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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1291 OF 2007

The State of Maharashtra

.. Appellant

Vs.

1. Tatya Maruti Phalke
Age 54 years.
2. Chandrakant Devidas Gaikwad
Age 23 years.
3. Rani Gangadhar Phalke
Age 28 years.
4. Gangadhar Maruti Phalke
Age 40 years.
5. Baba @ Gopal Subhash Phalke
Age 23 years.
6. Nagesh Tatya Phalke
Age 29 years.
All r/o Phalke Vasti,
Wagholi, Tal. Mohol,
Dist. Solapur

.. Respondents
(Org. Accd. Nos.1 to 6)

Mr. H. J. Dedhia, APP for appellant – State.
None for the respondents-accused.

CORAM: B. P. DHARMADHIKARI &
A. S. GADKARI, JJ.

JULY 28, 2015.

ORAL JUDGMENT [Per B. P. Dharmadhikari, J.] :

1. State has filed this appeal under Section 378 (1) of Cr. P. C.
challenging the Judgment and Order dated 28/10/2004 in Special Case No.

16 of 2002 delivered by II Additional Sessions Judge, Solapur, whereby the respondents-accused have been acquitted of offences punishable under Sections 147, 148, 323, 302 read with Section 149 of the Indian Penal Code and also under Section 3(1)(x) read with Section 6 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Matter was called out in first half and learned APP – Shri Dedhia assisted the court in absence of counsel for accused persons. In second half again, when matter is called out, there is no appearance for respondents-accused. It is in this situation, we have proceeded to hear learned APP for the appellant – State Government.

3. Shri Dedhia has submitted that at the instance of respondents, the complainant and her family members were implicated in an offence of theft on 27/2/2002. The complaint of theft, naming them as thieves, was filed by present respondents-accused. On that day at about 9.30 p.m. when complainant PW 1 and persons accompanied her were apprehended as thieves, father of PW 3, namely, Haridas was beaten by respondents with dangerous weapons like axe and sattur. He was required to be admitted in the hospital and died on 6/3/2002.

4. In the offence of theft, complainant, deceased and other persons were arrested. Deceased was admitted in the hospital, while other persons continued in police custody till after death of father - Haridas. After release on bail, complaint came to be made to police and on that basis offence was registered against the respondents on 11/3/2002. He submits that there is no delay in registering the offence.

5. He has taken us through the evidence of injured witnesses, namely, PW 1 – Kamal, PW 3 – Saudagar to demonstrate that they have identified accused persons as assailants and as such trial court has erred in acquitting them. Evidence of panch witnesses and about caste available on record is also read out by him.

6. As the counsel for the accused persons is not available, he also assisted the court by reading out the impugned judgment.

7. With the assistance of learned APP, we have perused the records.

8. We find it proper to mention the charge as framed so as to facilitate further consideration.

“That, you all on 28.2.2002 between 9.00 p.m. to 9.30 p.m. at land Gat No. 077 situated at village Wagholi, Tal. Mohol (owned by you accused No. 1) were member of unlawful assembly and in prosecution of them common object of such assembly Complainant Saudagar Pawar to assault and to commit murder of Haridas Vinayak Kale committed an offence of rioting and that you thereby committed offence punishable U/s 147 of I.P.C. and within my cognizance.

That, you on aforesaid day, time and place were members of unlawful assembly and did in prosecution of common object of such assembly viz to assault complainant Kamal Saudagar Pawar, Saudagar and Haridas Kale committed the offence of rioting with deadly weapon to wit stick, iron pipe, axe etc. and thereby committed offence punishable U/s 148 of IPC within my cognizance.

That, you on aforesaid day, time and place were members of unlawful assembly and in prosecution of common object of such assembly voluntarily cause hurt to complainant Kamal Saudagar Pawar and her husband Saudagar Pawar and thereby committed an offence punishable U/s 323 of IPC r/w Section 149 of Indian Penal Code and within my cognizance.

That you on aforesaid day, time and place were members of unlawful assembly in prosecution of common object of such assembly intentionally and knowingly committed the murder of Haridas Vinayak Kale and thereby committed offence punishable U/s 302 r.w. 149 of Indian Penal Code and within my cognizance.

That you, on the aforesaid day, time and place intentionally insulted or intimidated within intent to humiliate the complainant Kamal Saudagar Pawar, Haridas Vinayak Kale and Saudagar Pawar who were members of S.C. and S.T. and S.C. and S.T. Act and within my cognizance.”

9. Perusal of evidence of PW 1 – Kamal, wife of Saudagar Pawar, shows that after attending 13th day function of her brother-in-law (father-in-law of PW 2 – Londhubai), when they were returning back, the incidence took place. Prosecution has examined PW 2 – Londhubai to show that complainant, her husband – PW 3 and deceased had gone for attending said function. Evidence of Londhubai shows that the said witness i.e. PW 1 and her husband Saudagar as also his father Hari had come to their house for 3rd day function and they left at about 9 p.m. The said father-in-law, namely, Khullahya expired on 9/2/2002, as such period of three days was over on 12/2/2002 and period of 13 days expired on

22/2/2002.

10. Evidence of PW 1 – Kamal in chief, shows that accused – Chandrakant beat her father by means of axe and accused – Gangadhar was having a sattur in his hand. In next sentence she has stated that Chandrakant attempted to beat her by means of sattur but accused Rani sustained injury due to that sattur. She has further stated that she was knowing accused persons since prior to the incidence as their villages are adjacent to each other. She has further pointed out that they belonged to Pardhi community while accused persons from Maratha community.

11. Her cross-examination shows that she was not knowing name of Chandrakant when she filed report and she also did not take name of accused – Gangadhar. She has stated that she saw accused persons in the light of stars and moon. She has further deposed that at the time of Test Identification Parade she pointed out that accused – Chandrakant assaulted her father by means of axe and while filing complaint she had stated that one boy, who was wearing pajama attempted to beat her by means of sattur. She did not take name of Gangadhar. She further states that she disclosed that she had seen accused persons in the light of stars and moon.

She could not assign any reason why all these facts did not find mention in her report.

12. Later on, in her cross-examination, she has stated that when in connection with alleged complaint of theft they were produced before the Magistrate, she made a grievance that police had beaten them in police station. A stick was then shown to witness and she has stated that it was the stick which was used in the offence. Her evidence i.e. examination-in-chief does not show use of stick by any of the accused persons specifically. She has further deposed that pipe was not used by any accused.

13. Next witness is PW 3 who is husband of PW 1. He has deposed that accused – Gangadhar and accused Rani were beating his wife by means of stick. Accused – Chandrakant beat his father-in-law by means of axe. In court, while deposing, he indicated accused Nagnath and said that, that accused beat him by means of stick on his head, back and leg. When stick was shown to him, he has deposed that it was not that stick used as weapon and stick used was bigger.

14. His cross-examination shows that he did not state in his police

statement that Gangadhar and accused Rani beat his wife by means of stick. He also did not state about attack with axe by Chandrakant on his father-in-law. He could not point out why attack by Nagnath did not figure in his police statement.

15. There is no accused by name Nagnath before the court. Accused No. 6 is one Nagesh. Recording of evidence by trial court does not show that PW 3 has referred to said accused Nagesh as Nagnath.

16. Thus, evidence of panch witnesses i.e. PW 4 and PW 5 is rendered useless as prosecution has succeeded in recovering a stick and a plastic pipe only. PW 1 expressly ruled out use of plastic pipe, while PW 3 has specifically stated that stick used was not the same. His wife, however, has deposed that it was same stick.

17. Though there was Test Identification Parade, the Executive Magistrate, who may have conducted it, has not been examined and in this situation, evidence of PW 6 – Arvind Chivariya, then working as SDPO, is not decisive. Doctor has been examined a PW 9 to prove the postmortem report and cause of death of Hari. In the light of discussion above, it is

apparent that that evidence is of no assistance in this matter.

19. Perusal of evidence of PW 8 – Investigating Officer shows that prosecution could not produce before trial court any axe or any sattur. The material, on the strength of which respondent no.1 – Tatya or respondent no.5 – Baba and respondent no.6 – Nagesh have been implicated has also not come on record. The Test Identification Parade itself has not been established.

20. In this situation, we do not find any reason warranting interference in the Judgment and Order of trial court.

21. No case is made out. Appeal is accordingly dismissed.

(A. S. GADKARI,J.)

(B. P. DHARMADHIKARI,J.)