

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.83 OF 1999

The State of Maharashtra

APPELLANT
(Prosecution)

VERSUS

1. Vithal Baliram Bhoja,
Age 52 yrs., Occu.Aгри.
R/o. Ekdara, Tq. & Dist. Nanded
2. Dasharath Meghji Bhojane,
Age 42 yrs., Occu.Aгри.
R/o. Ekdara, Tq. & Dist.Nanded.

RESPONDENTS
(Orig.Accused No.
1 and 4)

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Mr.K.S.Patil, APP for the Appellant
Ms.Ranjana D. Reddy, Advocate for Respondent
nos.1 and 2.

...

**CORAM: S.S.SHINDE &
SANGITRAO S.PATIL, JJ.**

Reserved on : 19.08.2016
Pronounced on : 06.10.2016

JUDGMENT: (Per S.S.Shinde, J.):

This appeal has been filed
challenging the judgment and order dated
13.11.1998 passed by the 2nd Additional
Sessions Judge, Nanded in Sessions Case No.

119/1994, thereby acquitting the respondents of the offences punishable under Sections 147, 148, 302, 504 and 506 (2) read with Section 149 of Indian Penal Code ("IPC" for short).

2. For the sake of convenience, the parties are hereinafter referred to by the same nomenclatures by which they have been referred before the trial Court.

3. The background facts for filing the present appeal as per the prosecution case are as under:-

There were trees of Bor owned by the informant viz. Madhavrao Hanmantrao Bhojane situated on the common bund of his land and that of the accused, situate within the local limits of village Ekdara, Taluka Nanded, District Nanded. There was dispute about the said trees between the informant and the accused 6 months prior to the date of the

incident. The police did file chapter cases against the informant and also against the accused for committing breach of peace.

4. It is the case of the prosecution that on 06.05.1994 at about 8.00 a.m. the informant's elder brother Marotrao was returning after answering call of nature. The respondents restrained him. All the accused at that time were armed with axes and sticks. All of them in threatening voice told Marotrao that they were going to the land for cutting the trees and challenged that if Marotrao or anybody else wanted to prevent them, they might come in the land. Marotrao then went to the house of the informant. The wife of the informant and his daughter Anusayabai were at the house. Marotrao told them about the threats given by the accused. Then the wife and daughter of the informant went to their land. The informant followed them after some time. When the informant

reached the land, he found that accused nos.1 to 7 and 17 viz. Vithal, Kondiba, Balaji, Dashrath, Sahebrao, Ram, Gangadhar and Pandu were in the land. Out of them the accused Vithal, Dashrath and Pandu were armed with axes. The informant found that the disputed trees owned by him were cut down. He then went to the accused and accosted them for cutting the trees. All the accused then got annoyed. They rushed to the informant. The accused Pandu was beating the informant with the handle of axe over the left leg. The accused Vithal was beating the informant with the handle of axe over the left arm, head and left thigh. The informant then raised commotion. After hearing his commotion, his daughter Anusayabai, wife Parvatibai, son Ananda, brother Govind and one Namdeo Rama Munjaji and Sahebrao Sambhaji gathered near the informant. The informant fell on the ground. At that time Anusayabai, the daughter

of the informant, so as to save the informant from beating by the accused, laid herself on his person. Thereafter immediately, Pandu gave a blow of axe over the head of Anusayabai. Another blow was dealt with an axe by the accused Vithal over the head of Anusayabai. Anusayabai sustained bleeding injuries over the head and died instantaneously. When the other witnesses started going to the informant, the accused persons restrained and assaulted them. In the said assault, Parvatibai, Anandrao, Govindrao and Namdeo sustained injuries. Thereafter, the accused ran away from the spot of incident.

5. The informant then immediately went to the Police Station. He lodged the report (i.e. F.I.R.) in the Police Station against all the accused. The clothes on his person, being stained with the blood of Anusayabai, were seized by the police. The other injured

persons were referred to the Medical Officer but as the Hospital was closed, they were referred to Civil Hospital, Nanded where their injuries were examined and treated by Doctor. After receipt of the report, the offence was registered against all the 18 accused. The panchanama of scene of offence was drawn where some articles were also found along with blood stained earth. The accused were arrested. After their arrest, the clothes on their persons were seized. On the information given by the accused, the axes and sticks used in committing the offence were also seized by Investigation Officer. The seized articles were sent to the Chemical Analyzer.

6. Meanwhile notes of postmortem were received by the police disclosing that Anusayabai died due to the injuries sustained by her on the head. The accused were charge-sheeted under Sections 147, 148, 302, 323,

504 read with Section 149 of the IPC.

7. The prosecution examined in all 11 witnesses including the informant viz. Madhavrao Bhojane (PW6), his wife Parvatibai (PW7), his real brother Govindrao Bhojane (PW8), the son of the informant viz. Anandrao Bhojane (PW9) and the brother of informant viz. Namdeo Bhojane (PW10), who were the eye witnesses to the incident.

8. The accused raised defence that Anusayabai was of loose character. She was having illicit relations with the servant of the informant viz. Kondya. She remained pregnant from him. She was aborted. The informant, his son and others, therefore, were annoyed because of the same and might have killed Anusayabai. There was previous enmity between the informant and the accused, and therefore, a false FIR has been registered against them. The accused raised

the specific case of private defence. According to them, only accused nos.1, 3, 4, 5, 7 and 10 were present in the land at the time of the incident. All of them have sustained injuries. It is the case of the accused that since the informant and eye witnesses attacked them with the weapons like axes etc. in order to protect them, their lives and protect their trees they had a scuffle with the informant and others. In the said scuffle, the informant and others have sustained injuries by falling on the branches of the trees. The accused were not having any axes. In the said scuffle the axes which were with the informant, Govindrao (PW8) and Anandrao (PW9) took the life of Anusayabai. Anusayabai had been there along with her parents with a sachet of chilli powder. She threw chilli powder on the accused. As such, the accused acted in exercise of their right of private defence to save their lives and

property. The trial Court, after full-fledged trial, acquitted the accused. Hence this Appeal.

9. The learned APP appearing for the State invites our attention to the evidence of the eye witnesses and also to the medical evidence and submits that the evidence of the eye witnesses gets corroboration from the medical evidence. He submits that there was recovery of the axes and sticks at the instance of the accused persons. According to him, the prosecution has established guilt of the accused beyond reasonable doubt.

10. On the other hand, the learned counsel appearing for the respondents/accused submits that the trial Court on scrutiny of the evidence of the prosecution witnesses found that the said evidence suffers from improvements, contradictions and omissions, and therefore, the same cannot be

relied upon so as to base the conviction. The learned counsel invites our attention to the evidence of the informant, Parvatibai (PW7), Govindrao (PW8), Anandrao (PW9) and Namdeo (PW10) and submits that if their statements in examination-in-chief are minutely scrutinized in the light of the cross-examinations, it is abundantly clear that their evidence deserves to be discarded. He submits that the trial Court has taken plausible view and therefore the impugned judgment and order needs no interference.

11. We have considered the entire evidence brought on record by the prosecution. It appears that Srihari (PW1), Bhimrao (PW2) and Bajirao (PW3), who are the Panch Witnesses, turned hostile. The alleged recovery at the instance of the accused persons also is from the open field accessible to all.

12. The informant states that on the date of incident at the relevant time accused nos.1 to 7 were in the land. Accused no.17 Pandu and accused no.4 were armed with axes. The remaining accused persons were armed with sticks. The trees were already cut down. The informant then accosted the accused why they are cutting the trees. The accused got annoyed. Then they rushed to the informant. The accused Pandu gave a blow of handle of the axe over his left leg. Accused no.1 beat the informant with the handle of the axe over his head, left arm and left thigh. He raised shouts because of beating to him. After hearing his shouts, Parvatibai (PW7), the deceased Anusayabai, Govindrao (PW8), Namdeo (PW10), Anandrao (PW9), Rama Mujjani, Sahebrao son of Sambhaji went near the informant. Because of beating by the accused, he fell on the ground. The deceased

Anusayabai came and laid herself on his person so as to save him. Accused no.17 (Pandu) then gave blow of axe over the head of his daughter. Accused no.1 (Vithal) also then gave a blow of axe over the head of the deceased Anusayabai. When Parvatibai (PW7), Namdeo (PW10) and Anandrao (PW9) went to rescue him, they were also beaten by the accused. Because of beating to the deceased Anusayabai, she sustained bleeding injuries over the head. Thereafter, all the accused persons ran away from the spot of the incident. Then the informant went to the Police Station Ardhapur and lodged the F.I.R. (Exh.147) at about 2.00 p.m. on the same day. He further states that the land where the incident took place is standing in the name of his brother Namdeo (PW10).

13. In his cross examination, he admits that there was dispute between him and accused no.1 on account of ownership of trees

standing on the bund. During his cross-examination, he was confronted with the portions marked 'A', 'B' and 'C' of the F.I.R. (Exh.147). So far as the actual incident of assault is concerned, he states that it did not happen that accused Pandu (i.e. accused no.17) inflicted a blow of axe over the forehead of Anusayabai by which she sustained a grievous injury and due to it she fell on the ground and died immediately. The said admission given in the cross examination runs contrary to his statement in examination-in-chief that accused no. 17 gave blow of axe on the head of Anusayabai. He further states that though he stated in the F.I.R.(Exh.147) that accused no.1 gave a blow of axe over the head of Anusayabai, he could not tell the reason why the said fact was not appearing in his F.I.R.(Exh.147). He further states that it did not happen that the witnesses including Saheb and Ramrao were beaten with

the sticks by the accused. The specific suggestion was given to him as to whether the accused sustained injuries while cutting the trees. He states that it did not happen that while cutting the trees accused persons sustained injuries. It clearly emerges from the evidence of the informant that, the same suffers from inherent contradictions, omissions and also improvements.

14. Parvatibai (PW7) states that the accused Pandu inflicted a blow of axe on her head. Then accused no.1 Vithal gave blow of axe on the forehead of Anusayabai. Accused no.1 then took the axe from accused no.4 and again gave its blow over the head of Anusayabai. However, during her cross examination, she was shown her statement before the police wherein there was no mention about the said fact. She states that accused nos.1 and 17 were beating the informant with the handle of an axe.

However, the said fact does not find place in her statement before police. These are the material omissions in her evidence and therefore her evidence has been rightly disbelieved by the trial Court.

15. The prosecution examined Govindrao Bhojane (PW8), who is the brother of the informant Madhavrao. He states that accused no.1 and accused no.17 Pandu started beating the informant with the handle of axe. Accused no.1 also beat Anusayabai with the axe. Because of that beating, Anusayabai died on the spot. Accused no.4 was armed with an axe. Parvatibai (PW7) was also assaulted by the accused persons. However, during his cross examination, he states that he had been to the place of offence after about 20 minutes of arrival of the accused in the field. During cross examination, when his attention was invited to the portions marked 'A', 'B' and 'C' from his statement given

before the police, he stated that he did not tell the contents thereof before the police. These are the material contradictions. Upon considering his evidence in its entirety, it appears that it suffers from improvements, contradictions and omissions.

16. The prosecution examined Anandrao (PW9), who is son of the informant. He states that accused no.1 and accused no.17 Pandu beat Anusayabai with the axe over the head and forehead.

17. The prosecution examined Namdeo (PW10), who is a cousin of the informant. Upon careful perusal of his evidence, it appears that though he states in his examination-in-chief that accused no.1 gave a blow of axe over the head of Anusayabai, during his cross examination, when he was confronted with his police statement, he fairly states that he is unable to give

answer why the said fact was not mentioned in his statement.

18. The prosecution examined P.S.I. Uttam Pawar (PW11) (Exh.164), the Investigation Officer, who narrated the details about the manner in which he conducted investigation. When he was asked during his cross examination that whether any injury certificates of the accused were issued and whether he had seen the same during investigation, he states that he had not investigated how the accused persons had sustained injuries.

19. The accused persons suffered the following injuries. The injury certificate (Exh.95) of accused no.10 Kalawatibai shows that she had suffered contusion, abrasion on front of chest admeasuring 4 x 3 cm. It supports her defence that she sustained injury because of hitting of stone on chest.

The injury certificate (Exh.98) of accused no.3 Balaji shows that he sustained two contusions one on back and another on left patela measuring 6 x 3 cm and 4 x 3 cm. The injury certificate (Exh.99) of accused no.1 shows that he sustained three contusions on right side of back, left arm and buttock having sizes of 6 x 3 cm and 6 x 4 cm and 6 x 3 cm respectively. The injury certificate (Exh.100) of accused no.4 Dashrath shows that he sustained abrasion over left clavical region 4 x 1 cm. The injury certificate (Exh.97) of accused no.7 Gangadhar shows that he sustained incised wound over right parietal region having size 4 x 1 x 1 cm. It is mentioned in the certificate that the said injury must have been caused by hard and sharp object.

20. Therefore, it is clear from his evidence that the prosecution has not investigated and explained injuries sustained

by the accused persons and tried to suppress genesis of the incident. If the evidence brought on record by the prosecution is considered in its entirety and in particular the evidence of the eye witnesses, the same suffers from exaggerations, improvements, contradictions and the omissions which have been proved through the evidence of PSI Uttam Pawar (PW11). Post mortem note shows that the death of Anusayabai was homicidal. But the prosecution failed to prove that the death was caused by the accused.

21. So far as the medical evidence, other evidence in the nature of recovery of articles and the CA report are concerned, the same are also not useful to the prosecution inasmuch as they do not lend support to the case of the prosecution. The accused persons have come with the specific case that the prosecution tried to suppress the genesis of the incident, inasmuch as, the injuries on

the persons of the accused have not been investigated by the Investigation Officer. The incident has happened in the land of accused no.1. The injury certificates of accused nos.1, 3, 4, 5, 7 and 10 are on record at Exhibits 95 to 100. The prosecution has utterly failed to bring on record the cogent and satisfactory evidence so as to prove the case of the prosecution beyond reasonable doubt that the accused persons formed unlawful assembly and in prosecution of the common object of such assembly, they killed Anusayabai and assaulted the informant and other prosecution witnesses.

22. It is not necessary for us to lengthen the judgment. Upon re-appreciation of the evidence brought on record, we are of the considered view that the view taken by the trial Court was a plausible view and the same is in consonance with the evidence brought on record by the prosecution.

23. In the light of the discussion in the foregoing paragraphs, there is no substance in the appeal and hence the same stands dismissed.

Sd/-
[**SANGITRAO S.PATIL**]
JUDGE

Sd/-
[**S.S.SHINDE**]
JUDGE

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