

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1361 OF 2006**

1. Nandlal Bhau Bhagade	]	
age: 30 years, Occn. Agri.	]	
	]	
2. Suresh @ Suryakant Govind Bhagade	]	
age: 42 years, Occn. Agri.	]	
	]	
3. Vyankatesh Namdeo Bhagade	]	... <u>Appellants</u>
age: 23 years, Occn. Agri.	]	(Ori. accused Nos
	]	1 to 3 and 5)
4. Janardhan Vithoba Bhagade	]	
age: 23 years, Occn. Flowrist	]	
	]	
All resident of Nandgaon Sado,	]	
Taluka: Igatpuri	]	
Dist. Nashik	]	

V/s.

The State of Maharashtra	]	
(At the instance of Igatpuri Police	]	 Respondent
Station, District: Nashik	]	

Shri. Niteen Pradhan, Senior Counsel with Ms. Subhada Khot, Mr. Kartik Rajshekhar, Mr. Umesh Iyer and Ms. Farista Menon, for the Appellants.

Mr. A. S. Shitole, A.P.P., for the Respondent-State.

**CORAM : SMT. V. K. TAHILRAMANI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.**

DATE : 9th JUNE, 2015.

ORAL JUDGMENT : [Per: Smt. V. K. Tahilramani, J.]

1. The appellants -original accused Nos 1, 2, 3 and 5 have preferred this appeal against the judgment and order dated 29th November, 2006, passed by the learned Ad-Hoc Additional Sessions Judge-3, Nashik, in Sessions Case No.63 of 2005. By the said judgment and order, the learned Sessions Judge, convicted all the four appellants under Sections 143, 148 and 302 read with Section 149 of the Indian Penal Code. In addition, the appellant No.3 Vyankatesh Bhagade, is convicted for the offence punishable under Section 324 of the Indian Penal Code. For the offence under Section 148 of IPC, all the four appellants were sentenced to suffer rigorous imprisonment for one year and fine of Rs.500/- in default rigorous imprisonment for one month. For the offence under Section 302 read with Section 149 of IPC, all the four appellants were sentenced to life imprisonment and fine of Rs.500/- in default rigorous imprisonment for one month. For the the offence under Section 324 of the IPC, the appellant No.3 Vyankatesh was sentenced to suffer rigorous imprisonment for two years with fine of Rs.500/- in default rigorous imprisonment for one month. No separate sentence

was awarded to any of the accused under Section 143 of IPC. All the substantive sentences of imprisonment were directed to run concurrently. For the sake of convenience, we shall refer to the appellants as they were referred before the trial Court, i.e. appellant No.1 Nandlal Bhagade will be referred to as accused No.1, appellant No.2 Suresh @ Suryakant Bhagade will be referred to as accused No.2, appellant No.3 Vyankatesh Bhagade will be referred to as accused No.3 and appellant No.4 Janardhan Bhagade will be referred to as accused No.5.

2. The prosecution case briefly stated is as under :-

Deceased Hiralal was the brother of P.W.1 Mulchand Bhagat, P.W.10 Bharat was the cousin brother of P.W. 1 Mulchand. The incident occurred on 28th October, 2004. At about 7.00 p.m. P.W.1 Mulchand was coming out of Astral Glass Company on motorcycle, at that time his cousin P.W.10 Bhagat met him and told Mulchand that he wanted to come with him. Hence both of them were returning home on the motorcycle of P.W.1 Mulchand. When they were passing the Maruti temple in the village, they saw all the four appellants and 24 other accused. They were armed with sword and

sticks. At that time Hiralal brother of Mulchand reached near Maruti Temple. Accused Nos 1 & 2 obstructed him. They were saying whether the company belongs to Hiralal's father. They were also saying that Hiralal's brother is not giving employment to their people, hence they will kill all of them. Then accused No.1 Nandlal assaulted Hiralal with sword on the head, accused No.3 Vyankatesh also gave blow with sword to Hiralal. The accused No.2 Suresh picked up a stone and hit it on the head of Hiralal. Thereafter accused No.5 Janardhan also picked up stone and put it on the head of Hiralal. Because of this, the head of Hiralal was completely mangled. This incident was witnessed not only by P.W.1 Mulchand and P.W.10 Bharat but also by P.W.6 Dnyaneshwar Bhagade. P.W.1 Mulchand informed the police on telephone. Then police arrived at the spot. P.W.1 Mulchand lodged F.I.R. Thereafter investigation started. After completion of investigation, chargesheet came to be filed against the appellants and 24 other accused. In due course, the case was committed to the Court of Sessions.

3. Charge came to be framed against the appellants and 24 other accused under Sections 143, 148, 341 r/w 149, 302 r/w 149, 324 r/w 149, 504 r/w 149, 506 r/w 149 of the

Indian Penal Code and under Section 135 of the Bombay Police Act. The appellants and other accused pleaded not guilty to the said charge and claimed to be tried. Their defence is that of total denial and false implication. Their further defence is that P.W.1 Mulchand belongs to N.C.P. Party and all the accused belong to Shivsena Party. On the date of incident, there were riots in the village due to which three different crimes came to be registered at Igatpuri Police Station, District: Nashik. The present case pertains to C.R.No.98 of 2008. C.R.No.97 of 2008 was lodged by accused No.28 Bajarang Bhagade, for the offence punishable under Sections 307 and 504 of IPC. This C.R. was lodged on 28.10.2004 at about 7.45 p.m. The said F.I.R. was lodged against son of deceased and other accused. The third C.R. No.99 of 2008 was lodged by Bhagirath under Section 395, 324 and other sections of IPC. In this C.R. P.W.1 Mulchand and other persons were the accused. Thus, it is specific defence of the appellants that on account of political rivalry and on account of riots which took place in the village between two groups, they have been falsely implicated.

4. After going through the evidence adduced in this

case, the learned Ad-Hoc Additional Sessions Judge, was pleased to acquit original accused Nos.4 and 6 to 28 for the offences punishable under Sections 143, 148, 341 r/w 149, 302 r/w 149, 324 r/w 149, 504 r/w 149, 506 r/w 149 of the Indian Penal Code and under Section 135 of the Bombay Police Act. However, the learned Sessions Judge convicted and sentenced the present appellants as stated in para No.1 above, hence this appeal.

5. We have heard Mr. Niteen Pradhan, learned Senior Counsel for the appellants and learned APP for the State. We have carefully considered their submissions, the judgment and order passed by the learned Sessions Judge and the evidence in this case. After carefully considering the matter, for the below mentioned reasons, we are of the opinion that the prosecution has not proved its case against all the appellants beyond reasonable doubt.

6. The conviction of the appellants, is mainly based on the evidence of P.W.1 Mulchand, P.W.6 Dnyaneshwar and P.W.10 Bharat, who, according to prosecution, are eye witnesses to the incident. P.W.1 Mulchand has stated that

deceased Hiralal was his brother. Hiralal was working in the railway department. The incident occurred on 28.10.2004. At about 7.00 p.m. P.W.1 Mulchand was coming out of Astral Glass Company on his motorcycle. At that time, his cousin P.W.10 Bharat met him and told him that he wanted to come with him. Hence both were returning home on his motorcycle. When they came near Maruti Temple, they saw the appellants and other accused persons standing in front of Maruti temple with sword and sticks in their hands. At that time, Hiralal was going home on his bicycle. When Hiralal reached near the accused, accused No.1 Nandlal and accused No.2 Suresh @ Suryakant obstructed him and asked Hiralal whether the company belonged to his father and they further said that his brother is not giving employment to their persons and hence they will kill all of them. Then accused No.1 Nandlal assaulted Hiralal with sword on the head. Accused No.3 Vyankatesh also gave blow with sword to Hiralal. At that time accused No.2 Suresh @ Suryakant picked up stone and hit on the head of Hiralal. Then accused No.5 Janardhan also picked up a stone and put it on the head of Hiralal. P.W.1 Mulchand has stated that due to assault by stone by accused No.2 Suresh and accused No.5 Janardhan, the head of his brother was

completely mangled. At that time accused No.3 Vyankatesh saw Mulchand and Bharat. Accused No.3 Vyankatesh stated that they should be caught and killed, hence P.W.1 Mulchand and P.W.10 Bharat turned the motorcycle and tried to flee. At that time P.W.10 Bharat told Mulchand that accused No.3 Vyankatesh had assaulted him with sword on his shoulder. Mulchand has stated that after going some distance he stopped and contacted police from his mobile phone and told them about the incident. After some time police arrived at the spot. Then P.W.1 Mulchand gave complaint to the police. Then police took his brother to the hospital. The evidence of P.W.10 Bharat and P.W.6 Dnyaneshwar is on the same lines as that of P.W.1 Mulchand, hence we are not reproducing the same.

7. All the three eye witnesses i.e. P.W.1 Mulchand, P.W.6 Dnyaneshwar and P.W.10 Bharat have specifically stated that accused No.1 Nandlal gave one blow with sword on the head of Hiralal and accused No.3 Vyankatesh also gave one blow with sword. Thereafter all the three eye witnesses have stated that accused No.2 Suresh @ Suryakant picked up a stone and hit it on the head of the Hiralal. Thereafter accused No.5 Janardhan also picked up a stone and hit on the head of

Hiralal due to which the head of Hiralal was completely mangled.

8. In view of the evidence of all the three eye witnesses that accused No.2 Suresh @ Suryakant and accused No.5 Janardhan both assaulted Hiralal with stone on the head due to which head of Hiralal was completely mangled, we would like to advert to the medical evidence stated by P.W.7 Dr. Ankal, who had performed postmortem on the dead body of Hiralal. On external examination P.W.7 Dr. Ankal found following injures.

1) To the Head and neck region.

- a) Cut incised wound over left temporal region and mastoid region semicircular in shape 9 cms in diameter, skin and muscle deep and base of external pinna is cut, blood clot was present, reddish in colour.
- b) Cut incised wound over middle part of right pinna, antero /posterior direction 13 cms x 4 cms cranial cavity deep, with fracture bone, brain substance has come out.
- c) Cut incised wound over right frontal and right temporal and right side of occipital region, angaro /posterior in direction, 30 cms x 7 cms x

Cranial cavity deep and fracture of skull bones present and brain substance has come out and blood clot present over margin of wound.

d) Cut incised wound over middle of right sternomastoid muscle, transverse in direction, 4 cms x 5 mm x skin deep, blood clot present reddish in colour.

2) **Upper limbs**

a) right upper limb abrasion over deltoid region, oblique in direction 4 cms x 1 cm size, blood clot present. It was reddish.

b) Crush injury of elbow, cut ends of bones are seen from the wound and there were multiple injuries present.

c) Cut incised wound over lower third of fore arm on dorsal aspect transverse in direction, 4 cms x 1 cm x skin deep.

3) **Lower Limbs**

a) Right Lower limb – Two abrasions over leg on lateral side and one abrasion over lower third of thigh 4 cms, x 5 mm each, oblique in direction and reddish in colour.

b) Abrasion over gluteal region on lateral side, transverse in direction, 5 cms x 1 cm blood clot was present and reddish in colour.

Left Lower limb – abrasion over knee on lateral side, vertical in direction 4 cms x 2 cms, blood clot was present and reddish in colour.

4) Chest and Abdomen

a) posterior side – Abrasion over right scapular region oblique in direction 15 cms x 5 mm, blood clot present reddish in colour.

b) Abrasion over lumbar region on right side, vertical in direction 20 cms x 1 cm blood clot present and reddish in colour.

9. It is pertinent to note that P.W.7 Dr.Ankal has stated that it is true that there were no crush injuries on the head. He noted that there were four incised wounds and all the four incised wounds must have occurred due to separate blows with sharp weapon. According to him, four incised wounds on the head were caused due to different blows from different directions. This evidence of P.W.7 Dr. Ankal falsifies the evidence of all the three eye witnesses because all the three eye witnesses have stated that accused No.2 and accused No.5 picked up stones and hit on the head of Hiralal due to which head of Hiralal was mangled. But on the head of

Hiralal only cut incised wounds were found and no laceration or contusions were found on his head. All the three eye witnesses stated that head of Hiralal was mangled due to blows by stone given by accused Nos 2 and 5. No such corresponding injury was found by P.W.7 Dr. Ankal. Moreover, all the three witnesses categorically speak only about two blows by sword. These blows were given by accused No.1 Nandlal and accused No.3 Vyankatesh. However, according to P.W.7 Dr. Ankal, four incised wounds were found on the head of Hiralal. None of the eye witnesses have stated that any other accused assaulted Hiralal with any sharp weapon on the head so as to cause remaining two incised wounds on the head of Hiralal. All the three witnesses have stated about only two blows by sword being given to Hiralal, one each by accused No.1 Nandlal and accused No.3 Vyankatesh. Thus, on going through the medical evidence and the evidence of three eye witnesses, we find that it is totally inconsistent and hence it creates serious doubt in the mind about the evidence of these three eye witnesses.

10. As stated earlier, it is the defence of the appellants that P.W.1 Mulchand belongs to N.C.P party and accused

persons belong to Shivsena party. The record shows that Mulchand belonged to N.C.P Party and the accused belonged to Shivsena Party. It is further their defence that there were disputes between the accused persons and P.W.1 Mulchand on the ground that their people were not being employed in the company. It is further defence of the appellants that on the day of incident i.e. on 28.10.2004, in the evening riots took place in the village and on account of said riots, F.I.R. was lodged by accused No.28 Bajarang against son of deceased Hiralal and other accused. This F.I.R. is numbered as 97 of 2004, registered at Igatpuri Police Station under Section 307 and 504 of the IPC. This F.I.R. pertains to the incident which occurred at 7.15 p.m. and F.I.R. was registered at 7.45 p.m. i.e. within half an hour of the incident. This is stated by P.W.13 API Chaudhari, attached to Igatpuri Police station. He has stated that on 28th October, 2004 at about 7.00 p.m. the brother of Bajarang Bhagade -accused No.28 in the present case had brought him to the police station in injured condition. Therefore, he admitted Bajarang in the hospital at Igatpuri. P.W.13 API Chaudhari has stated blood was coming out from the ribs of Bajarang and clothes of Bajarang were stained with blood. The injury certificate of Bajarang is at Exh.288. It

shows incised wound (punctured) at 6 and 8th rib. Bajarang was operated upon and the nature of injury was grievous. The F.I.R. in the present case is registered at C.R.No.98 of 2008 and though the incident according to prosecution witnesses occurred at 7.00 p.m., F.I.R. was lodged at 10.10 p.m. There is third F.I.R. bearing C.R.No.99 of 2008 which was lodged on the same day. This F.I.R. was lodged by one Bagirath for offences punishable under Sections 395 and 324 and other sections of IPC. This is brought out from Exh.285. It is mentioned in Exh.285 that P.W.1 Mulchand came to the house of Bhagirath with about 25 other persons and stated that all the inmates of the house should be taken out. They caused extensive damage to the articles in the house. The spot panchnama pertaining to C.R.No.99 of 2008, which is at Exh.287, shows that extensive damage was caused to the tiles of the house of accused No.1 Nandlal as well as damage was caused to the property inside the house of accused No.1 Nandlal. The fact that all the three Crimes were lodged on the same day in relation to the incident which occurred at village Nandgaon Sado in close proximity with each other and looking at the persons involved in each of these cases, it appears that rioting on a large scale took place in village Nandgaon Sado

and on account of previous enmity with P.W.1 Mulchand and his family, the present appellants have been falsely implicated in this case.

11. We would also like to refer to the evidence of P.W.1 Mulchand who is the complainant in the present case. Mulchand has stated that immediately after the incident from the spot itself, he contacted the police from his mobile phone and informed that accused Nos 1, 2 and others had killed his brother in front of Maruti temple. This is falsified by the evidence of P.W.12 SDPO Salunke. SDPO Salunke has stated that there is no entry in the station diary about phone call from Mulchand. Moreover, P.W.13 API Chaudhary has stated that on 28.10.2004 at 7.00 p.m. brother of Bajrang (accused No.28) had brought him to police station in injured condition. API Chaudhary admitted Bajrang in the hospital. Then API Chaudhary went to Nandgaon Sado village. There he saw one person (Hiralal) lying in injured condition near the Maruti temple. The evidence on record shows that F.I.R. was lodged by Bajrang under Section 307 IPC against son of deceased Hiralal and other accused. Pursuant to this F.I.R. API Chaudhary went to Nandgaon Sado village where he noticed

Hiralal lying in injured condition near the temple. As stated earlier, F.I.R. was lodged by Bajrang at 7.00 p.m., whereas the F.I.R. was lodged in the present case at 10.10 p.m. that is 3 hours after the incident. This delay in informing the police, in the facts and circumstances of this case also creates doubt.

12. The learned APP tried to rely on the circumstantial evidence in order to sustain the conviction of the appellants. She stated that the clothes of accused Nos 1, 2, 3 and 5 were seized by the police under panchnama. All their clothes were blood stained. She further pointed out that spear was recovered from accused No.1 and sword was recovered from accused No.3. Three sticks were recovered from accused No.5. As far as weapons are concerned, P.W.3 and P.W.4 who are the panch witnesses have deposed on this point. However, it is noticed that panch witness P.W.3 Dashrath has acted as panch in four panchnamas drawn on different dates and P.W.4 Shatrughna has acted as panch witness in five different panchnamas drawn on different dates. Looking to this fact, we are not inclined to place any reliance on any of the seizures or recovery of clothes. As far as weapons are concerned, blood group on the same is not ascertained and

the same is the case with the clothes of accused Nos 2 and 3. As far accused No.1 and accused No.5 are concerned, their clothes were found stained with blood of "O" group. However, the clothes of deceased were found stained with blood of "A" group, though actual sample of blood taken from the deceased turned out to be inconclusive. Thus, these recoveries and seizures also cannot be relied upon.

13. As far as accused No.3 Vyankatesh is concerned the prosecution is relying on the evidence of P.W.10 Bharat to show that offence under Section 324 is proved against him. Reliance is placed on the evidence of Bharat wherein he has stated that after Hiralal was assaulted, he and Mulchand were fleeing from the spot, at that time accused No.3 Vyankatesh assaulted him on his left shoulder with sword. However, it is to be noted that though the incident occurred on 28th October, 2004, the medical certificate of Bharat is dated 2nd November, 2004. This raises some doubt about the evidence of Bharat.

14. On going through the record, we are of the opinion that there is no sufficient material to prove the case against the appellants beyond reasonable doubt. In such case, all the

appellants will have to be acquitted. Hence following order.

ORDER

- i) The Appeal is allowed.
- ii) The judgment and order dated 29th November, 2006, passed by the learned Ad-Hoc Additional Sessions Judge-3, Nashik, in Sessions Case No.63 of 2005, convicting and sentencing the appellants under Sections 143, 148 and 302 read with Section 149 of the Indian Penal Code and also the conviction of appellant No.3 Vyankatesh Bhagade for offence punishable under Section 324 of the IPC, is set aside.
- iii) All the four appellants are acquitted of the said offences.
- iv) All the four appellants who are in jail be released forthwith if not required in any other case.

[DR.SHALINI PHANSALKAR-JOSHI, J.] [SMT. V.K.TAHILRAMANI, J.]