

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

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CRIMINAL APPEAL NO. 44 /2004

The State of Maharashtra
Through P. S.O. Police Station, Gondia (city)
Dist.Gondia. ... **...APPELLANT**

v e r s u s

- 1) Ashok Gyanprakash Seth
Aged 32 years, R/o Ramabai Ward
Ramnagar, Gondia.
- 2) Mahesh Babulal Maldhare
Aged 21 years, Ramnagar Ward
No.1 gonduia.
- 3) Imran Usman Khan Pathan
Aged 25 years, R/o Suryatola
Ward Gondia.
- 4) Akhilesh Gyanprakash Seth
Aged 27 years, R/o Ramabai Ward
Ramnagar, Gondia. ... **...RESPONDENTS**

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Ms. Sangeeta Jachak, Addl. Public Prosecutor for appellant
Mr. A.V. Gupta, Sr. Counsel with K.P. Sadavarte, Adv.for
Respondents

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CORAM: A.B.CHAUDHARI &
INDIRA K. JAIN, JJ.
DATED : 26th August, 2015

ORAL JUDGMENT : (Per A.B.CHAUDHARI, J.)

Being aggrieved by the judgment and order dated 10.10.2003 in Sessions Trial No. 66/2001 passed by the learned Additional Sessions Judge, Gondia, by which he acquitted the accused nos. 1 to 4 for offence punishable under Section 302 read with section 34 of the Indian Penal Code, the present Appeal was filed by the State of Maharashtra.

2. In support of the Appeal, Mrs. Sangeeta Jachak, learned Additional Public Prosecutor submitted that in the trial the prosecution has mainly relied on three eye witnesses, namely PW 4-Uttam Yadav, PW 5-Rajesh Methiya and PW 7 Geeta Varade. According to her, PW 4 and PW 5 did not support the prosecution, obviously because of the trend not to support the prosecution. She then argued that accused persons were politically affiliated to Congress, a political party, and, therefore, under its influence, they turned hostile. She submitted that at any rate PW 7 Geeta, the sister of the deceased, was an eye witness and though she was a sole eye witness the trial Judge

could not have been rejected her testimony which she deposed in the examination-in-chief, as regards holding of weapons of accused persons and assault by them on deceased Prakash, so also the the identification made by her of these accused persons. Though it was evening, the identification was believable because the accused persons were neighbours of PW 7 Geeta. According to her, the genesis of the incident was the waste lying near the courtyard of the house of complainant. After construction of slab made by the accused persons in their house instead of cleaning of waste material, they started giving threats to Prakash. The accused persons started abusing filthily and also started assaulting Prakash. The trial Judge therefore ought to have held that it was the accused/respondents who committed the murder of deceased Prakash, in the wake of direct evidence of PW 7-Gita which evidence was not shattered in the cross-examination. He, therefore, prayed for reversal of order of acquittal.

3. *Per contra*, Mr. A.V.Gupta, learned senior counsel with

Mr. K.P. Sadavarte, for respondents /accused submitted that the impugned judgment and order is passed giving sound reasons and no perversity whatsoever can be found. According to Mr. Gupta, alleged eye witness PW 7-Geeta did not at all identify the respondents as the assailants holding of any weapons, much the less, the iron rods. On the contrary, her evidence goes to show that some persons had been assaulting some boy near the public urinal and nothing more and that by itself cannot be said to be evidence as required by law. He therefore submits that the evidence of PW 7 Geeta was, thus, infirm and incomplete. That apart, Mr. Gupta submitted that the evidence of Geeta shows that it an evidence full of omissions duly proved by the defence from the I.O. Mr Ahirrao. He therefore, stated that in the wake of sole testimony of PW 7 Geeta, the trial Judge could not be faltered with the recording of the order of acquittal. He prayed for dismissal of the Appeal.

CONSIDERATION:

4. We have heard the learned counsel for the parties at length. We have perused the entire evidence including the star

witness PW 7-Geeta. We have perused the FIR and other documents in the instant case to find out the correctness of the reasoning given by the learned trial Judge. We have also checked up as to whether the evidence of PW 7-Geeta suffers from any material omission or not. We find from the evidence of PW 7-Geeta, which is the only eye witness in this case, that she claimed to have seen some persons assaulting one boy near the public urinal. Then she stated that she saw Ashok and Abhishekh near the place of the incident and she identified them under the municipal tube lights. This is the only evidence which can be believed since the other evidence she has adduced before the Court that she had actually seen the accused respondents assaulting the deceased with iron rods in the head, who is ultimately was her brother Prakash, is entirely in the form of omission amounting to contradictions duly proved within the meaning of Section 145 of the Indian Evidence Act and which could certainly be looked with caution by the Court in the matter of appreciation of evidence within the meaning of Section 3 of the Evidence Act. We have seen the evidence of I.O. Mr.Ahirrao. We

find that in the evidence and cross-examination of Geeta (PW 7) there is material contradiction and omission which are brought on record. The learned trial Judge, in fact, discussed the said aspect of the matter in his judgment in paragraph 28, which we quote hereunder :-

“28. According to him, he has proved these material contradictions and omissions by cross-examination of I.O. Shri Ahirrao, who recorded her statement. He states that she has not stated the above statement before him. He also submitted that Geeta in her evidence stated that when she reached the spot after she came to know about murder of her brother, she saw that P.I. Chaube had come to the spot and she immediately told him that accused nos.1 and 4 have beaten his brother. Mr. Chaube is examined at Exh.99. Mr Ramakant Chaube has stated that at about 19.35 hours ASI Puram from Ramnagar Police chowky informed police station Gondia that there took place murder at a place behind panthela in Ramnagar Bazar chowk, Gondia. He himself PSI Ahirrao and police staff immediately went to the spot of incident. When they reached they found sister of deceased by name

Sarita Narayansingh Varade was present. She lodged her oral report about incident which he reduced to writing in Ramnagar Police chowky. He then sent said oral report to Gondia (city) Police Station for registration of crime through P. C.. Mahurle and investigation was conducted by Ahirrao. So, Mr. Ramakant Choube does not support her version. On the contrary, Geeta was confronted with her police statement. She stated that she has stated before police that on arrival of P.I. Choube she told that accused nos. 1 and 4 murdered her brother, Prakash Varade, This material omission is proved through I.O Shri Ahirrao, who states that Geeta has not stated before him as such. According to Geeta all her material contradictions and omissions on the incident dated 22.7.2001 are not incorporated by police because the accused no. 1 was Congress Party leader. Mr. Ahirrao Police Officer denied and, therefore, on material aspects evidence of Geeta is improved, contradictory and full of omissions. “

5. We do not find any error with the reasoning given by the learned trial Judge while dealing with the case where the case solely rests on the testimony of an eye witness. Moreover, PW 7 Geeta's statement was recorded on 25.7.2001. For this

there is no explanation offered by the prosecution.

6. In the light of the above discussion and keeping in view the legal principles enunciated by the Apex Court in the matters relating to Appeals against acquittal in the case of *State of Rajasthan v. Darshan Singh (AIR 2012 SC 1973)*, more particularly paragraph no.24 thereof, we think the following order is inevitable.

ORDER

Criminal Appeal No.44/2004 is dismissed. The bail bonds of the accused shall stand cancelled.

JUDGE

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