

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.268 OF 1993

(By State against acquittal)

The State of Maharashtra

] **... Appellant**
(Orig. Complainant)

Versus

1. Shripati Pandurang Patil,

Age – 27 years,

]
]

2. Chandrakant Pandurang Ugave,

Age – 25 years,

]
]

3. Bandu Pandurang Patil,

Age – 30 years,

]
]

4. Khandu Pandu Patil,

Age – 35 years,

]
]

5. Mahadev Krishna Patil,

Age – 27 years,

]
]

6. Hindurao Shankar Patil,

Age – 40 years,

]
]

7. Dagadu Pandurang Ugave,

Age – 25 years,

]
]

8. Ananda Pandurang Patil,

Age – 40 years,

]
]

9. Hindurao Chandrakant Patil,

Age – 35 years,

]
]

All Agriculturists, R/o. Nandgaon,	]	... Respondents
Tal. Shahuwadi, Dist. Kolhapur.	]	(Orig. Accused)

Smt. V. R. Bhonsale, APP for State/Appellant.

Mr. Sarang Kotwal a/w Mr. J. J. Bardeskar for Respondents.

<u>CORAM :-</u>	<u>SMT. V. K. TAHILRAMANI AND</u>
	<u>SMT. I. K. JAIN, JJ.</u>
<u>DATE :-</u>	<u>JANUARY 15, 2015</u>

JUDGMENT (PER SMT. I. K. JAIN, J.) :-

The Appellant/State has preferred this Appeal against the Judgment and Order dated 14/10/1992 passed by the learned 3rd Additional Sessions Judge, Kolhapur, in Sessions Case No.81 of 1988. By the said Judgment and Order, the learned Additional Sessions Judge acquitted all the Respondents/original accused nos.1 to 9 of the offences punishable under Sections 147, 148, 149, 324 and 302 of Indian Penal Code.

2. Facts giving rise to the prosecution case in brief may be stated as under.

That incident occurred on 17/01/1988 at about 8.00 a.m. at Village Nandgaon in the area known as Kharadewadi. On the previous day of incident, Shankar, a villager, had been to Police Patil Shripati Dhondi Patil and informed him that Hindurao misbehaved with him. Police Patil asked Shankar to settle the matter. On the day of incident, villagers were called in front of the

house of Sarpanch accused no.1. Police Patil questioned Hindurao why did he abuse Shankar. On that there was hot exchange of words. Then PW 9 Rangrao and deceased Tukaram Balu Gurav intervened. Seeing them, Hindurao and accused no.1 hurled filthy words to Tukaram. In the meantime, accused nos.1, 2 and Hindurao rushed to Tukaram and started assaulting him with an axe, spears and sticks. As a result, Tukaram died. Police Patil lodged report to Shahuwadi Police Station. Investigation was set into motion. Accused were arrested. On completion of investigation, charge-sheet came to be filed.

3. Charge came to be framed against the Respondents/accused nos.1 to 9 under Sections 147, 148, 302, 324 read with 149 of IPC and in the alternative under Sections 302 read with 34 and under Sections 324 read with 34 of IPC. Respondents pleaded not guilty to the charge and claimed to be tried. The defence of Respondents was of total denial. According to them, there was enmity due to elections in the village and complainant concocted plan to take revenge against the Respondents/accused so they were falsely implicated.

4. On going through the evidence adduced in the case, learned Additional Sessions Judge acquitted the Respondents of the offences as referred hereinbefore. Hence this Appeal.

5. We have heard the learned Advocates for parties. After giving our anxious consideration to the facts and circumstances of the case, submissions advanced on behalf of the parties, evidence on record and the Judgment delivered by the learned Additional Sessions Judge, for the below-mentioned reasons, we are of the opinion that there is no merit in the Appeal.

6. Prosecution case is based on ocular evidence. PW 1 Shripati Patil, PW 7 Tanaji, PW 8 Maruti and PW 9 Rangrao are the eye witnesses. According to them, all the Respondents/accused assembled in front of the house of Respondent No.1 and that time they were carrying sticks, spears and axe with them. They assaulted Tukaram who sustained multiple injuries and met with instant death on the spot.

7. PW 1 Shripati Patil was the Police Patil of village Nandgaon. He proved report (Ex.38). According to him, accused no.1 inflicted blow of an axe on Tukaram and thereafter all the accused started assaulting him with sticks and axe. In the cross-examination, PW 1 admitted that after seeing one blow, he ran away from the spot. He does not know what happened later. This admission in the cross-examination of PW 1 is sufficient to disbelieve his evidence that he has seen the entire incident.

8. So far as the next eye witnesses PW 7 Tanaji, PW 8 Maruti and PW 9 Rangrao are concerned, they have admitted in cross-examination that the manner of incident which they narrated before the Court was not stated by them before police. Their evidence suffers from material contradictions amounting to omissions and so the trial Court thought it fit not to rely upon their testimonies.

9. It is pertinent to note that the incident occurred at 8.00 a.m. It was reported to police at 3.45 p.m. Prosecution has not explained delay in lodging F.I.R. As stated above, PW 1 Police Patil ran away immediately from the spot after one blow was delivered. Still he did not promptly lodge the complaint. On the manner of occurrence of incident, there is no consistency in the evidence of prosecution witnesses. The vital omissions and contradictions in their evidence had adversely affected the substratum of prosecution case.

10. Another piece of evidence relied upon by the prosecution is in respect of the recovery of an axe at the instance of accused no.1 and the bloodstained clothes of accused nos.5, 7 and the deceased. Regarding discovery of weapon, it is apparent from the evidence of PW 2 Panch Rajaram and PW 11 PSI Powar that recovery was from the field. It cannot be said to be discovery under

Section 27 of the Evidence Act in strict terms. There is absolutely no evidence to show that the articles and the clothes recovered were sealed on the spot. In the absence of sealing, evidence on recovery becomes suspicious and cannot be relied upon.

11. Under these circumstances where evidence of eye witnesses suffers from material contradictions and omissions, delay in lodging F.I.R. not explained, recovery of incriminating articles is doubtful, we find that view taken by the learned Additional Sessions Judge is reasonable and possible view. We are therefore not inclined to interfere in the Judgment and Order of acquittal.

12. In the result, Appeal is dismissed.

(SMT. I. K. JAIN, J.)

(SMT. V. K. TAHILRAMANI, J)