

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.32 OF 2014

The State of Maharashtra

...Appellant

Versus

1.Deepak Parshuram Patil
Age 35 years, occu. Service.

...Respondents

2.Praveen Parshuram Patil
Age 28 years, occu. Service.

3.Dayanad Parshuram Patil
Age 32 years, occu. Service.

4.Kishor Parshuram Patil
Age 36 years, occu. Service.

5.Prakash Parshuram Patil
Age 40 years, occu. Agriculture.

6.Pradeep Parshuram Patil
Age 28 years, occu. Service.

7.Pratap Vithoba Patil
Age 26 years, occu. Service.

All r/o. Village Patnoli, Taluka-
Panvel, District-Raigad

...

CRIMINAL APPEAL NO.732 OF 2013

Vilas Shravan Patil

...Appellant

Versus

1.The State of Maharashtra
(At the instance of Senior Inspector
of Police, Panvel Town Police
Station vide their FIR No.276 of
2009)

2.Deepak Parshuram Patil,
Age 38 years, occu. Service.

3.Praveen Parshuram Patil,
Age 31 years, occu. Service.

4.Dayanand Parshuram Patil,
Age 35 years, occu. Service.

5.Kishor Parshuram Patil,
Age 39 years, occu. Service.

6.Prakash Parshuram Patil,
Age 43 years, occu. Agriculture

7.Pradeep Parshuram Patil,
Age 38 years, occu. Service.

8. Pratap Vithoba Patil,
Age: 29 years, Occ: Service,
(Nos.1 to 7 residing at Village
Patnoli, Taluka-Panvel, District
Raigad.

...Respondents

...

Mr. H.J. Dedia, A.P.P. for the Appellant-State.

Mr. Nitin Sejpal with Mrs. Pooja Sejpal for original
complainant and for the Appellant in Appeal/732/2013.

Mr. Nishigandh N. Patil for Respondent Nos.1 to 7.

CORAM : SMT. V.K.TAHILRAMANI &

SMT. ANUJA PRABHUDESSAI, JJ.

RESERVED ON:11th APRIL, 2016

PRONOUNCED ON :25th JULY, 2016

JUDGMENT (PER ANUJA PRABHUDESSAI, J.).

These appeals are directed against the judgment and order dated 10th May, 2013 in Sessions Case No.59 of 2010 whereby the learned Addl. Sessions Judge-1, Raigad, District Alibag, acquitted the aforesaid Respondents /accused for offences punishable under sections 307 r/w. 149, 323 r/w 149, 143, 144, 147, 148 and 504 of the IPC and under section 37(1), 135 of the Bombay Police Act.

2. The case of the prosecution in brief, is that on 5.7.2009 PW2-Sujit Patil and some other boys were playing cricket on the school ground of village – Patnoli. PW1- Vilas Patil, PW3-Sandeep Patil and PW4- Kashinath Patil were sitting by the road and watching the cricket match. It is alleged that the accused No.1 Deepak Patil and his brother Anil got down from Safari vehicle and came to the school ground and started abusing PW2-Sujit Patil and others.

Thereafter the accused left the place of the incident and returned with other accused, who were armed with weapons such as hockey sticks, sword, lathi, etc. The accused assaulted the complainant and his brothers PW2-Sujit Patil, PW3-Sandeep Patil, PW4-Kashinath, etc. As a result, the complainant and others sustained grievous injuries and they were taken to Government Rural Hospital.

3. PW10-Prakash Patil, PSI, who was informed about the incident had visited Gandhi Hospital where the accused were admitted. He recorded statement of Deepak Patil (A1), pursuant to which he registered Crime No.275 of 2009 for offences under 302, 307, 326, 325, 324, 504, 143, 144, 147, 148 and 149 of the IPC and under section 37(1), 135 of the Bombay Police Act and under sections 4 and 25 of the Indian Arms Act against the complainant PW1- Vilas Patil, PW2-Sujit Patil and others (accused in C.R. No.275 of 2009). While PW10- Prakash Patil, PSI learnt that the accused in C.R. No.275 of 2009 were also injured and were admitted in Purohit Hospital. He visited Purohit Hospital. Accordingly he recorded the statement of PW1-Vilas Patil pursuant to which

Crime No.276 of 2009 against aforesaid Respondents came to be registered for offences under sections 307, 323, 504, 143, 144, 147, 148 and 149 of the IPC and under section 37(1), 135 of the Bombay Police Act.

4. PW10-Prakash Keshav Patil, PSI visited the place of the incident and conducted the scene of offence panchanama and seized the incriminating material lying at the place of the incident. He recorded the statement of the witnesses, arrested the accused and on completion of investigation filed the charge sheet before the JMFC, Panvel. The case being sessions triable was committed to the Sessions Court, Raigad and registered as Sessions Case No.59 of 2010.

5. It is to be noted that the Crime No.275 of 2009 was also investigated and charge sheet was filed against PW1-Vilas Patil, PW2-Sujit Patil, PW3-Sandeep Patil, PW4-Kashinath Patil and others for forming unlawful assembly and committing murder of Anil, attempting to commit murder of Manohar and for causing injuries to Deepak, Pravin, and others and thereby committing offences under sections

Sections 143, 144, 147, 148, 302 r/w. 149 of the Indian Penal Code. The said case was committed and registered as Sessions Case No.134 of 2009. The prosecution had adduced evidence in both cases. By judgment dated 10th May, 2013 the learned Judge convicted the accused in Sessions Case No.134 of 2009 arising from C.R. No.275 of 2009. By the judgment of the same date the learned Judge acquitted the accused in Sessions Case No.59 of 2010 arising from C.R. No.276 of 2009. The judgment in Sessions Case No.134 of 2009 has been challenged by the accused in Criminal Appeal No.667 of 2013 and 668 of 2013 whereas the judgment of acquittal in Sessions Case No.59 of 2010 was challenged by the State as well as the complainant by filing the present appeals.

6. The learned APP Mr. Dedia has submitted that the evidence of injured witnesses viz. PW1-Vilas Patil, PW3-Sandeep Patil and PW4-Kashinath Patil which is corroborated by the medical evidence proves that the accused /Respondents herein had inflicted serious injuries on PW1-Vilas Patil, PW3-Sandeep, PW4-Kashinath Patil and others. He has submitted that the prosecution has established that

after the initial altercation the Respondent No.1 and the deceased Anil had left the place of the incident and returned to the place of the incident with others armed with deadly weapons such as swords, hockey sticks, lathi, etc. and assaulted the complainant and the other injured prosecution witnesses. He has submitted that the evidence adduced by the witnesses amply proves that the Respondents were aggressors and they had come to the place of the incident with a common object of inflicting injuries on PW1-Vilas, PW4-Kashinath and others. He has submitted that it was not a case of free fight and that the learned Trial Judge could not have discarded the case of the prosecution and disbelieved the testimony of the injured witnesses merely because some of the Respondents/accused had sustained injuries.

7. The learned APP has further submitted that the learned Trial Judge also could not have discarded the evidence of these injured witnesses on the basis of minor omissions or variations. He has submitted that the prosecution had established the guilt of the accused beyond reasonable doubt and the learned Trial Judge has erred in

giving benefit of doubt to the accused.

8. The learned counsel for the Respondents has submitted that evidence on record amply proves that PW2- Sujit and other injured prosecution witnesses had inflicted severe injuries on Anil and had thereby committed his murder. He has further submitted that PW1-Vilas Patil and PW2- Sujit Patil and other prosecution witnesses were aggressors and that they had also inflicted serious injuries on Manohar and other Respondents herein. He has submitted that the prosecution witnesses have not explained the injuries sustained by the Respondents and deceased Anil and Manohar and had thus suppressed the genesis of the incident. He has submitted that the learned Trial Judge was therefore, justified in acquitting the accused.

9. We have perused the records and considered the submissions advanced by the learned counsels appearing for the respective parties.

10. At the outset it may be mentioned that while acquitting the accused the learned Trial Judge has held that

the prosecution has failed to establish that the Respondent No.1 and his brother Anil had gone to the village after the initial altercation and that they had returned with other accused armed with weapons. The learned Trial Judge has further held that there are material omissions, variations and improvements in the prosecution case. The learned Trial Judge has further held that the Respondents had also sustained injuries, which are not explained by the prosecution. The learned Trial Judge has held that the injuries on the person of PW1-Vilas Patil and PW4-Kashinath Patil were not grievous or life threatening. The injuries sustained by PW3-Sandeep and Alpesh were also minor injuries. The learned Judge has held that the prosecution has failed to establish that the Respondents herein had attempted to cause death of PW4-Kashinath Patil or injuries to the other prosecution witnesses. In view of the said findings the learned Trial Judge acquitted the accused of offences under sections 307 r/w. 149, 323 r/w. 149, 143, 144, 147, 148, 504 of the IPC and under section 37(1)/135 of the Bombay Police Act.

11. It may be mentioned that in **Ghurey Lal Vs. State of U.P. 2008 (2) UJ SC 0991**, the Apex Court after considering the previous decisions, crystallized the legal position as regards the scope of the powers of the Appellate Court in dealing with the appeal against acquittal as under:

“73. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

i) The trial court's conclusion with regard to the facts is palpably wrong;

ii) The trial court's decision was based on an erroneous view of law;

iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

v) *The trial court's judgment was manifestly unjust and unreasonable;*

vi) *The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.*

vii) *This list is intended to be illustrative, not exhaustive.*

2. *The Appellate Court must always give proper weight and consideration to the findings of the trial court.*

3. *If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused."*

12. **In Mrinal Das vs State of Tripura, 2011(9) SCC**

479, the Apex Court has reiterated that:-

"It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power

and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial Court has ignored

the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed.”

13. We have scrutinised the evidence and analysed the reasoning and the conclusion arrived at by the learned Judge, keeping in view the above well settled principles laid down by the Apex Court. It is not in dispute that PW1- Vilas Patil, PW2-Sujit Patil, PW3-Sandeep Patil and PW4-Kashinath Patil as well as the Respondents are closely related to each other. The relations between both the groups are strained due to land dispute and the animosity between both the groups led to the incident of 5.7.2009, in which Anil, brother of Respondent No.1-Deepak Patil had lost his life and the Respondents as well as the complainant-PW1-Vilas Patil, PW3-Sandeep Patil and PW4-Kashinath Patil sustained injuries.

14. The testimony of the complainant-PW1-Vilas Patil as well as injured witnesses PW3-Sandeep Patil and PW4-Kashinath Patil reveals that on the relevant day PW2-Sujit

Patil and PW3-Sandeep Patil and some other boys were playing cricket on the school ground at village Patnoli. PW4-Kashinath and some others were sitting by the side of the road and watching cricket. They have deposed that, Respondent No.1-Deepak Patil and his brother Anil and Manohar got down from a Safari Vehicle and started abusing them. Thereafter they left the place and returned again with other accused/Respondents. They were armed with weapons and that they inflicted injuries on PW1-Vilas Patil, PW3-Sandeep Patil and PW4-Kashinath Patil. These witnesses have stated that they had assaulted the Respondents by means of bats and stumps in exercise of self defence.

15. It is pertinent to note that the evidence of PW1-Vilas Patil indicates that after the initial altercation the Respondents had left the place and had returned to the place of the incident after about one hour. Whereas PW2-Sujit Patil, and PW3-Sandeep Patil claim that the Respondents returned to the place of the incident within 10 to 15 minutes. The testimony of PW4-Kashinath does not indicate that the Respondents had gone to the village after the initial

altercation. In the light of the above evidence, we are unable to accept the contention that the Respondents had gone to the village after the initial altercation and returned to the place of the incident armed with weapons with an object of assaulting PW1-Vilas Patil, PW2-Sujit Patil, PW3-Sandeep Patil and PW4-Kashinath Patil and other boys from the said village. On the contrary, the evidence on record reveals that PW2-Sujit Patil, PW3-Sandeep Patil and some other boys from the village-Patnoli were playing cricket whereas PW1-Vilas Patil and PW4-Kashinath Patil and some others were sitting by the road watching the cricket match. The evidence on record reveals that Respondent No.1 and his brothers Anil and Manohar, who were returning to the village by Safari, had stopped near the place of the incident and had gone to the ground wherein PW2-Sujit Patil and PW3-Sandeep Patil were playing cricket. There was an altercation and scuffle between both the groups and they were joined by their respective family members, who had arrived at the place of the incident armed with weapons and assaulted each other.

16. The evidence of PW5-Dr. Basavaraj S Lohare, Vis-

a-vis the medical certificates reveal that PW1-Vilas Patil, PW3-Sandeep Patil, PW4-Kashinath Patil and Alpesh Patil had sustained following injuries:

Injuries sustained by PW1- Vilas Patil :-

(I) Contused lacerated wound over forehead 0.5 cm x bone deep

(II) Fracture on left humerus lower end. There was diffuse swelling at lower end of left hand.

Doctor has opined that the age of the injuries were within three hours and caused by hard and blunt object, nature of injury No.1 is simple and about injury No.2 opinion is reserved.

Injuries sustained by PW3- Sandeep Patil :-

(I) Over left tempo parietal region, measuring 10 cms x bone deep

(II) Blunt Trauma over right forearm, size diffuse swelling.

PW5-Dr. Basavraj Lohare has opined that the age of the injury was within three hours, caused by hard and blunt object and simple in nature.

Injuries sustained by PW4- Kashinath Patil :-

(I) Contused lacerated wound over right side of forehead 8 cms x bone deep.

PW5-Dr. Basavraj Lohare has opined that age of the injury is within three hours, caused by hard and blunt object, nature is simple.

Injuries sustained by Alpesh Patil :-

(I) Blunt Trauma over right knee joint, size diffuse swelling.

PW5-Dr. Basavraj Lohare has opined that age of the injury is within three hours and caused by hard and blunt object and simple in nature.

17. It is also pertinent to note that in the same incident Anil, brother of Respondent No.1 had sustained head injury and that he had succumbed to the injuries on 8.7.2009. The Respondents herein and their brother Manohar had also sustained following injuries:

Injuries sustained by Accused No.1-Deepak Patil :-

- i) Monteggia Fracture dislocation left forearm
- ii) Fracture distal phalnx right thumb
- iii) CLW over left frontal area of size 2 x 05. x 0.5 cm
- iv) CLW over left parietal area, having size 5 x 0.5 x 0.5 cms
- v) CLW on mid parietal having size 5 x 1 x 1 cm
- vi) Contusion of right forearm having size 6 x 4 cm
- vii) Contusion on left thigh having size 7 x 4 cm

Injuries sustained by Accused No.2-Praveen Patil:-

- (i) Nasal bleeding through both the nostrils

- (ii) Left black eye
- (iii) Contusion on left shoulder, size 8 x 6 cm
- (iv) Contusion over upper dorsal area size 7 x 4 cm
- (v) Extra axial haemorrhage with pneumocephalus on the left frontal area
- (vi) Fracture frontal bone, involving roof of the left orbit.
- (vii) Haemosinous left maxillary and Ethmoidal

Injuries sustained by Accused No.3-Dayanand Patil:-

- (i) Fracture left ulna on the proximal 1/3rd area
- (ii) CLW over the right tempora parietal area , size 6 x 1 x 1 cm
- (iii) CLW over left occipital area size 4 x 1 x 1 cm

Injuries sustained by Accused No.4-Kishore Patil :-

- (i) Fracture proximal ulna on left forearm
- (ii) Haematoma over occipital area , size 4 x 3 cm

Injuries sustained by Accused No.5-Prakash Patil :-

- (i) Contusion over back of neck, size 5 x 2 cm
- (ii) CLW on left supra orbital area, sized 3 x 1 x 1 cm
- (iii) CLW over left infra orbital area, size 2 x 1 x 1 cm
- (iv) Contusion over left middle finger 2 x 2 cm
- (v) Contusion over the dorsum of left hand 3 cm

Injuries sustained by Accused No.7-Pratap Patil :-

- (i) Abrasion over the left forearm area 3 x 2 cm

- (ii) Contusion over left forearm size 5 x 3 cm
- (iii) Abrasion on the dorsum of left wrist, sized 1 x 1 cm
- (iv) Contusion over left frontal area size 4 x 3 cm
- (v) Contusion on the left hand of size 3 x 3 cm
- (vii) Contusion over the left shoulder, size 6 x 4 cm

Injuries sustained by Manohar Patil :-

- (i) Extra axial hemorrhage on left parietal region with effacement of basal cistern and cortical sulci with cerebral edema with midline shift to right side.
- (ii) Fracture right zygomatic arch and lateral wall of right orbit.
- (iii) Right black eye
- (iv) Haematoma on right parietal area size 4 x 4 cm.

18. The evidence on record thus indicates that members of both groups had sustained injuries. The evidence adduced by the prosecution does not indicate that either of the groups had assembled at the place of incident with a common intention of assaulting each other. On the contrary, it was a case of sudden free fight, in which members of both the groups had assaulted each other.

19. While considering the applicability of necessary ingredients of Section 149 of the IPC, the Apex Court in ***Kuldip Yadav & Ors. vs. State of Bihar, JT 2011 (4) SC*** has held as under:

"26) The above provision makes it clear that before convicting accused with the aid of Section 149 IPC, the Court must give clear finding regarding nature of common object and that the object was unlawful. In the absence of such finding as also any overt act on the part of the accused persons, mere fact that they were armed would not be sufficient to prove common object. Section 149 creates a specific offence and deals with punishment of that offence. Whenever the court convicts any person or persons of an offence with the aid of Section 149, a clear finding regarding the common object of the assembly must be given and the evidence discussed must show not only the nature of the common object but also that the object was unlawful. Before recording a conviction under Section 149 IPC, essential ingredients of Section 149 IPC must be established."

20. It is thus clear that the accused can be held guilty of principal section with aid of Section 149 of the IPC only if it is established that he was a member of an unlawful assembly. The members of the unlawful assembly can be held liable under section 149 of the IPC if it is shown that they knew that the offence actually committed was likely to be

committed in prosecution of the common object. It is equally true that the common object does not require prior consent and a common meeting of mind before the attack. It can develop even on spot but sharing of such an object by all the accused must be shown to be in existence at any time before the actual occurrence.

21. In the instant case there is no cogent and conclusive evidence to prove that the Respondents herein were the aggressors or that they had assembled at the place of incident with a pre meditated plan to inflict injuries on PW1-Vilas Patil, PW2-Sujit Patil, PW3-Sandeep Patil and PW4-Kashinath Patil. This being the case of free fight the accused cannot be held guilty of offence under sections 143, 147 and 148 of the IPC and further they cannot be convicted of substantive offence with the aid of section 149 or section 34 of the IPC. In other words, no constructive liability can be imposed against the accused and they can be at the most held responsible for their individual acts.

22. Now coming to the role of the individual accused,

the testimony of PW1-Vilas reveals that the Respondent No.1 Deepak and Pravin had given a blow of wooden stick on his forehead whereas Anil (deceased) had given a blow on his left hand. He has further stated that Pratap Patil, Kishore and Pradeep had also assaulted him by giving fist blows. He has stated that his uncle Kashinath and his cousins Sandeep, Alpesh and Sujit came to his rescue and the accused assaulted them with hockey sticks and wooden sticks and that they had sustained serious injuries. He has further stated that Manohar had rushed towards him with a sword. He has further submitted that Prakash Patil and Dayanand Patil had given a blow of stick on his back.

23. It is pertinent to note that in the FIR at Exh.57 this witness had not stated that the said nine persons viz. Anil Patil, Deepak, Prakash, Dayanand, Praveen, Manohar, Kishor, Pratap and Pradeep had got down from Safari and that they were armed with weapons such as hockey sticks, wooden sticks, etc. He had also not stated that the other accused had assaulted him with fist blows. He had also not stated that Manohar had rushed towards him with a sword. These

omissions have been brought on record and proved through the Investigating Officer. This witness has admitted in his cross examination that he had not stated in his FIR that Kishore, Pratap Vithoba and Pradeep Mahadeo had assaulted him with fist blows, hockey stick, sword, Lathi etc. He has stated that these persons were not armed with such weapons. He has further stated that in his examination in chief he had falsely stated that Kishore Parshuram, Pratap Vithoba and Pradeep Mahadeo were armed with weapons.

24. PW2-Sujit Patil has not attributed any specific role to any of the accused/ Respondents but has made a general statement that Anil, Deepak, Prakash, Manohar, Dayanand, Praveen, Kishore, Pratap and Pradeep had got down from the vehicle and assaulted Vilas by means of hockey sticks, wooden rod, etc. PW4-Kashinath Patil has made a general statement that all the Respondents as well as the deceased Anil had assaulted the boys, who were playing cricket. PW4-Kashinath Patil claims that he was assaulted by Deepak and Prakash.

25. The evidence on record indicates that PW1-Vilas

Patil had sustained grievous injury, which was inflicted by Anil (deceased). PW3-Sandeep Patil, PW4-Kashinath Patil and Alpesh Patil had sustained simple injuries. There is no cogent and conclusive evidence to prove as to which of these accused had inflicted the said injuries. Furthermore, the evidence of the injured witness suffers from material omissions, variations and improvements. The prosecution has also suppressed genesis of the incident. In the light of above, the view taken by the Trial Court is probable and reasonable. We do not find any compelling or substantial reasons to disturb the order of acquittal.

26. Under the circumstances and in view of discussion supra, both the appeals are dismissed.

(ANUJA PRABHUDESSAI, J.) (SMT. V.K. TAHILRAMANI, J.)