

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.284 OF 2009

1. Rama Balu Mhase	]	
Age 37 Yrs., Occu.: Agriculture,	]	
	]	
2. Balkrishna Raju Mhase,	]	
Age 24 Yrs., Occu.: Agriculture,	]	
	]	
3. Balu Dharma Mhase,	]	
Age 66 Yrs., Occu.: Agriculture,	]	
	]	
4. Dilip Kashinath Mhase,	]	
Age 21 Yrs., Occu.: Agriculture,	]	
	]	
5. Raju Shankar Mhase,	]	
Age 43 Yrs., Occu.: Agriculture,	]	 Appellants /
	]	(Original
All residents of Khuded, Mhasepada,	]	Accused
Taluka Vikramgad, Dist. Thane	]	Nos.1 to 5)

Versus

The State of Maharashtra,	
Thru' Vikramgad Police Station, Dist. Thane	] Respondent

Ms. Shubhada Khot for the Appellants/Original
Accused Nos.1 to 5.

Mrs. Sangeeta D. Shinde, A.P.P., for the Respondent-State.

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

DATE : 25TH MARCH, 2015.

ORAL JUDGMENT [Per Dr. Shalini Phansalkar-Joshi, J.] :

1. This Appeal takes an exception to the Judgment of the Additional Sessions Judge, Thane in Sessions Case No.203 of 2006 dated 4th December, 2008. By the said Judgment, the Appellants stand convicted for the offence punishable under Section 302 r/w. 149 of the Indian Penal Code and sentenced to suffer life imprisonment and to pay fine of Rs.1,000/- each, in default to undergo further S.I. for two months. They are further convicted for the offence punishable under Section 326 r/w. 149 of the Indian Penal Code and sentenced to suffer R.I. for six months and to pay fine of Rs.500/- each, in default to undergo S.I. for one month. They are also held convicted for the offence punishable under Section 148 r/w. 149 of the Indian Penal Code. However, no separate sentence is passed for the said offence.

2. Facts, as are necessary, for deciding this Appeal can briefly be stated thus :-

On 26th March, 2006, at about 10:30 am, while PW-11 PHC Tukaram Mor was on PSO duty in Vikramgad Police Station, PW-1 Babulal Mhase came to the Police Station and lodged complaint Exhibit-37 informing that on account of the previous inimical and strained relations, the Appellants herein committed assault on deceased Suresh

Mhase and other eye witnesses, while they were proceeding on the way to Police Station near Tivaspada. Due to the assault by means of weapons like iron pipes, iron rods and stones, Suresh has succumbed to the injuries and died instantaneously on the spot itself, whereas, PW-1 Babulal had come to the Police Station in injured condition along with PW-3 Subhash Gangoda to lodge the complaint.

3. On this complaint, PW-11 PHC Tukaram Mor registered C.R. No.9 of 2006. He referred injured witnesses, namely, PW-1 Babulal Mhase and PW-5 Ramesh Kadu to Primary Health Center, along with Police Yadi (Exhibits "74" and "75"), for the medical treatment. He handed over further investigation of the said C.R. to PW-12 Dy.S.P. Hanmant Giri. He verified the complaint Exhibit-37 and rushed to the spot. The dead body of Suresh was lying on the spot. He made Inquest Panchanama (Exhibit-39) in the presence of Panchas and sent the dead body for postmortem to the hospital at the hands of Police Constable Tadvi. He remained on the spot and drew the Scene of Offence Panchanama (Exhibit-40). He recorded the statements of the witnesses, who were present there. Meanwhile, Police Constable Tadvi produced the clothes of the deceased, which came to be seized by PW-11 PHC Tukaram Mor under Panchanama (Exhibit-76).

4. On the same day, PW-12 Dy.S.P. Giri arrested the Appellants under Panchanama (Exhibit-79). He also seized the Jeep, in which the Appellants had come to the spot, armed with weapons. The said Seizure Panchanama was prepared by him vide Exhibit-67. During police custody on 29th March, 2006, at the behest of Appellant No.2-Balkrishna, in pursuance of the disclosure statement given by him, the weapons, like iron rods and iron pipes, came to be seized at some distance from the spot under Panchanama (Exhibit-53). He sent the seized articles, including the blood stained clothes of the Appellants and of the deceased with the weapons of assault and the blood samples of the Appellants and deceased, to the Chemical Analyzer vide requisition letter dated 30th April, 2006 (Exhibit-80). The C.A. Reports are produced in the case (Exhibits “81” to “87”). Further to completion of investigation, he filed Charge-Sheet in the Court against the Appellants.

5. On the case being committed to the Sessions Court, the Trial Court framed charge against the Appellants vide Exhibit-30. The Appellants pleaded not guilty and claimed to be tried, raising the defence of false implication on account of the political rivalry and strained relations.

6. In support of its case, though the Prosecution has examined in all 12 witnesses, the main thrust of the Prosecution case was on the

evidence of the injured eye witnesses and some independent witnesses, namely, PW-5 Ramesh Kadu, PW-6 Ragho Pawar and PW-7 Bhagwan Ozre. The Prosecution has further relied on the medical evidence and the recovery evidence of weapons and clothes, proved through the evidence of Panchas and Investigating Officers. On appreciation of the evidence led by the Prosecution, the Trial Court held the guilt of the Appellants to be proved beyond reasonable doubt and convicted and sentenced them, as aforesaid.

7. We have heard learned Counsel for the Appellants Mrs. Shubhada Khot and learned A.P.P. for the Respondent-State Mrs. Sangeeta Shinde. In our considered opinion, before adverting to their submissions, it would be useful to refer to the evidence on record.

8. To prove the homicidal death of the deceased, Prosecution has led the evidence of PW-9 Dr. Anil Phutane, who has conducted postmortem examination on his dead body. On external examination, he found following injuries :-

- (1) *C.L.W. on scalp, right parietal region, 5 x 1 cm.*
- (2) *C.L.W. on occipital region centrally, 2 x 0.5 cm.*
- (3) *C.L.W. on scalp from occipital right parietal region, about 15 cms x fracture of parietal and occipital bone, brain and covering seen through the wound.*

- (4) *C.L.W. on scalp from occipital bone to upper end of right ear, about 10 cms. x 4 cms. fracture of occipital and temporal bone. Brain matter seen coming through the wound.*
- (5) *Linear contusion on back, right scapular region, 10 cms. x 3 cms. vertical.*
- (6) *Liner contusion lateral to injury no.5, 20 cms. x 3 cms. vertical.*
- (7) *Multiple abrasions on right knee, right shin of tibia.*

9. According to him, all these injuries were antemortem and sufficient in the ordinary course of nature to cause the death. On internal examination, he found following injuries :-

- (1) *Skull – Vault and base describe fractures, their sites, dimensions, directions etc. - # of occipital and temporal bone from right ear to occipital. Brain matter coming through the wound.*
- (2) *Brain – The appearance of its coverings, size, weight and general condition of the organ itself and any abnormality found in its examination to be carefully noted (weight M.3 gram F. 2.75 grams) – Intra-cranial traumatic haemorrhage at right temporal and occipital region hematoma under scalp in temporal region on left side.*

10. In his opinion, the cause of death was “*traumatic intra-cranial haemorrhage with brain injury*”. Accordingly, he has prepared the Postmortem Report (Exhibit-61) and issued the Death Certificate (Exhibit-62). In evidence before the Court, he has further confirmed that Injury Nos.3 and 4 were fatal injuries, which have resulted into the death. On

query by the Investigating Officer during the course of investigation, he has given opinion that the injuries found on the dead body are possible due to assault by weapons like iron rod and stones.

11. To prove the injuries of PW-1 Babulal, who was also referred for medical examination and treatment to PW-9 Dr. Anil Phutane vide Yadi, he has examined PW-1 Babulal at about 10:30 am and found following injuries on his person :-

- (1) *Contusion on right leg lower third lateral aspect, 4 x 4 cms.*
- (2) *Two contusions on right arm posterior aspect, 6 x 2 cms. each,*
- (3) *One liner contusion on back, right scapular region, 10 x 2 cms.*
- (4) *C.L.W. on scalp, left parietal region, 4 x 1 cms, bleeding present.*
- (5) *Contusion on chest right side 3 x 3 cms.*

12. He has opined that the age of injuries was within 24 hours and they were caused by hard and blunt object. The nature of the injury was simple. He has issued Injury Certificate accordingly vide Exhibit-59.

13. On the same day, PW-9 Dr. Anil Phutane had also examined another injured PW-5 Ramesh Kadu, who was also referred to him, along

with Police Yadi, by PW-11 PHC Tukaram Mor. On his examination, he found contusion on his right arm, admeasuring 4 cm x 3 cm. The age of the injury was within 24 hours, caused by hard and blunt object and the nature of injury was simple. He has issued Injury Certificate vide Exhibit-60 in accordance therewith.

14. As aforesaid, the Prosecution case stands on the solid foundation of the evidence of the injured eye witnesses and some independent eye witnesses. For proper appreciation of their ocular account of the incident, we find it necessary to refer to the evidence relating to the motive, which is found embedded in the inimical relations between the parties on account of political rivalry. The Appellants themselves have also not seriously disputed the fact that the relations between them were apparently strained. The very defence raised by them is that due to this political enmity, they are falsely implicated. In this respect, the evidence of PW-1 Babulal, PW-3 Subhash, PW-4 Madhukar and PW-5 Ramesh, which is more or less of an identical nature, goes to prove that the Appellant No.1 Rama was the Sarpanch of the village at the time of incident. During that period, 'Jalswaraj Yojana' was made applicable to their village. The Sarpanch of the village has arbitrarily appointed his wife Kusum as chair-person of the 'Jalswaraj Yojana'. Deceased Suresh was opposing the appointment of Kusum. As a result, the relations between

the Appellants and deceased Suresh had become strained. It has actually resulted into two factions in the village. Some persons belonging to the faction of deceased Suresh and others belonging to the faction of the Appellants.

15. Genesis of the incident lies in the occurrence that took place on 25th March, 2006. On that day, at about 11 am, deceased Suresh, along with PW-1 Babulal, PW-3 Subhash and PW-5 Ramesh and some other persons, had gone to Gram Panchayat's Office to get the receipt of house tax. Appellant No.1 Rama also came to the said office and said that no receipt of house tax should be given to Govind Vanase, as he has not constructed the latrine. Deceased Suresh confronted him by saying that when the tax receipts had been given to other persons, why it should be refused to Govind Vanase. On this point, there was a dispute. Therefore, Appellant No.1 Rama has lodged complaint against deceased Suresh and these witnesses in Vikramgad Police Station. In the evening time, Police came and gave the message to deceased Suresh and the witnesses to attend Police Station on the next day. The details of these incidents are brought out in cross-examination of PW-1 Babulal also.

16. As per evidence of PW-1 Babulal, PW-3 Subhash, PW-4 Madhukar and PW-5 Ramesh, on 26th March, 2006, at about 9:30 pm, all the four of

them, along with deceased Suresh and Govind Vanase, started from their Village Mhasepada at about 9:30 am in order to go to Vikramgad Police Station. At about 10:30 am, they reached near Tivaspada. Deceased Suresh was coming from behind them talking with PW-6 Ragho and his wife Shewanti Pawar, who were from Mhasepada. At that time, one Jeep came from behind and they saw Appellants getting down from the said Jeep. The Appellants were armed with iron rods and stones in their hands. They started assaulting Suresh with the weapons in their hands. As a result, deceased Suresh sustained head injury and fell down. When PW-1 Babulal tried to rescue Suresh, Appellant No.1 Rama gave a blow of iron rod on his head, right shoulder and right leg. As a result, he also received injuries in the said assault. Hence, PW-3 Subhash, PW-4 Madhukar and PW-5 Ramesh came to his help. However, Appellants attacked those persons also. Hence, PW-1 Babulal got up and went towards Mhasepada. On the way, he met his sisters and told them that Appellants had assaulted Suresh. Then he went home. After some time, PW-3 Subhash also came there and he took PW-1 Babulal to the Vikramgad Police Station, where his complaint came to be recorded.

17. In cross-examination of PW-1 Babulal, further details are brought on record to prove that he and PW-3 Subhash went to Vikramgad Police Station on the motor cycle. It took them about half an hour to reach to the

Vikramgad Police station. Police started writing down his complaint, whereas, some Police Officers went to the spot with PW-5 Ramesh and others. It took about half an hour to write down the complaint. In the evidence of PW-3 Subhash, it is brought on record that deceased Suresh was his father-in-law, whereas, PW-1 Babulal is his brother-in-law and PW-4 Madhukar is his cousin. He has also deposed about while proceeding on the road, how the Appellants came in Jeep and assaulted Suresh, by weapons like iron rods and stones, who succumbed to the injuries on the spot itself. He has deposed that due to the assault on Suresh and PW-1 Babulal, he got frightened and apprehended that Appellants will beat him also. Hence, he went running towards the forest along with his cousin PW-4 Madhukar. Thereafter, about half an hour, he went to the house of PW-1 Babulal and from there they went to Police Station to lodge the complaint. According to him, they reached Vikramgad Police Station at about 11:30 am.

18. The evidence of PW-4 Madhukar is also of an identical nature. According to him, while they were proceeding on the way, Appellants came there in the Jeep and started assaulting Suresh with iron pipes and iron rods. As a result, Suresh fell down and died on the spot, whereas, PW-1 Babulal, who tried to intervene and save Suresh, also sustained the injuries. As Appellants started chasing him and other witnesses, he went

running towards forest along with PW-3 Subhash. Subsequently, they came to the house of PW-1 Babulal and then went to lodge the complaint at Vikramgad Police Station.

19. Then there is evidence of PW-5 Ramesh, who was also injured in the same incident and who was accompanying the deceased and other eye witnesses at the time of incident. According to him, while they were on road near Tivaspada, Suresh was lagging behind at a distance of 20 ft. along with PW-6 Ragho and his wife Shewanta. In the meantime, Jeep came from behind and stopped at the place where Suresh was. All the Appellants got down from the Jeep. They were having iron rods with them. Appellant No.4 Dilip was having stones in his hand. They started assaulting Suresh with the weapons in their hands. When they went to rescue him, Appellant No.1 Rama assaulted PW-1 Babulal on his head, shoulder and leg, whereas, Appellant No.5 Raju gave him a blow of iron rod on his right hand. Hence, he and other witnesses started running away from the spot. Thereafter, they went to Police Station to lodge the complaint. In evidence before the Court, all these witnesses have identified the weapons of assault.

20. Then there is independent evidence of PW-6 Ragho Pawar, who, at the relevant time, was going to Sakhara along with his wife Shewanta. On

the way, he met Suresh and these witnesses. Suresh was lagging behind, whereas, these witnesses were some what proceeding ahead. He has deposed that when they came upto Tivaspada, one vehicle came from behind. He gave signal to that vehicle to stop. He and his wife boarded that vehicle. Suresh was walking ahead. At that time, Appellant No.3 Balu shouted. The vehicle stopped and all the Appellants got down from the vehicle with the iron pipes and iron rods in their hands and started beating Suresh. In cross-examination, it is suggested to him that as PW-3 Subhash is his son-in-law, he is giving false evidence. The said suggestion is denied by him.

21. Lastly, there is evidence of PW-7 Bhagwan Ozre, the Driver of the Jeep, in which the Appellants came to the spot. As per his evidence, on that day, on the request of juvenile-in-conflict with law Jayesh, he accepted request of carrying Appellants to Vikramgad in his Jeep from Mhasepada for the fare of Rs.150/-. According to him, Appellants boarded his Jeep at Mhasepada with iron rods and iron pipes. When Jeep came near Thivaspada Phata, two disabled persons, i.e. PW-6 Ragho and his wife Shewanta, gave him signal to stop. Hence, he stopped the Jeep. Those two persons boarded the vehicle and he started it. Suresh was walking ahead. Seeing him, the Appellants asked him to stop the Jeep. Then all the Appellants got down from the Jeep and assaulted Suresh by

iron rods and iron pipes. As a result, Suresh sustained head injury. He himself got frightened and left the spot with his Jeep. In his evidence before the Court, he has identified the iron pipes and iron rods. It is also brought on record in his cross-examination that his statement was recorded on the same day by the Police at about 12^oclock and his Jeep was seized by the Police.

22. Thus, the evidence of all these five witnesses is thoroughly consistent with each other. Absolutely no contradictions, omissions or discrepancies are brought out in their cross-examination to make any dent in their evidence. It has remained unshattered on record and it is also getting complete support and corroboration from the medical evidence, which is discussed above, and also from the prompt lodging of the F.I.R. giving all the details of the incident and names and overt acts of each of the Appellants.

23. Though learned Counsel for the Appellants has tried to raise the contention that evidence in this case is mostly of the relatives and hence of interested witnesses, needless to state, that in a faction-ridden village, where an occurrence takes place involving rival groups, it is but inevitable that the evidence would be of partisan nature. In such a situation, to reject entire evidence on the sole ground that it is partisan is to shut one's eyes

to the realities of the rural lives in our country. As observed by the Supreme Court in ***State of Uttar Pradesh Vs. Ballabh Das and Ors., (1985) 3 SCC 703***, if this approach is adopted, large number of accused would go unpunished, if such an easy course is chartered. Simultaneously, the evidence of these witnesses is also required to be examined with utmost care and caution. In the present case, though the witnesses are mostly related to the deceased and belonged to one faction, their presence at the time of incident is not disputed. Two of them, namely, PW-1 Babulal and PW-5 Ramesh were injured in the same incident. The presence of other witnesses is also proved on record. Their conduct during the incident is also not found to be unnatural. Their statements are recorded on the same day. Their evidence also gets further support and corroboration from the independent evidence of PW-6 Ragho and the Jeep Driver PW-7 Bhagwan Ozre. Even after their evidence is subjected to careful scrutiny, we do not get even a single reason to disbelieve them. The indiscriminate assault made by all the Appellants on deceased Suresh and PW-1 Babulal is found fortified from the medical evidence also, which shows that as many as seven injuries were found on the body of the deceased and that too on the vital part of the body like head, which ultimately resulted into his instantaneous death on the spot itself. PW-1 Babulal has also sustained five contusions in the

said incident, which corresponds to the ocular account of the Appellants being armed with the weapons and making simultaneous assault.

24. We are also unable to accept the next submission made by the learned Counsel for the Appellants that independent witnesses are giving different versions than the versions given by the interested witnesses. It is submitted that as per evidence of PW-6 Ragho and PW-7 Bhagwan, Ragho and his wife, who were walking with deceased Suresh, boarded the Jeep, in which Appellants came on the spot and thereafter they stopped the Jeep near Suresh, then Appellants got down and assaulted Suresh. It is submitted that PW-1 Babulal, PW-3 Subhash, PW-4 Madhukar and PW-5 Ramesh have not stated anything to this effect and, therefore, there is variance in the evidence of the interested witnesses and the independent witnesses. In our considered opinion, there is not much variance as such, because the evidence of interested witnesses also goes to prove that Suresh was walking behind them. PW-3 Subhash, PW-4 Madhukar and PW-5 Ramesh have also deposed about PW-6 Ragho and his wife Shewanta walking along with Suresh. Hence, whether PW-6 Ragho and his wife boarded the Jeep or not and thereafter the incident took place is not much relevant, once their presence is spoken of at the time of incident by the interested witnesses also. Moreover, as the incident had taken place all of a sudden, where five Accused were beating

three persons, that too with weapons in their hands, the exact sequence of events cannot be expected with exactitude.

25. On the same ground, the submission raised by the learned Counsel for the Appellants that, there is variance relating to the time of recording complaint and referring the injured to the hospital, is required to be rejected. It is urged that as per the evidence of PW-9 Dr. Anil Phutane, he has examined the injured PW-1 Babulal and PW-5 Ramesh at about 10:30 am, whereas, as per the evidence of PW-4 Madhukar and other witnesses also, the incident itself had taken place at about 10:30 am and they had reached at Vikramgad Police Station at about 11:30 am. It is submitted that, thus, there is variance as to whether the Investigating Officers referred these injured for medical examination before registration of complaint or whether these witnesses had really reached to the Police Station at the time deposed by them.

26. In our considered opinion, it must be remembered that all these witnesses are from the rural area. They are rustic and illiterate. They cannot be expected to give the exact time of the incident or of the subsequent sequence of events. Therefore, if there is any embellishment in non-essential part of their testimonies or there is some so called variance in time, it cannot militate against veracity of the core of their

testimony, especially, when there is an impress of truth and conformity to probability in substantial fabric of their evidence.

27. Prosecution has also relied upon the evidence relating to recovery of the weapons of assault, being iron rods and iron pipes vide Recovery Panchanama (Exhibit-53), at the instance of Appellant No.2-Balkrishna, proved through the evidence of PW-12 PI Giri. However, in view of the C.A. Reports (Exhibits "81" to "87"), which revealed that the results of the blood group were inconclusive, the Trial Court has left the recovery evidence out of its consideration. In our considered opinion, also even if that evidence is excluded from consideration, it does not make any difference to the Prosecution case, as Prosecution case is otherwise also proved on record from the ocular account of the eye witnesses to the incident. Once the ocular account is believed upon and it is corroborated with the medical evidence, then we do not find any reason to deviate from the conclusion arrived at by the Trial Court of holding the guilt of the Appellants to be proved beyond reasonable doubt for both the offences punishable under Sections 302 and 326 r/w. 149 of the IPC. The presence of all the Appellants at the time of incident stand proved, coupled with their participation in the incident. The fact that they have arrived at the spot of incident together armed with the weapons and immediate on arrival, started committing assault on the deceased and the witnesses goes to

prove that they had formed an unlawful assembly with the common object and in prosecution of the common object, they had committed the murder of deceased Suresh. Hence, charge under Sections 148, 302 and 326 r/w. 149 of the IPC stands proved against them beyond the spec of doubt. The Appeal, therefore, holds no merit.

28. Consequently, Criminal Appeal stands dismissed, confirming the conviction and sentence of the Appellants.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[P.V.HARDAS, J.]