

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.602 OF 2005
WITH
CRIMINAL APPLICATION NO.831 OF 2016

1. Shri Gorakh Baban Kankate)
r/at: Inamdar Vasti, Koregaon Mul)
Tal.: Haveli, Dist. Pune)
2. Shri Uttam Patil Buva Kanchan)
r/at: Inamdar Vasti, Koregaon Mul)
Tal.: Haveli, Dist. Pune)
(Appeal is abated as per Court's)
order dated 9.10.2006))
3. Shri Ravindra Shankar Gaikwad)
r/at Panmala, Mahatobachi Alandi, Pune)
4. Shri Anna alias Babdya Kisan Gavare)
r/at Mamane Wad,)
Tal. Daund, Dist.: Pune)
5. Shri Pramod alias Bapu Kaluram Kanchan)
r/at : Patil Wada)
Urali Kanchan, Tal.:Haveli, Dist.Pune)
6. Shri Somnath Kaluram Kanchan)
r/at Urali Kanchan, Tal.Haveli, Dist.Pune) .. Appellants

Vs.

The State of Maharashtra) ... Respondent

Mr.O.A. Siddiqui, with Ms.Vidya Pol More i/b Mr.Kamran Shaikh, for the Appellants

Mr.R.B. Paranjape i/b A.V. Mandalik for Applicant in Criminal Application No.831 of 2016

Mrs.A.S. Pai, APP, for Respondent – State.

**CORAM: MRS.V.K. TAHILRAMANI &
MRS.MRIDULA BHATKAR, JJ.**

DATE: JULY 11, 2016

ORAL JUDGMENT (PER MRS.MRIDULA BHATKAR, J.):

1. In this appeal against conviction, the judgment and order dated 16.5.2005 passed by the learned Adhoc Additional Sessions Judge, Pune, is challenged. The accused are convicted for the offences punishable under sections 302, 149 r/w 34 of the Indian Penal Code and are sentenced to suffer R.I. for life and fine. The case of the prosecution in brief is as follows:

The deceased Vilas Haribhau Londhe was assaulted on 2.3.2002 in front of a Maruti temple in village Urali Kanchan, Taluka Haveli, District Pune at 9.30am. On account of a competition of wrestling in a fair, there was a dispute between the deceased, his family members and the accused persons. A few years prior to the incident, the accused and associates of the deceased quarrelled and the deceased was prosecuted in a criminal case registered against him. However, six months prior to the incident, the deceased and his brothers were acquitted and, therefore, the accused were angry with them. The deceased and his family members have constructed a temple of Lord Mahadev and they wanted to install the deity. They wanted to give invitation for the same to the person concerned and therefore before leaving, the deceased, his brother and friends went

to a Maruti temple. At that time, the accused came and took the deceased a little away. In the meantime, the complainant Prakash Londhe, the brother of the deceased, went to another temple when he heard shouts of his brother for help so when he rushed to Maruti temple. He saw the accused and other persons armed with weapons were assaulting his brother Vilas. Accused No.2 Uttam Patil was instigating them that the deceased Vilas should be killed. Prakash requested them not to assault his brother. Then, those persons fled away in jeep. It was 9.45am. The complainant, his associates lifted Vilas Londhe to Sassoon hospital, Pune, where he was declared dead. Therefore, the complainant went to Loni-Kalbhor police station at Urali Kanchan and gave information to the police pursuant to which the offence was registered at C.R. No.64 of 2004. The police drew Spot panchanama (exhibit 49) and Inquest panchanama (exhibit 30). On the same day, the police recorded statements of the witnesses. Within couple of days, all the accused were arrested. Post-mortem was conducted on the dead body of Vilas. The police prosecuted 10 persons out of them, accused No.10 Pravin Kunjir was a juvenile and his case was separated. The police seized the weapons under the discovery Panchanama. After completion of the investigation, the police filed chargesheet before the learned Magistrate and thereafter the case was committed to the Court of Sessions for trial. The learned Sessions Judge framed charge under sections 149, 302, 143, 147, 148 against all

the accused. They pleaded not guilty and adopted the defence that they were innocent and falsely implicated due to previous rivalry. After considering documentary as well as oral evidence, the trial was concluded in conviction. Accordingly, the accused Nos.1, 2, 5, 4, 7 and 9 were convicted and accused Nos.3, 6, 8 and 10 were acquitted. Accused No.2 died during the pendency of the appeal. Hence, this appeal.

2. The case stands on the evidence of five eye witnesses including PW9 Prakash Londhe, the informant, who gave FIR (exhibit 66) on 2.3.2002. PW2 Arjun Mahadev Kakate, PW3 Ashok Shivaji Mehtre, who was the uncle of the deceased Vilas, PW4 Pramod Devidas Londhe and PW5 Rajesh Vitthal Taware are the other eye witnesses. PW9 Prakash Appa Haribhau Londhe has deposed that he had constructed a temple in his land and wanted to install the idol of Lord Mahadev at the hands of Gajanan Maharaj of Khopoli. He wanted to give invitation to him. So he and his brother, Arjun, Sitaram, Ashok, Rajendra, Altaf and Pramod first went to the temple of Maruti at Urali Kanchan in the morning at around 9.30 am. At that time, when he went to other temple and his brother was standing in front of Maruti temple, he heard shouts of his brother Vilas calling Appa (complainant) to save him. So, the complainant and his friends rushed there. He found the original accused Nos.1, 4, 6, 7 and 9 i.e., the appellants assaulting his brother Vilas with different weapons. He has deposed that accused Nos.4 and 7 were armed with sickles; accused

No.1 Gorakh with chopper, accused No.5 Bandy with Sattur and accused Somnath Kanchan was having Sattur and they mounted multiple assaults on Vilas. His right hand, palm were completely severed from the body and he was lying in a pool of blood. They reached there and started shouting. They found that accused No.2 Uttam Kanchan was instigating the other accused to kill the deceased and as they tried to intervene, the accused persons ran away. The complainant and the other witnesses lifted Vilas and took him to the hospital, where he was declared dead. On the point of assault, the other eye witnesses corroborate the complainant in all material particulars and have given very consistent versions.

3. Mr.Siddiqui, the learned Counsel for the Appellants/accused, has submitted that the evidence of these eye witnesses and the complainant is not reliable. These eye witnesses were in fact not present at the time of assault. He read over the evidence of all the eye witnesses, the complainant so also, the evidence of PW21 Raghunath Gangaram Jadhav, police personnel attached to Haveli police station, PW22 Avinash Shankarrao Shilimkar, the PSI attached to the Loni-Kalbhor police station. The learned Counsel submitted that PW22 had received anonymous phone call about some untoward incident at the temple. However, there is no such record of anonymous call and the prosecution did not produce entry in the police station diary to that effect. He also read over the evidence of PW25 Suryakant Rangrao Kamble and PW26 Suresh

Pandurang Bhosle, the Investigating Officer. After referring to the evidence of these police personnel, he pointed out the omissions in the evidence of eye witnesses. He submitted that there are basic *inter se* inconsistencies in the evidence of these eye witnesses. He highlighted that Shivaji, the uncle of the deceased, claimed that though he was present at the time of the incident, he has also acted as panch for inquest panchanama (exhibit 30) on the same day. The said panchanama was drawn on the same day at around 1400 to 1500 hrs. However, in his evidence, he did not say a word that he has acted as a panch. He further relied on the evidence of API Jadhav, and highlighted that in the cross-examination, this police officer, has given admission that there was nobody to identify the dead body. So he called Appa Londhe i.e., the complainant, and Appa arrived at the end of panchanama to identify the body. He submitted that it appears that Ashok Mehtre was either not present at the time of the incident or at the time of the inquest, and hence, his evidence becomes doubtful.

4. It is true that Ashok Mhetre did not say in his examination in chief that he was panch for inquest panchanama. However, his name is seen in the body of inquest panchanama. As per his evidence, he was the uncle of the deceased. So he ought to have identified the dead body. It was not necessary to get the body identified from the complainant. The inquest panchanama was exhibited at exhibit 30 as it is admitted by the defence

under section 294 of the Code of Criminal Procedure. Therefore, it looks that as a panchanama was admitted by the defence, learned Prosecutor at the time of trial did not put any question to the witness in respect of the spot panchanama. However, if at all Ashok Mehtre is related to the deceased, he should have identified the body of the deceased. So at the most it can be said that presence of this witness at the time of the inquest panchanama appears doubtful. However, in his evidence on the point of assault, he has supported the complainant. So, is the case of the other eye witnesses, i.e., PW2 Arjun Kakate, PW4 Pramod Londhe and PW5 Rajesh Tavare. PW5 Rajesh Tavare was an adjacent land cultivator of the deceased. Their presence on the spot was natural as they all wanted to give invitation to Gajanan Maharaj for installation of idol of Lord Mahadev. The FIR of PW9 Prakash Londhe (the complainant) was recorded immediately and in the FIR, the names of PW2 Arjun Kakate, PW3 Ashok Mehtre, PW4 Pramod Londhe and PW5 Rajesh Tavare are mentioned as witnesses in the FIR as they were present near the incident of assault. In the FIR, the names of the assailants alongwith weapons are also mentioned.

5. Thus, the oral as well as documentary evidence produced by the prosecution is found sufficient, consistent and reliable on the point of assault and also attributing specific role to the assailants. Minor omissions are bound to be there in the evidence of the witnesses but these are not

material or significant omissions so that the evidence of these eye witnesses can be dislodged.

6. As argued by the learned Prosecutor, it is a bad case for the appellants because the assailants were known to the witnesses and the incident has taken place in the morning at 9.30am. The learned Prosecutor has submitted on the point of motive, that the evidence of the complainant and the other eye witnesses tendered by the prosecution, is reliable and is to be given a complete weightage. All these eye witnesses have stated that there was a family dispute between the deceased and the family of the accused Gorakh Kankate. Each one wanted to take credit of wrestling competition which was held in the village on the day of religious fair. There was conflict between the two groups and 4 to 5 years prior to the incident, a quarrel between the two groups led to the prosecution against the deceased and the complainant. However, 6 months prior to the incident, the said case was concluded into acquittal. There was a motive of previous enmity, which the prosecution has brought on record successfully.

7. The prosecution has examined PW11 Dr.Shrikant Suresh Chandekar from Sassoon hospital. He had performed the post-mortem on 2.3.2002 on the body of Vilas Londhe. He produced post-mortem notes which are marked at exhibit 74. He has deposed that he noticed 32

external injuries on the body of the deceased. Most of the injuries were incised. They were on forehead, chest, face and stomach. There were multiple facial and cranial fractures. There were fractures of left and right maxillary bone. The heart plate was fractured. Deep stab wounds were found on stomach, abdomen and right palm was severed from the body. Doctor opined that the cause of death was shock due to multiple and incise wounds and injuries. He also opined that the age of injuries indicate that they had been inflicted simultaneously and with rapid succession. He has also opined that there were many assailants as there were number of injures and the injuries must be caused by sharp edged weapons. All the weapons such as sickle, Sattur (Articles 28, 29 and 30) were shown to the Doctor and he confirmed that the injuries are possible due to these weapons. The post-mortem notes (exhibit 74) corroborate the evidence of the Doctor. This medical evidence remained unshaken. The multiple injuries and the cause of death speak in volumes about the brutality and vengeance involved in killing the deceased. This medical evidence supports the evidence of the eye witnesses, who have given the description of the weapons and have stated that there were 6 to 7 assailants.

8. The learned Counsel for the defence has argued that recovery of the weapons from the accused persons is bogus. These panchanamas of discovery should not have been believed by the trial Judge. Mr.Siddiqui

submitted that there is a doubt in the collection of the blood of the deceased. The CA report (exhibit 168) is concocted.

9. Learned Prosecutor relied heavily on the CA report (exhibit 168). She pointed out exhibit 139 is a CA report disclosing that the blood group of the deceased was 'A'. She argued that the weapons of the accused, which were recovered at the instance of the accused, also were found with dried blood stains and after chemical analysis, the group of those blood stains was found of blood group 'A'.

10. Perused the evidence of PW16, Subhash Mahadev Vaykar. He has stated about the recovery panchanama of weapons (exhibits 97 and 98) i.e., sickle (article 28) at the instance of the accused No.4 is proved by the prosecution. PW8 Tukaram Shankar Handal was examined to prove the recovery of Sattur (article 29) at the instance of accused No.5 and accordingly memorandum and discovery panchanama were drawn at exhibits 63 and 64. Both these panchanamas were drawn on 6.3.2002 after arrest of the accused. PW12 Gangaram Rambhai Shivarkar has deposed about the recovery of weapon at the instance of accused No.7 Pramod alias Bapu Kanchan i.e., sickle (article 30) and the memorandum and discovery panchanama was marked at exhibit 87 collectively. Recovery at the instance of accused Nos.1 and 9 is not proved. However, their names are taken by all the eye witnesses about the presence. We do

not find any reason to disbelieve these panchanamas. The CA report (Exhibit 168), as pointed out by the learned Prosecutor, shows the blood found on these weapons was of blood group A. That was of the deceased. It is another incriminating circumstance establishing the nexus between the assault and the accused. We do not find any reason to disbelieve the eye witnesses. There may be some inconsistencies in the evidence of the eye witnesses and some lacunae in the investigation, however, these are all insignificant. We accept the evidence of the eye witnesses and hereby confirm the judgment and conviction against all the accused.

11. Appeal is dismissed.

12. In view of the dismissal of the Appeal, nothing survives in the Application and the same is disposed of accordingly.

(MRIDULA BHATKAR, J.)

(V.K. TAHILRAMANI, J.)