

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 495 OF 2001

Santosh S/o Ganpatrao Marakwad,
Age 24 years, Occu.: Business,
R/o. Bhokar, Tq. Bhokar,
Dist. Nanded

.. Appellant
(Orig. Accused No.1)

Vs.

The State of Maharashtra,
Through Police Station, Bhokar,
Tq. Bhokar, Dist. Nanded

.. Respondent
(Orig. Complainant)

WITH

CRIMINAL APPEAL NO. 509 OF 2001

1] Madhav S/o Laxmanrao Shinde
Age : 25 years, Occu. : Agri.,

2] Keshav S/o Laxmanrao Shinde,
Age : 24 years, Occu.: Service,
R/o Gondwar Colony,
Bhokar, Tq. Bhokar,
Dist. Nanded

.. Appellant
(Orig. Accused No.1)

Vs.

The State of Maharashtra

.. Respondent

AND

CRIMINAL APPEAL NO. 62 OF 2002

Anand @ Gater S/o Namdeorao Jadhav,
Age : 24 years, Occu.: Student,
R/o Gandewar Colony, Bhokar,
Tq. Bhokar, Dist. Nanded

.. Appellant

Vs.

The State of Maharashtra
Through Police Station, Bhokar,
Tq. Bhokar, Dist. Nanded

.. Respondent

Mr. R.S. Deshmukh, Advocate i/b Mr. Santosh C. Bhosale,
Advocate for the appellant in Criminal Appeal No. 495/2001

Mr. V.R. Dhorde, Advocate with Mr. Vasant N. Shelke,
Advocate i/b Mr. R.N. Dhorde, Sr. Advocate for the
appellants in Criminal Appeal No. 509/2001

Mr. Santosh C. Bhosale, Advocate i/b Mr. H.S. Bedi, Advocate
for the appellant in Criminal Appeal No. 62/2002

Mr. R.B. Bagul, A.P.P. for respondent/State in all matters

CORAM : M.T. JOSHI, J.

DATE : 27/01/2016

ORAL JUDGMENT :

Heard both sides.

2. All the present Criminal Appeals have arisen out of the judgment and order dated 08/11/2001 passed by the learned Sessions Judge, Nanded in Sessions Case No. 57 of 2000. Therefore all the three appeals are decided by the present common judgment.

3. Present 4 appellants alongwith other 2 accused were charged of the commission of the offences

punishable under section 147, 148, 302 read with section 149 of the Indian Penal Code and also for the offence punishable under section 323 read with section 149 of the Indian Penal Code and also for the offence punishable under section 135 of the Bombay Police Act.

. The learned Sessions Judge, Nanded after trial however came to the conclusion that out of the six accused, present four appellants i.e. accused nos.1,2, 3 and 5 have participated in the offence. Accused no.4 Ashok Marakwad was acquitted, while accused no.6 – Prakash Waghmare died during the pendency of the trial. According to the learned Sessions Judge, it was a case of commission of culpable homicide not amounting to murder so far as appellant – Santosh S/o Ganpatrao Marakwad i.e. original accused no.1 is concerned.

. As regards appellants in Criminal Appeal No.509 of 2001 – Madhav Laxmanrao Shinde i.e. original accused no.2 and appellant – Keshav Laxmanrao Shinde i.e. original accused no.5 are concerned, the learned Sessions Judge came to the conclusion that he alongwith original accused no.3 – Anand @ Gater S/o Namdeorao

Jadhav i.e. appellant in Criminal Appeal No. 62 of 2002 have committed the offences punishable under section 324 r/w. Section 34 of the Indian Penal Code.

. Appellant – Santosh S/o Ganpatrao Marakwad was sentenced to suffer rigorous imprisonment for a period of six (6) years and to pay a fine of Rs.6,000/-. Appellant – Madhav Laxmanrao Shinde was sentenced to suffer rigorous imprisonment for a period of three (3) years and to pay a fine of Rs.3,000/-. Appellant – Keshav Laxmanrao Shinde was also sentenced to suffer rigorous imprisonment for a period of three (3) years and to pay a fine of Rs.3,000/-.

. Appellant – Anand @ Gater Namdeorao Jadhav was directed to be released on probation for a period of three (3) years on his execution of bond to keep good behaviour. Hence, the present appeals by these four accused.

4. The prosecution case, in short is as under:-

. That there was long standing business rivalry

between appellant – Santosh Marakwad and appellant – Madhav Shinde on one hand and the deceased as well as his father i.e. complainant Saya Goud due to the business of operation of two different wine bars at Bhokar. In the circumstances, on 24/09/1999, appellant – Santosh and appellant – Madhav had come to the house of the complainant and threatened to kill him. About the same, a police complaint was filed, however, no action was taken.

. In the circumstances, on 27/09/1999, while the complainant and his son PW9 – Venkatesh and Ramesh were attending the counter of their hotel at Bhokar named and styled as 'Kanaka Bhuvan' at about 10.00 to 10.15 pm in the night, deceased Ramesh i.e. son of the complainant and his friends like PW1 – Narayan Solanke, PW8 – Balaji Ingle and Laxmikant Alewar went towards a pan stall in the square. At that time, in the square, all the present appellants alongwith the other accused came there. Appellant – Santosh, appellant – Madhav, appellant – Keshav and appellant – Anand @ Gater were having knives and sticks in their hands. Appellant –

Santosh and appellant – Madhav started assaulting the deceased with knives while appellant – Keshav and appellant – Anand @ Gater assaulted him with sticks. Complainant Saya Goud and his another son PW9-Venkatesh rushed to the spot. The deceased was on the ground. Friends of the deceased had received certain injuries due to the assault by sticks. Thereafter, however, the assailants fled away.

. The deceased was taken to the hospital, however, he was found dead and, therefore, the complaint came to be filed in the same night at about 11:30 pm.

. The Investigating Officer – PW17 – Vithal Angole took over the investigation. Usual exercise of drawing of inquest panchanama was carried. Panchanama of the spot of occurrence was drawn. Post Mortem examination notes were collected from the Medical Officer PW14 – Dr. Lalita Swami. All the accused were arrested. Statements of the witnesses including the eye witnesses were recorded. Clothes from the person of the accused were seized.

. While in custody, appellant – Sanotsh made a statement leading to the recovery of the knife. Appellant – Madhav also made recovery of the knife while other accused made recovery of the sticks. Necessary articles were sent for chemical analysis and ultimately, the chargesheet came to be filed.

5. Before the learned Sessions Judge, Nanded, in all 17 witnesses were examined. Out of them, five witnesses were examined as eye witnesses. Those included PW1 – Narayan Solanke, PW6 – Mohan Joshi and PW8 – Balaji Ingle. While these three eye witnesses did not support the prosecution in the witness box, only two eye witnesses i.e. complainant – father of the deceased PW7 – Saya Goud and the brother of the deceased PW9 – Venkatesh had supported the prosecution case. All the panch witnesses turned hostile. PW13 – Yadav Suryawanshi, the Circle Officer, Tehsil Office, Bhokar has drawn the sketch map of the scene of the offence while PW17 – Vitthal Angole had carried the investigation.

6. The learned Sessions Judge, upon appreciation of the evidence, passed the judgment and order, as detailed supra. Hence, all these criminal appeals.

7. Learned counsel for the appellants took me through the evidence recorded by the learned Sessions Judge. It was submitted that a deep animosity between group of the complainant and the appellant – Santosh has been amply proved from the cross-examination of the relevant witnesses. Even earlier, the deceased had assaulted appellant – Santosh and, therefore, a criminal case was already pending against him. The deceased was a known goonda in the locality.

. It was further submitted that the material on record would show that father and brother of the deceased i.e. PW7 and PW9 could not have seen the activities on the spot, as the same was not visible from their hotel. On the other hand, the prosecution evidence would show that the spot of occurrence is near Tehsil Office and during the relevant period, some

agitators were sitting in a pendal on dharna on fast. Those were the natural witnesses, but those were not examined.

. In the circumstances, it was submitted that only due to earlier enmity, due to suspicion, the father and brother of the deceased have falsely involved the appellants and his friends in the present case. Hence, Mr. R.S. Deshmukh, learned counsel i/b. Mr. Santosh C. Bhosale, learned counsel for the appellant in Criminal Appeal No. 495 of 2001 submitted that the appeals be allowed and all the present appellants be acquitted of all the offences.

8. On the other hand, the learned A.P.P. submits that though in the immediately FIR, the names of the witnesses i.e. friends of the deceased i.e. the eye witnesses are recorded, all these eye witnesses, in the witness box have turned hostile. The immediately filed FIR would also show that PW7 – Saya Goud – the complainant and PW9 – Venkatesh, the brother of the deceased were also the eye witnesses. In the

circumstances, it was submitted that there is no reason to disbelieve these prosecution witnesses.

9. On the basis of this material, following points arise for my determination:-

I) Whether the prosecution has proved that on 27/09/1999, in the night at about 10:15 pm, at Bhokar, Dist. Nanded, near a square near the Tehsil Office, the present appellant – Santosh Ganpatrao Marakwad has caused homicidal death of the deceased ?

II) Whether the prosecution has proved that the appellants in Criminal Appeal No. 509 of 2001 and Criminal Appeal No. 62 of 2002 i.e. Madhav Laxmanrao Shinde, Keshav Laxmanrao Shinde and Anand @ Gater Namdeorao Jadhav have voluntarily caused hurt to the deceased by dangerous weapons at the given date, time and place ?

My finding to point no. (I) is in the negative as regards the homicidal death caused by appellant – Santosh.

. It is however found that grievous hurt by dangerous weapons i.e. offence punishable under section 326 of the Indian Penal Code is committed by appellant – Santosh. While the prosecution failed to prove the offences against the rest of the appellants.

. Hence, my finding to point no. (II) is in the negative.

. Criminal Appeal No. 495 of 2001 is therefore partly allowed and Criminal Appeal No. 509 of 2001 and Criminal Appeal No. 62 of 2002 are allowed for the reasons to follow.

R E A S O N S

10. It is no doubt true that three independent eye witnesses did not support the prosecution case. The FIR of the incident was filed by PW7 – Saya Goud – father of the deceased in the night at 11:30 pm on 27/09/1999. The incident has occurred between 10.00 pm to 10:15 pm. on that date. Thus, within a period of 1-1/2 hour, the FIR came to be filed. In the said FIR,

not only the names of the eye witnesses are referred but the tone and tenor of the FIR would show that the complainant had seen the present appellants alongwith the other accused rushing towards the spot of occurrence with weapons in their hands.

. The FIR would show that the complainant as well as his son i.e. PW9 – Venkatesh therefore rushed to the spot and has seen the occurrence.

11. Mr. R.S. Deshmukh, learned counsel for the appellant in Criminal Appeal No. 495 of 2001 and other learned counsel for the appellants in other appeals submit that in-fact, the spot of occurrence was not visible from the hotel of the complainant, as is clear from the deposition of PW13 – Mr. Yadav Suryawanshi, the Circle Officer, who has drawn the sketch map at Exhibit – 88. It would show that certain trees are planted in front of the hotel of the complainant and the distance between the said hotel and the spot of occurrence was 87.50 meter. Not only this, the complainant has admitted that he is required to use a

spectacle while driving a motorcycle. Therefore, considering the fact that the incident has occurred after 10.00 pm in the night and about more than 87 meter away from the hotel, according to them, it would not have been possible for the complainant to see the incident.

. It was further submitted that the natural witnesses i.e. the agitators who were sitting on dharna on fast near the Tehsil office, just opposite the spot of occurrence, were not examined.

12. It should however be borne in mind that according to the prosecution, there were three more eye witnesses as examined by the prosecution i.e. Narayan Solanke, Mohan Joshi and Balaji Ingle. Unfortunately however, none of them has supported the prosecution case. The version of the prosecution i.e. PW7 – Saya Goud and PW9 – Venkatesh i.e. father and brother of the deceased, respectively, that they had opportunity to witness the incident, is natural in the set of facts, as already appreciated.

13. In that view of the matter, there is no reason to interfere in the conclusion of the learned Sessions Judge that the present appellant – Santosh is the author of the fatal injury on the person of the deceased.

14. This however would take us to find out the injuries and the nature of the same those were found on the person of the deceased by PW14 – Dr. Lalita Swami when the Medical Officer had examined the dead body on 28/09/1999 at Civil Dispensary, Bhokar. Her evidence coupled with the post-mortem examination notes at Exhibit 95 would reveal that following external injuries were found on the person of the deceased :-

1) Cut injury (incised wound) on right arm in axillary region encircling half arm and dimension 20 cm X 8 cm X 5 cm cutting skin subcutaneous-tissue, triceps muscle tendon. Brachial artery, Vein and nerves leading to severe haemorrhage cut ends of vessels exposed. clotted blood-seen. Humerus bone is intact.

2) Abrasion with contusion below & lateral to right eye on cheek bone 3 cm X 3 cm.

3) Superficial incised injury on right cheek 7 cm X 1/2 cm X 1/4 cm. transverse extending from angle of lip in backward direction.

4) Infected wound on left thumb of palm dorsal aspect 1 cm X 1 cm.

5) Abrasion on waist left side on left hip joint laterally 1cm X 1 cm.

The age of injuries no.1 to 3 and 5 was estimated as 2 hours before death.

15. The Medical Officer has admitted in the cross-examination that injury nos.2 to 5 were minor injuries. Out of them, injury no.4 was the old injury. Only injury no.1 was fatal injury. Except injury no.1, other injuries were possible due to fall or due to contact with blunt object. As regards injury no.1 also, the Medical Officer deposed that it was not a stab wound but a slash wound and ordinarily, slash injury is unlikely to endanger human life unless it is on vulnerable area like throat. It was also deposed that such an injury on hand would not be on vital organ.

16. If all these facts are taken into consideration, in my view, the conclusion of the learned Sessions Judge that the present appellant – Santosh has caused culpable homicide not amounting to murder i.e. offence punishable under section 304 Part-II of the Indian Penal Code would not stand. It would be a grievous injury by dangerous weapon as the injury no.1 being 20 cm X 8 cm X 5 cm would necessarily require immobilization for 20 days. Therefore offence punishable under section 326 of the Indian Penal Code as regards appellant – Santosh is made out.

. As regards the rest of the appellants however, the testimony of PW7 and PW9 is not consistent and is somewhat contradictory to the statement made in the immediately filed FIR. We have seen the contents of the FIR while appreciating the prosecution case.

. To repeat, in the immediately filed FIR, PW7 Saya Goud had complained that while appellant – Santosh had assaulted with knife, rest of the appellants i.e. Madhav, Keshav and Anand @ Gater though had knives and

sticks in their hands, appellant – Madhav had assaulted with knife and appellant – Keshav and Anand @ Gater assaulted with sticks.

17. As against this, the very same witness, in the witness box deposed that while appellant – Santosh had caused the injury by knife, accused no.4 and accused no.6 held the hands of his son Ramesh as they were standing on the either side of his son – Ramesh. His deposition is that only appellant – Santosh stabbed his son with knife.

18. If we peruse the deposition of PW9 – Venkatesh, he has given his own version though he stuck to the prosecution that appellant – Santosh was the author of the injury caused by the knife. According to him, appellant – Anand @ Gater and appellant – Keshav bet the deceased with wooden stick while appellant – Madhav was merely holding a knife.

19. This contradictory version of the two eye witnesses would clearly go to show that the prosecution

failed to prove beyond reasonable doubt that these appellants had caused any injury to the deceased. The learned Sessions Judge however appears to have placed reliance on the one testimony to the other and convicted these appellants.

20. Considering all these facts, in my view, appellant – Santosh S/o Ganpatrao Marakwad has committed offence punishable under section 326 of the Indian Penal Code while the prosecution has failed to prove that any offence is committed by rest of the appellants. They are therefore required to be acquitted from all the offences.

21. As regards the sentences awarded to appellant – Santosh S/o Ganpatrao Marakwad, Mr. Deshmukh, learned counsel submits that the deep animosity between the parties, the fact that the appellant was earlier assaulted by deceased, who was a known goonda in the locality and the fact that appellant – Santosh was required to remain behind the bar for a period of of 2 years and 4 months, would show that his further

incarceration is not required. He further submits that while the incident has occurred in the year 1999, after a period of 16 years, again sentencing appellant – Santosh behind the bar, would not be reasonable.

22. On the other hand, learned A.P.P. submits that though this Court has come to the conclusion that culpable homicide not amounting to murder is not committed by appellant – Santosh, keeping in mind the nature of the injury found on the person of the deceased, no leniency is required to be shown.

23. Upon hearing both sides, in my view, appellant – Santosh S/o Ganpatrao Marakwad is required to be sentenced to suffer rigorous imprisonment for a period of three (3) years for the offence punishable under section 326 of the Indian Penal Code. He is also required to pay a fine of Rs.6,000/-, in default to suffer rigorous imprisonment for 1 years. The fine amount is already deposited by appellant – Santosh. In the circumstances, the following order :-

24. Criminal Appeal No. 495 of 2001 filed by Santosh S/o Ganpatrao Marakwad - original accused no.1 is hereby partly allowed. His conviction recorded by the learned Sessions Judge, Nanded vide judgment and order dated 08/11/2001 passed in Sessions Case No. 57 of 2000 for the offence punishable under section 304 Part-II of the Indian Penal Code is hereby set aside. Consequently, the sentences awarded to him for the aforesaid offence are also set aside.

. Instead, the appellant - Santosh S/o Ganpatrao Marakwad is convicted for the offence punishable under section 326 of the Indian Penal Code. He is sentenced to suffer rigorous imprisonment for a period of three (3) years and to pay a fine of Rs.6000/-, which is already deposited by him.

. Learned Sessions Judge, Nanded to take steps for securing presence of appellant - Santosh S/o Ganpatrao Marakwad to serve the remaining sentence, now awarded to him.

25. Criminal Appeal No. 509 of 2001 and Criminal Appeal No. 62 of 2002 are hereby allowed. The impugned judgment and order dated 08/11/2001 passed by the learned Sessions Judge, Nanded in Sessions Case No. 57 of 2000, convicting all the three appellants in these two Criminal Appeals is hereby set aside.

. Instead, the appellants in these two Criminal Appeals are acquitted of the offences for which they were convicted by the learned Sessions Judge. Their bail bonds shall stand cancelled.

26. On the request of Mr. R.S. Deshmukh, learned counsel for the appellant in Criminal Appeal No. 495 of 2001, eight (8) weeks time to surrender the appellant – Santosh S/o Ganpatrao Marakwad in Criminal Appeal No. 495 of 2001 is hereby granted.

27. All Criminal Appeals stand disposed of accordingly.

[M.T. JOSHI]
JUDGE

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