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Judgment and Order, the learned Additional Sessions Judge acquitted all the accused of the offences punishable under Sections 147, 148, 149 read with 341 and 302 of the Indian Penal Code and under Section 135 of the Bombay Police Act.

2. For the sake of convenience, we shall refer the Respondents as accused as they were referred before the trial Court.

3. Prosecution case briefly stated is as under :-

(i) That Ranghnath Bhusnar, along with his son Sadashiv and daughter-in-law, was residing in a farmhouse at village Vole, Taluka Pandharpur, District Solapur. Prior to one year of the incident, Sadashiv acted as a panch in a wrestling match held in the village. As Sadashiv and other panch declared the match as draw, accused no.1 Kumar got annoyed and threatened Sadashiv.

(ii) On 15/05/1991, Sadashiv had been to Pandharpur to purchase oil cake. He was returning by a jeep. Accused persons were riding two motorcycles and intercepted Sadashiv near Dattapati stop on Pandharpur-Karkamb Road. It is the prosecution case that the accused formed unlawful

assembly with deadly weapons such as knives and sticks with common object to kill Sadashiv and wreck vengeance. PW 8 Vishnu Dada Chavan was the driver of the jeep. Accused inflicted knife and stick blows on hands, legs and head of Sadashiv. He was seriously injured and brought to his village in jeep. From there, he was taken to P.H.C. at Karkamb. As doctor was not available, father of Sadashiv PW 7 Rangnath Bhusnar and others took Sadashiv to Cottage Hospital, Pandharpur. On the way to Karkamb, PW 7 Rangnath inquired from Sadashiv who caused the injuries. Sadashiv disclosed that Hanmant Kolekar, Arjun Kolekar and Shaliwahan Kolekar caused him the injuries with knives and sticks. He succumbed to injuries at 8.30 p.m.

(iii) PW 16 PSI Shankarrao Jadhav was attached to Taluka Police Station, Pandharpur. At 9.00 p.m., HC Gavane informed him that injured Sadashiv Bhusnar expired in Cottage Hospital. On receiving information, PW 16 PSI Jadhav visited the hospital. He found the injured dead. He recorded first information report narrated by PW 7 Rangnath. Thereafter PSI Jadhav came to police station. Crime No.68 of 1991 was registered against the accused. PSI Jadhav himself took over investigation.

(iv) During investigation, inquest panchanama, spot panchanama and seizure panchanama of clothes of deceased came to be drawn. The dead body was sent for post-mortem examination. PW 13 Dr.Sukumar Magdum performed the post-mortem. He opined cause of death due to injury to brain due to fracture skull bone and haemorrhagic shock due to multiple injuries. It was revealed by the investigating agency that incident was witnessed by PW 8 Vishnu Chavan, PW 9 Suresh Bhusnar and PW 10 Baban Nile. Statements of these witnesses were recorded. Accused were arrested.

(v) On 17/05/1991, a knife and a shirt were recovered at the instance of accused no.4 Shaliwahan, stick from accused no.5 Amar, two sticks from accused no.2 Arjun and bloodstained trouser from accused no.3 Hanmant. The seized articles were sent to C.A. for chemical analysis. On completion of investigation, charge-sheet came to be filed.

4. Charge was framed against the Respondents/ accused under Sections 147, 148, 149, 341 and 302 of IPC and under Section 135 of Bombay Police Act. They pleaded not guilty to the charge and claimed to be tried. The defence of Respondents was of total denial and false implication.

5. We have heard Mr. A. S. Shitole, learned APP for Appellant/State and Mr. Prakash Naik h/f Mr. Sandeep Salunkhe for Respondents/accused. After giving our anxious consideration to the facts and circumstances of this case, arguments advanced, the 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. The learned APP submitted that the evidence of PW 8 Vishnu and PW 9 Suresh clearly shows that there was an assault on Sadashiv by means of deadly weapons. Relying upon the evidence of PW 7 Rangnath, PW 8 Vishnu, PW 9 Suresh and PW 10 Baban, prosecution submitted that there is sufficient evidence to bring home the guilt of the accused.

7. At the threshold, it is to be mentioned here that the evidence of PW 3 Kalidas Randive and PW 4 Mahadeo Randive on recovery of knife and shirt at the instance of accused no.4 Shaliwahan, PW 5 Shamrao Lokhande on recovery of sticks from accused Amar and Arjun and bloodstained trouser from accused Hanmant is not helpful to

the prosecution as they chose not to support the prosecution. Prosecution could not prove seizure of clothes of the deceased as PW 6 Saudagar Sutar and PW 11 Haridas Bagal turned hostile.

8. Prosecution examined 16 witnesses to substantiate its case. The star witnesses are PW 7 Rangnath, PW 8 Vishnu, PW 9 Suresh and PW 10 Baban. PW 8 Vishnu was the driver of jeep in which Sadashiv was traveling. It appears from his evidence that he was working with Dhanaji Patil. He had been to Pandharpur to repair the jeep. When he was returning, on the way, Sadashiv and 4 other persons boarded the jeep at Pandharpur. Sadashiv was sitting at Cleaner's side. The other persons were sitting on the backside. Near sugar factory, the four persons got down. According to Vishnu, then he proceeded towards Chilar Stream. That time, he and Sadashiv were in the jeep. Two persons came on the motorcycle and intercepted the jeep from front. Those two persons started beating Sadashiv. They inflicted blows with stick and rod on Sadashiv. He then went to inform the father of Sadashiv. Thereafter, along with father of Sadashiv, he had been to P.H.C., Karkamb. As no doctor was available, they proceeded to Cottage Hospital at

Pandharpur. He stated that the assailants were Hanmant Kolekar, Amar Kolekar, Arjun Kolekar and Shaliwahan Kolekar. He did not notice the fifth assailant. As the witness did not fully support the prosecution, he was declared hostile. Material contradictions have been brought in his cross-examination which have been proved by PW 16 IO PSI Jadhav. He denied the manner of entire incident in the cross-examination.

9. PW 9 Suresh Bhusnar claimed himself to be an eye witness. He stated that on the day of incident, he boarded the jeep driven by Vishnu Chavan for going to Vhale. He was sitting on Cleaner's side. Sadashiv was sitting between him and the driver. No one else was in the jeep. His evidence on occurrence of incident is doubtful as he has not narrated the same before police. All the omissions have been brought in para 4 of his deposition and duly proved by PW 16 IO PSI Jadhav. As such, no reliance can be placed on the testimony of PW 9 Suresh.

10. As indicated above, PW 7 Rangnath is the father of deceased Sadashiv. His evidence shows that there was a dispute over wrestling match between the accused and

deceased. He was informed about the incident by PW 8 Vishnu. PW 7 Rangnath is not an eye witness. His evidence is relied upon to prove the alleged oral dying declaration. It is stated by PW 7 Rangnath that on 15/05/1991 at about 5.30 p.m., PW 8 Vishnu Chavan and PW 10 Baban Nile brought his son Sadashiv in a jeep. That time he was irrigating groundnut crop. When he saw Sadashiv in jeep, he found several injuries on his hand, right leg, forehead and head. He stated that Sadashiv was conscious and he was able to speak. When they were taking Sadashiv to dispensary at Karkamb, on the way, he inquired from Sadashiv who caused the injuries. Sadashiv disclosed that Hanmant Kolekar, Arjun Kolekar and Shaliwahan Kolekar caused the injuries to him with knife and sticks. At P.H.C., Karkamb, doctor was not available. He stated that Sadashiv was shifted to Cottage Hospital, Pandharpur. During treatment, Sadashiv succumbed to injuries. PW 7 Rangnath has proved F.I.R. (Exh.39).

11. The crucial question here is whether the oral dying declaration was ever made by Sadashiv to PW 7 Rangnath. Admittedly, PW 10 Babab Nile is the relative of deceased Sadashiv. He reached the spot after the incident.

PW 7 Rangnath was informed about the assault by PW 8 Vishnu. He accompanied Vishnu to the spot. Baban noticed several injuries on the person of Sadashiv. Then along with the father of Sadashiv, he went in jeep to Karkamb. He stated that on the way, father asked Sadashiv who caused the injuries and Sadashiv disclosed that Arjun, Hanmant, Kumar and Shaliwahan caused the injuries with sticks and knife. Through the evidence of PW 10 Baban, it was tried to show that oral dying declaration made to the father was fully corroborated and it can be safely relied upon.

12. If the evidence of PW 13 Dr.Magdum is minutely scrutinized, it can be seen that there were as many as 12 injuries on the person of Sadashiv. Doctor opined that injury nos.1, 7, 8, 9 and 10 were caused by sharp and cutting object. The other injuries were caused by hard and blunt substance. Injury Nos.2, 3 and 4 were grievous in nature. He could not give definite opinion whether injured could remain conscious after the injuries were caused. It has come in the evidence of PW 8 Vishnu that Sadashiv was unconscious when he was being carried to P.H.C., Karkamb. Considering the nature of injuries, parts of the body where grievous injuries were caused, admission of PW 8 Vishnu that Sadashiv

was unconscious and the inability of doctor to opine whether the injured could remain conscious after the injuries were caused, we find that sole reliance cannot be placed on the oral dying declaration.

13. So far as PW 1 Balu Bhusnar and PW 2 Nirappa Bhusnar are concerned, they are the witnesses on inquest and spot panchanama. PW 13 Dr.Magdum has proved post-mortem report (Exh.46) and advance certificate of death (Exh.48). On the basis of the evidence of these witnesses, at the most, it can be said that Sadashiv met with homicidal death. Regarding authorship of the accused to cause the death of Sadashiv, we do not find any reliable and convincing evidence. The ocular evidence and evidence on oral dying declaration does not inspire confidence. Thus, we find that the view taken by the learned Additional Sessions Judge is the reasonable and possible view. As such, we are not inclined to interfere in the Judgment and Order of acquittal. In the result, Appeal is dismissed.

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

(SMT. V. K. TAHILRAMANI, J)