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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 410 OF 1996

The State of Maharashtra

.. Appellant

Versus

1. Babi @ Rajesh Rambhau Kavade
Age 22, resident of Shivaji Chowk
At Post Nandgaon, Tal. Nandgaon,
Dist. Nashik.
2. Bali @ Chandrashekhar Rambhau
Kavade, Age 24,
R/o Shivaji Chowk, Nandgaon,
Dist. Nashik.
3. Rajendra Shahadurao Chavan
Age 24, R/o Dahegaon-naka,
Nandgaon, Dist. Nashik
4. Balu Trymbak Pandhare
Age 20, R/o Nandgaon,
Opposite to grinding flour of
Ashok Patil, Devi Galli, Nandgaon,
Dist. Nashik.
5. Sunil Bansilal Bahikar
Age 22, R/o Nandgaon, Ganeshvadi,
Nandgaon, Dist. Nashik

.. Respondents
(Org. Accused)

Mr. H. J. Dedhia, APP for the appellant-State.

Mr. S. V. Dhakephalkar for respondents.

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

JANUARY 27, 2015.

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

1. The State, being aggrieved by the judgment of the 2nd Additional Sessions Judge, Malegaon at Nashik, dated 19/3/1996, in Sessions Case No. 72 of 1994, acquitting the respondents for offence punishable under Sections 143, 147, 148, 302, 307, 324, 323 read with Section 149 of the Indian Penal Code, has filed the present appeal.

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

PW 15 – API Krushna Kadam, who, on 9/7/1994, was attached to Nandgaon Police Station, recorded the report of PW 1 – Yogesh at Exh. 47. On the basis of the said report, he registered an offence vide Crime No. 63 of 1994 under Sections 302, 324, 504, 147, 148 and 149 of the IPC. An entry was accordingly made in the station diary. After registering the

offence, PW 15 – API Kadam, proceeded to the Vardhaman Hospital at Nandgaon, where the dead body of deceased Kailash was kept. In the presence of panchas, he drew the inquest panchanama of the dead body of deceased Kailash at Exh. 59. The dead body of deceased Kailash was then referred for postmortem examination to the Government hospital at Nandgaon. Some policemen had brought accused no.1 – Babi and accused no.2 – Babli at the police station and they were arrested. The clothes on their person were seized in the presence of panchas at Exh. 75. The injured witnesses, namely, PW 1 – Yogesh, PW 4 – Balvant and PW 6 – Arvind were referred for medical examination along with the requisition. The clothes worn by PW 1 – Yogesh were produced by him at the police station and were seized in the presence of panchas under seizure memo at Exh. 76. The clothes of PW 6 – Arvind were seized in the presence of panchas under seizure memo at Exh. 77. The clothes of PW 4 – Balvant were seized in the presence of panchas under seizure memo at Exh. 78. The statements of the three eye witnesses were recorded.

In the morning on 10/7/1994, the scene of the incident panchanama was drawn in the presence of panchas at Exh. 68, on the spot being shown by PW 1 – Yogesh. On the same day, statement of

Yashodabai and others were recorded. The accused nos.1 to 5 were arrested and the clothes of accused – Sunil were seized under seizure memo at Exh. 70.

During custodial interrogation on 12/7/1994, accused – Babi had expressed his willingness to point out the place where one knife and one stick had been concealed. A memorandum was accordingly recorded in the presence of panchas at Exh. 61. Accused – Babi led the police and the panchas to one room located on the eastern side of the Chawl and after opening the room, produced one knife, one dagger and one stick. These articles were seized under seizure memo at Exh. 62. Accused – Sunil also expressed his willingness to point out the place where a sword and revolver had been concealed. A memorandum to that effect was recorded in the presence of panchas at Exh. 63. Accused – Sunil led the police and the panchas to an agricultural field and produced a sword and pistol which were buried in the ground. The said articles were seized under seizure memo at Exh. 64. The accused were referred for drawing their blood sample. The seized articles were then referred to the Chemical Analyzer at Aurangabad under requisition at Exh. 82. The reports of the C.A. are at Exhs.83, 84 and 85. Further to the completion of investigation, a charge-

sheet against the accused was filed.

PW 2 – Dr. Bhise examined PW 4 – Balvant and noted the following external injuries :-

- (i) Sutured C.L.W. on left occipital region, admeasuring 3 cm x 1 ½ cm. I could not give depth of the injury as it was already sutured.
- (ii) Sutured C.L.W. on lseft idex finger 2 cm in length.
- (iii) Little abrasion on left forearm.

The injury certificate of PW 4 – Balvant is at Exh. 49.

PW 5 – Dr. Mundhe had also examined PW 1 – Yogesh, PW 4 – Balvant and PW 6 – Arvind and had noted that PW 4 – Balvant had sustained following injuries:-

- (i) C.L.W. over head occipital region size 4 cm x ½ cm. red in colour, irregular in margin, age within 24 hrs. and caused by hard and blunt object.
- (ii) C.L.W. over left hand index finger, breadth ¼ cm. , red in colour, angular shape, 1 cm in length, age within 24 hrs., caused by hard and blunt object.

He opined that injury no.2 was simple in nature. The injury certificate is at Exh. 54.

He had examined PW 6 – Arvind and had noticed one C.L.W. over perianal region right side 3 fingers away from anus, 1 cm x 1 cm. x ½ cm. red in colour, irregular margin. According to him the said injury was caused by hard and blunt object. The injury certificate is at Exh. 55.

He had also examined PW 1 – Yogesh and had noticed a contusion over chest, 3 cm x 2 cm, irregular margin, caused by hard and blunt object and the injury was simple in nature. The injury certificate is at Exh. 56.

Postmortem on the dead body of deceased Kailash was performed by PW 3 – Dr. More, who had noticed that deceased Kailash had sustained the following external injuries:-

- (i) Clean cut edge, slightly curved slit shaped, 1 ½ cm x ½ cm (middle), injury over left side of chest, about 5 ½ cm. below left nipple and about ½ cm. in depth.

- (ii) Clean cut edge slightly curved, slit shaped with sharp angles at the two extremities, 3 cm. in length, half cm. in middle and 5 inches to 6 inches by catheter method. A penetrating wound (stab wound) over right side of the chest about 2 ½ cm. below right nipple transversely to chest.

On internal examination, he noticed that brain was pale. Trachea and bronchi were filled with blood. Right lung middle lobe showed penetrating injury with cut of blood vessel. According to him, the cause of death was due to hemorrhagic shock due to stab injury to vital organ i.e. lung. The postmortem report is at Exh. 51.

3. On committal of the case to Court of Sessions, trial court vide Exh. 38 framed charge against the accused for offence punishable under Sections 143, 147, 148, 302 r/w 149, 324 r/w 149, 307 r/w 149, 323 r/w 149, 324 and simpliciter charge under Sections 302, 324, 307 and 323 of the IPC. The accused denied their guilt and claimed to be tried. Prosecution, in support of its case, examined 15 witnesses. The defence of the accused was of denial. The entire pivot of the prosecution case is the evidence of the three eye witnesses, namely, PW 1 – Yogesh, PW 4 – Balvant and PW 6 – Arvind.

4. We have heard the learned APP and Mr. S.V. Dhakephalkar, learned counsel representing the respondents and in order to effectively deal with their submissions, it would be useful to refer to the evidence of the eye witnesses.

5. PW 1 – Yogesh, brother of deceased Kailash, deposes that his father had advanced a hand-loan to father of accused as marriage of accused no.2 was to be solemnized. The hand-loan of Rs.4000/- was advanced about 7 to 8 years prior to the incident. Rambhau did not pay the said amount and after his demise, the accused also did not pay the amount, though repeatedly demand was made for repayment. On 9/7/1994, at about 12 noon, PW 1 – Yogesh along with his mother PW 9 – Yashodabai had gone to the house of the accused for demanding the refund of the hand-loan. Accused Nos.1 and 2 were present and they declined to repay the said amount and told PW 1 – Yogesh and Yashodabai to do what they wanted. The accused also abused PW 1 – Yogesh and Yashodabai. In the evening, deceased returned home and was informed about the incident. Deceased Kailash said that he would go to the house of the accused and questioned them as to why they had abused his mother Yashodabai. Accordingly, Yogesh, deceased Kailash and PW 4 – Balvant went near the Maruti temple

at about 6 to 6.30 p.m. There they noticed that the accused nos.1 to 5 were present. Kailash questioned the accused as to why his mother was abused and thereupon the accused said that they would show Kailash and accordingly went to a bicycle shed and came out of the shed armed with weapons like sword, knife, dagger, sword-stick etc. Accused Nos.1 to 5 then rushed towards the prosecution witnesses. Seeing the accused, Yogesh, Kailash and Balvant started fleeing from the scene of the incident. The accused chased them and near the statue of Shivaji, accused no.1 – Babi inflicted two blows of knife on the chest of Kailash. Accused No.2 – Bali gave a blow of sword on the head of Balvant. Accused No.3 attempted to inflict a blow of sword-stick to PW 1 – Yogesh, but PW 1 – Yogesh evaded the said blow. According to Yogesh, accused nos.4 and 5 also assaulted him, Kailash and Balvant by sticks which they carried with them. PW 6 – Arvind then came to the scene of the incident and rescued them. Accused No.1 Babi also assaulted PW 6 – Arvind by knife on his thigh due to which he sustained a bleeding injury. On sustaining the injuries, Kailash fell in the river bed and the accused then fled from the scene of the incident. Injured Kailash was then taken on a motorcycle to the Vardhaman Hospital, where he was declared dead. Yogesh thereafter went to the Police Station and lodged his report at Exh. 47. He deposes that he had sustained a blunt

trauma on chest on account of assault by stick.

6. In cross-examination, he has admitted that he was studying in standard third or fourth at the time of marriage of accused – Bali. He has admitted that no notice had been issued to the accused demanding the repayment of the hand-loan. He has also admitted that during the life time of Rambhau, Yogesh had never demanded refund of the hand-loan. He has also admitted that on the previous day, his father had not instructed Yashodabai to go to the house of the accused for demanding Rs.4000/-. He has admitted that prior to the incident, he and the accused were on visiting terms. Omission has been elicited that he had not stated in his report that he has noticed the accused rushing towards them, armed with weapons and, therefore, he, Kailash and Balvant started running towards the statue of Shivaji. Omission has also been elicited that he had not stated that the entire incident of assault had taken place near the statue of Shivaji. Omission is also elicited that he had not stated in his previous statement that Kailash, after he was assaulted, ran towards the river and fell in the riverbed. Omission is elicited that he had not stated that he had carried injured Kailash to the Vardhanman Hospital. He has also admitted that when they left the house in the evening, they had not received any

information that accused nos.1 and 2 were present near the Maruti temple. He has also admitted that the weapon with which Kailash was assaulted was the same weapon with which PW 6 – Arvind was assaulted. He has denied the suggestion that he had been informed that the dead body of deceased Kailash was lying in the riverbed and, therefore, they had suspected the involvement of the accused and had filed a false report.

7. Prosecution has examined PW 4 – Balvant, uncle of deceased Kailash and PW 1 – Yogesh. According to him on the day of the incident at about 6.30 p.m. he was returning home and had met Kailash and Yashodabai. He asked them as to where they were going and Kailash had informed him that he was going to the house of accused nos.1 and 2 for seeking explanation as to why they had abused Yogesh and Yashodabai. Balvant, therefore, accompanied them to the Maruti temple, where they noticed accused nos.1 to 5. Kailash questioned accused nos.1 and 2 as to why they had abused Yogesh and Yashodabai and thereupon the accused told him that they would show him. Accused Nos.1 to 5 went to the bicycle shed and came out of the bicycle shed, armed with weapons like sword, stick, knife and dagger. Seeing the accused armed with weapons, Balvant, Yogesh and Kailash started running towards the statue of Shivaji. Kailash

was assaulted by accused no.1 – Babi near the statue of Shivaji by inflicting two blows of the weapon with which he was armed. Accused No.2 – Bali gave a blow of sword on the head of Balvant. Balvant held the sword when accused no.2 – Bali was attempting to deliver the second blow. According to Balvant, he had sustained cut injury on his index finger. Accused No.3 tried to inflict a blow of the weapon to PW 1 – Yogesh. Accused Nos.4 and 5 assaulted both, Balvant and Yogesh by sticks. On receiving the injuries, Kailash started running towards the side of the riverbed. The accused chased him. At that time, PW 6 – Arvind came to the scene of the incident and was assaulted by accused no.1 with the weapon with which he was armed. Kailash fell in the riverbed. The accused thereafter fled from the scene of the incident.

8. In cross-examination, omission is elicited that he had not stated in his previous statement that accused – Babi was armed with a knife. Omission is also elicited that he had not stated that accused no.3 had assaulted PW 1 – Yogesh with a sword-stick. Omission is elicited that he had not stated in his previous statement that he was assaulted near the statue of Shivaji. He has denied that he had sustained the injuries near the Maruti temple.

9. Prosecution has examined PW 6 – Arvind. According to PW 1 – Yogesh and PW 4 – Balvant, Arvind had arrived at the scene of the incident after deceased Kailash had been assaulted. PW 6 – Arvind deposes that on the day of the incident at about 6.30 p.m. he was proceeding towards the Shivaji statue and when he reached near the statue, he noticed accused chasing PW 4 – Balvant. According to him, he was also noticed deceased Kailash and PW 1 – Yogesh at the scene of the incident. According to him in his presence accused no.2 – Bali dealt two blows on the chest of Kailash. Kailash thereafter fled towards the side of the river and accused no.1 chased deceased Kailash., According to Arvind, he went to rescue deceased Kailash but accused no.1 Babi dealt a blow of the weapon on his buttock. Deceased Kailash then fell in the riverbed. Accused No.3 – Rajendra had assaulted PW 1 – Yogesh with a sword-stick, while accused no.2 – Bali dealt a blow of sword on the head of PW 4 – Balvant.

10. In cross-examination, he has denied the suggestion that he had sustained the injury on account of hard and blunt object. According to him, he had sustained an injury by a sword-stick and dagger. He has denied the suggestion that PW 4 – Balvant assaulted near the Maruti temple. He was

confronted with portion marked “A” from his statement which he had denied to have stated. Omission has been elicited that he had not stated that he had seen accused no.2 chasing PW 4 – Balvant.

11. The learned trial Judge, at paragraph 19 of the judgment, came to the conclusion that there was material variance / inconsistency in the testimony of the eye witnesses. Admittedly, according to PW 1 – Yogesh and PW 4 – Balvant, PW 6 – Arvind had arrived after the incident, yet PW 6 – Arvind deposes about assault on deceased Kailash. The Medical Officer, who had performed the postmortem i.e. PW 3 – Dr. More, had admitted in the cross-examination that injuries 1 and 2 sustained by the deceased were not possible to be caused by the knife (Article 21). According to PW 1 – Yogesh, the knife, Article 21, was the weapon which was used for causing injuries to deceased Kailash. In respect of the injuries sustained by PW 4 – Balvant, the trial Judge found that the medical evidence falsified the version of PW 4 – Balvant about sustaining the injuries. According to him, Balvant had sustained a contused lacerated wound. Balvant claims that he was assaulted by a sword on his head and yet no incised wound has been caused to Balvant. The trial court, therefore, came to the conclusion that the nature of the injuries sustained by

Balvant was not corroborated by the medical evidence. The Medical Officer, in fact, on the other hand opined that the injuries sustained by Balvant could be caused by hard and blunt object. Thus the evidence of Balvant that sharp edged weapon was used for causing injuries to him was falsified. In respect of the injuries sustained by PW 6 – Arvind, the trial court, at paragraph 22, held that the injuries sustained by Arvind was a simple injury and was caused by hard and blunt object, while Arvind claims that the said injury had been caused to him by a knife.

12. The trial court, therefore, concluded that implicit reliance could not be placed on the testimony of the three eye witnesses in the light of the fact that there was a complete improvement in respect of the scene of the incident as well as about the accused chasing the deceased and inflicting injuries to deceased near the statue of Shivaji. The witnesses had made a departure from their earlier claim of being assaulted near the Maruti temple. In the face of such evidence, the trial court came to the conclusion that in the absence of the examination of any other independent witnesses, it would not be safe to place implicit reliance on the testimony of PW 1 – Yogesh, PW 4 – Balvant and PW 6 – Arvind. According to the trial court, PW 6 – Arvind was not an eye witness to the earlier incident as he had

arrived at the scene of the incident after the incident was over. The trial court, therefore, gave the benefit of doubt to the accused and acquitted them.

13. We have heard the learned APP, with whose assistance we have perused the findings recorded by the trial court and we have also perused the evidence of the prosecution witnesses. In our opinion, 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 and merely because a second view of the evidence is possible is not a ground for reversing the acquittal.

14. We, therefore, find that in the absence of any perversity in the reasoning of the trial court, this appeal against acquittal must fail and dismiss.

15. Accordingly, Criminal Appeal No. 410 of 1996 is dismissed, confirming the acquittal of the respondents/accused. Bail bonds of respondents/accused stand cancelled.

(DR. SHALINI PHANSALKAR-JOSHI,J.)

(P. V. HARDAS,J.)