

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO. 62 OF 2014

1. Trimbak Sakharam Sodgir,
Age : 55 years, Occupation : Agricultural,
2. Ashabai Trimbak Sodgir,
Age : 50 years, Occupation : Agricultural,

Both R/o : Dongargaon, Tq: Gangakhed,
District : Parbhani.

... APPELLANTS
(Orig. Accused Nos.3 & 7)

VERSUS

1. State of Maharashtra,
(Copy to be served on the Public
Prosecutor, High Court,
Bench at Aurangabad).
2. Laxmibai Maroti Sodgir,
Age : 45 years, Occupation : Agricultural,
R/o. Dongargaon, Tq: Gangakhed,
District : Parbhani.

... RESPONDENTS

...

Mr. V. D. Sapkal, Advocate h/f Mr. N. R. Pawale, Advocate for Appellants.
Mr. S. G. Karlekar, APP for Respondent No.1.
None for Respondent No.2.

...

WITH

CRIMINAL APPEAL NO. 68 OF 2014

1. Shankar s/o. Trimbak Sodgir,
Age- 33 years, Occu.: Agril.,
R/o. Dongargaon, Tq. Gangakhed,
Dist. Parbhani.

2. Sow. Manisha w/o Shankar Sodgir,
Age- 27 years, Occu.: Agril.,
R/o. Dongargaon, Tq. Gangakhed,
Dist. Parbhani.

... APPELLANTS
(Orig. Accused Nos.1 & 8)

VERSUS

State of Maharashtra.
(Copy of Respondent to be served on
Public Prosecutor, High Court of Bombay,
Bench at Aurangabad.)

... RESPONDENT

...
Mr. V. D. Sapkal, Advocate h/f Mr. N. R. Pawale, Advocate for Appellants.
Mr. S. G. Karlekar, APP for the Respondent.
...

AND

CRIMINAL APPLICATION NO. 5737 OF 2015
IN
CRIMINAL APPEAL NO. 68 OF 2014

Shankar s/o. Trimbak Sodgir,
Age: 34 years, Occ: Agriculture,
R/o. Dongargaon, Tq. Gangakhed,
Dist. Parbhani.

... APPLICANT

VERSUS

State of Maharashtra,
Through Investigation Officer,
Police Station Gangakhed,
Tq. Gangakhed, Dist. Parbhani.

... RESPONDENT

...
Mr. V. D. Sapkal, Advocate h/f Mr. N. R. Pawale, Advocate for Applicant.
Mr. S. G. Karlekar, APP for the Respondent.
...

CORAM : **A. V. NIRGUDE &
INDIRA K. JAIN, JJ.**

DATE : 17th March, 2016.

ORAL JUDGMENT: (Per A. V. Nirgude, J.)

. These appeals challenge the judgment and order dated 14th December, 2013 delivered by the learned Additional Sessions Judge, Gangakhed in Sessions Case No.16 of 2009. There were in all 8 Accused before the trial Court. The learned Judge convicted Accused Nos.1 and 3 for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentenced them to suffer life imprisonment with fine of Rs. 5,000/- with a default clause. Accused Nos.7 and 8 were convicted for the offence punishable under Section 323 read with Section 34 of the Indian Penal Code. Other Accused Nos.2 and 4 to 6 were acquitted.

2 The prosecution case was that all 8 Accused formed an unlawful assembly and in prosecution of common object they assaulted Maroti, the brother of the Complainant and caused his death. They were also charged with offence punishable under Section 37 read with Section 135 of the Bombay Police Act.

According to the prosecution, incident took place on 13th November, 2008 at about 08:00 am to 09:00 am at village Dongargaon, Taluka Gangakhed. As indicated above, the prosecution could not prove involvement of Accused Nos.2, 4, 5 and 6 in this incident. The prosecution depended on 12 witnesses. Since the incident took place at broad daylight in the village, the prosecution case mainly depended on eye witness account. But before we could advert to the eye witness account, we would like to discuss the place of offence, which has bearing on the appreciation of eye witness account. During the investigation, the Investigation Officer (PW-12 Satish Deshmukh) stated that after the complaint was lodged, he went to the scene of occurrence, which was shown to him by Complainant Balasaheb. He prepared spot Panchanama. He also drew a location sketch, which is exhibited through his deposition. On perusal of this location sketch and having regard to the depositions of eye witnesses, we may describe the location as under:

House No.86 and House No.87 are situated within a common compound. There is an open space in front of both these houses. In the open space, there is a small bathroom. It is indicated throughout the prosecution story that sewage discharged from the

bathroom would flow towards East through a *Kaccha* channel. On the East side of these two houses, there is a public road. This public road takes turn towards East and the same goes on further towards East. The road in front of the House Nos.86 and 87 runs North-South. The incident of assault is shown to have been occurred about 45 ft. away from the *Kaccha* channel on public street in front of house of one Pandurang. It is also mentioned in the Panchanama that this place is paved with cement concrete. At this spot, the police could collect blood stained earth and cap belonging to the deceased. What is pertinent to note about scene of occurrence is that the assault did not take place inside the compound of House Nos.86 and 87 though the parties had some issue about the open space in front of these two houses. The assault took place about 45 to 50 ft. away from the open space in front of the houses. This indicates that the victim as well as assailants walked up towards East and in front of Pandurang's house the assault took place.

3 The next circumstance, which is required to be considered is the nature of injuries sustained by victim Maroti. PW-9 Dr. Avinash Puri is the autopsy surgeon. He stated that on 14th November, 2008 he received intimation from the Government Medical

College, Nanded requesting him to examine dead-body of Maroti. At about 01:00 am to 02:00 am on 14th November, 2008 postmortem was conducted. He prepared a postmortem report in which it was mentioned that the deceased had a stitch wound over left tempero parietal region of 6 cm length. He also mentioned that victim suffered multiple contusions over occipito temporal region on both right and left side of the head. Upon internal examination the autopsy surgeon found that there was haematoma under the skull all over. He also found liner depressed fracture of skull bone in the area of frontal, temporal and occipital. The length of such fracture was about 15 cm. The surgeon opined that the death took place due to head injury. During the cross-examination of this witness, he further opined that the injuries described above could not have caused by one single blow of weapon on the head. He opined that there could have been number of strokes delivered on the head of the victim. In the background of these circumstances, now we examine the ocular version of the prosecution case.

4 PW-1 Janardhan stated that at the relevant time he used to stay in deceased Maroti's house at village Dongargaon. He further mentioned that Maroti and his brother Balasaheb did not stay in their

house, but they stay in their agricultural field. He further mentioned that there was no drainage available to his house.

5 PW-2 Complainant Balasaheb is the brother of the deceased. He stated that on the day of incident at about 08:00 am he, his brother Maroti and Bapurao were in their house (Though this witness did not indicate that his house is situated in the agricultural field, there is a clear indication that he was trying to suggest that he and others were inside the house, which was in the use of PW-1 Janardhan.) He then stated that Accused Nos.1, 2, 4, 5, 6, 7 and 8 came in front of the house and started abusing him and his brother Maroti. They were calling them outside of the house and were issuing threats of death. He stated that this happened on the road in front of the house. He thereby ruled out possibility of the above mentioned Accused entering inside the compound and were standing in the open space in front of the houses. He then stated that Accused No.3 Trimbak came from outside and caught hold of hands of Maroti. Accused No.1 Shankar then delivered a blow of spade from the blunt side on the head of Maroti, who sustained bleeding injury and fell unconscious on the ground. We have already noted above the place of assault was in front of Pandurang's house about 50 ft away from

the open space. This witness did not mention anywhere as to how he, Bapurao and his brother Maroti walked from their house inside the compound upto the spot where the incident took place. He even did not state as to from where Accused No.3 came to the spot. He simply stated that he came from 'outside' thereby indicated that Accused No.3 Trimbak was not with other Accused when they were abusing and threatening him and his brother.

6 In the cross-examination, he admitted that he has a house in his agricultural field. But he said that at the time of the incident, he was sitting in his house, which is situated in the village. He also indicated that he, Bapurao and Maroti were standing in front of the house. He further indicated that part of their ancestral house was sold by one of the brothers to Accused No.3 Trimbak. He further admitted that the open space in front of both the houses was common. He further stated in the cross-examination that quarrel with the Accused took place due to dispute about open space. In the cross-examination, he further admitted that after victim Maroti fell down on the ground, he raised an alarm and hearing him persons from the village came to the spot. He further admitted that after the incident, he along with other witnesses of the prosecution took Maroti

in an auto-rickshaw to hospital at Gangakhed, but the doctors did not admit Maroti there. They asked them to take the deceased to Parbhani. They then used a car to take Maroti to Parbhani. Even doctors at Parbhani hospital advised them to take Maroti to Nanded. Ultimately, Maroti was taken to a private hospital at Nanded. Deceased died in this hospital after few hours. In the cross-examination, he also admitted that though he stated to the police at the time of recording of the complaint that Bapurao was with him at the time of incident, his name was not found in the complaint. This admission indicates that at the time of filing of the complaint, this witness did not mention to the police that Bapurao was with him and deceased Maroti at the time of assault. Because of this lapse, the deposition of Bapurao, who is said to be an eye witness, gets suspicious.

7 The next important witness is PW-3 Bapurao Sodgir, who gave a little different story about the incident. He stated that PW-2 Balasaheb and deceased Maroti were his cousins. He indicated that they all had houses at village Dongargaon. He stated that he sold his portion of ancestral house to Accused No.3 Trimbak. All Accused then started residing in this house. He further stated that to the North

of the house, there was a bathroom from where sewage would flow through common open space towards East. Accused/Trimbak stopped sewage flow by obstructing it. On the day of incident at about 08:00 am he, Maroti the deceased and Balasaheb Complainant were in the agricultural field. Deceased Maroti came to him in the morning and asked him to accompany him to village. Maroti told him that Trimbak had obstructed drainage flow. He, deceased Maroti and Balasaheb then went to village. They called 2-4 persons by name Shivaji, Gyandeo, Radhabai. All of them then went towards the house where Accused No.1 and PW-1 resided. They asked Accused No.1 Shankar to let sewage flow. To this, Accused No.1 Shankar refused. There occurred discussion. They all then went towards on the road. At that time, Accused No.3 Trimbak came from outside. He said in angry mood that he would show how sewage from bathroom would get drained. Accused No.3 Trimbak then caught hands of Maroti. Accused No.1 Shankar delivered blow of spade on Maroti's head using blunt side. Maroti sustained injury and fell down on the ground etc. After seeing Maroti's blood, he felt giddiness and sat on the ground for about 10-15 minutes. Thereafter, he helped Balasaheb to take Maroti to hospital etc. Despite of this deposition,

which partly helped the prosecution case, learned Public Prosecutor declared this witness hostile probably because he did not implicate Accused Nos.4, 5 and 6. In the cross-examination, this witness admitted that he had sold half portion of his house to Accused / Trimbak. He also admitted that open space admeasuring 20 x 20 ft was also sold to Trimbak. He further admitted that because of such transaction there remained no space in front of his house for drainage or sewage channel in the common open space. The presence of this witness is also doubtful because of absence of his name in the FIR as an eye witness to the incident. Beside this witness stated that prior to the incident, he and others called Shivaji, Gyandeo and Radhabai and in their company they proceeded to the house of the Accused. It is thereafter, the incident took place. But the prosecution case did not depend on depositions of Shivaji, Gyandeo and Radhabai at all. They were not examined as witnesses. This witness also did not support the deposition of PW-2 Complainant Balasaheb, who said that he was inside the house and the Accused started abusing standing in front of the house on the road. This witness does not corroborate this part of the prosecution case. We have therefore, serious doubt of credibility of this witness.

8 The next important witness is PW-4 Laxmibai, who was the wife of deceased Maroti. She stated that there was dispute on account of drainage between the Accused party and her husband. She also admitted that after Bapurao sold his portion to Accused No.3, his family started residing in the house. She stated that at about 08:30 am on that day, her husband Maroti, Bapurao and Balasaheb went towards the house in the village. At that time she had been to flour mill of one Vithoba, which is about 10-15 ft away from the house. She then narrated the incident, as if, she was present on the spot all throughout. She stated that her husband Maroti, Bapurao and Balasaheb went inside the house. Accused Nos.1, 2, 7 and 8 prevented and abused them. Her husband and brothers-in-law came out on the road. Accused No.3 Trimbak came from outside. He caught hands of her husband and Accused No.1 Shankar delivered blow of spade on his head. Her husband Maroti fell down. Thereafter, she also implicated other Accused. She further stated that at the time of incident, villagers by name Gyanba, Sarjerao, Bhagwan, Satish and Shivaji came on the spot and separated the quarrel. We have strong doubt about presence of this witness at the scene of occurrence. Both PW-2 and PW-3 did not

mention her name as one of the witnesses to the incident. She also conveniently stated that at the time of incident, she had come to flour mill. This gave an opportunity for her to see the incident. She thus is a chance witness. We do not believe her when she said that at the relevant time she had gone to the flour mill and then she could see the incident. This witness is a got up witness and we reject her testimony altogether.

9 The next eye witness is PW-5 Vithal, who stated that he ran flour mill in village Dongargaon. At the relevant time, he was sitting in front of his flour mill. He saw deceased Maroti and Complainant Balasaheb were cleaning the drainage, which was situated in front of Maroti's house. There occurred scuffle between Maroti and Trimbak. Trimbak caught hold of Maroti's hands and Accused No.1 Shankar delivered blow of spade on Maroti's head. He sustained bleeding injury and fell down. He also narrated the incident implicating other Accused. This witness has given another twist to the prosecution case, which is narrated above through the depositions of three so-called eye witnesses. He takes the incident right inside the compound of the house on the open space, which according to the scene of occurrence was far away from the actual place of occurrence

where blood of the deceased was found and from where deceased was lifted. This witness did not explain as to how he could see the incident while sitting in front of his flour mill. In the scene of occurrence Panchanama and the location sketch, which depicted all nearby houses, did not mention about existence of flour mill near the scene of occurrence. This witness thus is a got up witness and we reject his testimony.

10 There is one more eye witness, who is PW-8 Satish Gavai. He stated that at the time of incident, he was at his house. His house is situated near the house of the Accused. He heard noise of abuses. He came out of the house. He saw deceased Maroti, his brother Balasaheb PW-2, Accused No.1 Shankar, Accused No.2 Tukaram and women in front of his house. They were having quarrel. The Accused were abusing. Thereafter, deceased Maroti and Balasaheb came out on the road. Accused No.3 Trimbak then caught Maroti's hands and Accused No.1 Shankar delivered blow of spade using blunt side on his head. Maroti fell down. In the cross-examination, this witness stated that he would not remember whether he had told police at the time of recording of his statement that Accused No.1 Shankar came from back side having spade in his

hand and gave blow from back side of head. He further stated that he could not assign any reason why this was not written in his statement. Therefore, the material allegations which he made as eye witness is an improvement. We are therefore, not inclined to believe his deposition that he saw Accused No.1 delivering a blow of spade on the head of the deceased.

11 We have made a gist of depositions of eye witnesses. We are inclined to believe that when the deceased was assaulted, PW-2 Balasaheb was with him. All other witnesses are got up witnesses. The incident of assault lasted for about few seconds because all the witnesses indicated that there was only one blow of spade, which was delivered on the head of the deceased. No other injuries were found on the person of deceased. No other person was also injured. This leaves us with deposition of PW-2 Balasaheb the Complainant. We have recorded our reasons why we are not inclined to believe his deposition.

12 The incident took place at broad daylight in front of the houses of so many persons. It was a public street and yet the interested prosecution witnesses from beginning narrated the incident

in such a manner that they would involve as many as possible persons from the opponent family. They implicated 8 Accused. Even the involvement of Accused Nos.7 and 8 does not appear possible. They were women from the family of Accused Nos.1 and 3. It was alleged against them that they delivered kick and fist blows on the person of deceased, but the medical evidence did not support this part of the prosecution case. Therefore, they also deserve clean acquittal. Despite the fact that the incident took place at broad daylight and could have been seen by independent witnesses, the prosecution made a complete mess and therefore, their entire case deserves to be disbelieve. Both the appeals should therefore succeed. Hence the following order –

ORDER

- I. Criminal Appeal Nos.62 and 68 of 2014 are allowed.
- II. The judgment and order dated 14th December, 2013, passed by the learned Additional Sessions Judge, Gangakhed, in Sessions Trial No.16 of 2009 convicting the Appellants, is hereby set aside.

- III. Appellants / Accused Nos.1, 3, 7 and 8 are acquitted of the charge.
- IV. Accused Nos. 1 and 3, who are in jail shall be released forthwith, if not required in any other crime.
- V. Bail bonds of Accused Nos.7 and 8 are cancelled.
- VI. Pending Criminal Application No.5737 of 2015 stands disposed of.

[INDIRA K. JAIN, J.]

[A. V. NIRGUDE, J.]

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