on the testimony of PW 1 – Harishchandra. We, therefore, find that the trial court has not committed any error in not placing any reliance on the testimony of PW 1 – Harishchandra.

10. In respect of the other circumstance i.e. finding of blood stains on the clothes of the accused, the trial court at paragraph 12 of the judgment has observed that the accused had surrendered to the police on 20/9/1987 and curiously no arrest panchanamas were drawn. The clothes of the accused were seized after three days i.e. on 23/9/1987 and the clothes were found to be blood stained as per the report of the C.A. at Exhs. 55 and 56. The blood stains found on the clothes of the accused nos. 1 and 8 were of blood group “A”. The learned trial court came to the conclusion that it was unbelievable that the accused would be wearing the blood stained clothes from 13/9/1987 till they surrendered on 20/9/1987. If

the clothes were found to be blood stained on 20/9/1987, the police ought to have immediately seized the blood stained clothes. We further find that there is no evidence whatsoever that the clothes, on their seizure, were sealed and remained in the sealed condition till they were examined by the Chemical Analyzer. In our opinion, therefore, the circumstance that the clothes of the accused were blood stained cannot be said to be a circumstance which aids the prosecution in proving the offence against the accused beyond reasonable doubt.

Under a memorandum under Section 27, the accused are alleged to have discovered a wooden log and one knife. As far as wooden log is concerned, as per the report of the C.A. at Exh. 55, it was found stained with blood. The knife was found stained with blood on the blade and handle. Unfortunately, grouping of the blood groups was not possible. In respect these discovery we also find that the evidence of the Investigation Officer is completely silent in respect of the exact place from which these weapons were discovered. In his examination-in-chief, the Investigation Officer makes no reference to the exact place. The discovery of an object encompasses not only the knowledge of the accused but also the place from where it is discovered. We further find that there is no

evidence in respect of sealing of the weapons immediately on their seizure and, therefore, finding of the C.A. that they were stained with human blood would pale into insignificance.

11. We thus find that the view taken by the trial court is a possible view to be taken on the basis of evidence on record. We do not notice any perversity in the reasoning of the trial court to warrant any inference in this appeal against acquittal. The incident had occurred on 13/9/1987 and the accused were acquitted by the judgment of the trial court dated 3/9/1992. Thus, we find no merit in the present appeal and the appeal is, therefore, dismissed, confirming the acquittal of the respondents-accused.

(A. S. GADKARI,J.)

(P. V. HARDAS,J.)