

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

CRIMINAL APPEAL NO.193 OF 2000

The State of Maharashtra
through Padmakar @ Bandu s/o Angad
Phad, Age 20 years, Occ. Education,
R/o Dharmapuri, Parli Rural Police
Station, District Beed.

... APPELLANT

VERSUS

1. Ramrao s/o Ambaji Phad,
Age 43 years, Occ. Agriculture,
R/o Dharmapuri, Tq. Parli,
District Beed.
2. Yankati s/o Vaijnath Phad,
Age 35 years, Occ. and
R/o as above.
3. Navnath s/o Ramrao Phad,
Age 24 years, Occ. and
R/o as above.
4. Prabhakar s/o Trimbak Dahiphale,
Age 33 years, Occ. and
R/o as above.
5. Laxman s/o Manik Phad,
Age 36 years, Occ. and
R/o as above.
6. Maroti s/o Dnyanoba Phad,
Age 36 years, Occ. and
R/o as above.
7. Vaijnath s/o Ambaji Phad,
Age 65 years, Occ. and
R/o as above.

... RESPONDENTS

.....
Shri S.D. Ghayal, A.P.P. for appellant
Shri S.P. Chapalgaonkar, Advocate for respondents No.2 to 7
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CORAM: T.V. NALAWADE AND
 SUNIL K. KOTWAL, JJ.

DATED : 11th July, 2017.

JUDGMENT (PER SUNIL K. KOTWAL, J.) :

1. This appeal is directed by State of Maharashtra against the judgment and order of acquittal, passed by 2nd Additional Sessions Judge, Ambajogai in Sessions Case No.83/1994. The respondent No.1 to 7 are original accused No.1 to 7 respectively.

2. From the memo of Criminal Revision Application No.258/2000 which is filed by Navnath Ramrao Phad, who is son of respondent No.1 in this Appeal, it appears that, respondent No.1 Ramrao s/o Ambaji Phad died before filing the said revision.

3. Facts leading to institution of this appeal are that, the respondent No.1 to 7 were prosecuted for the offences punishable under Sections 302, 307, 338, 353, 147, 148 read with Section 149 of the Indian Penal Code. Prosecution case in brief is that, in the month of December 1993, fair of Goddess was organized at village Dharmapuri. As per usual practice, on 29/12/1993, competition of wrestling was arranged in the wrestling ground prepared in the field property of Shri Babu Dashrath Phad which is adjacent to Dharmapuri locality. Complainant Padmakar Angad

Phad was one of the competitor wrestler. The family of complainant and accused persons carried enmity since last many years on account of various reasons. Criminal cases were pending against either parties. On the date of incident, i.e. 29/12/1993 in the wrestling competition, complainant Padmakar Phad started wrestling with the wrestler from village Badwani. In that fight, Padmakar won the wrestling and when he was garlanded with the currency note garland, some spectators gathered on the eastern side of mob, started shouting that wrestling was not completed. On the other hand, villagers from Dharmapuri and some other persons started shouting from the side of winner Padmakar. On that count, quarrel arose and accused No.6 Maroti assaulted Maroti Dnyanoba Phad by footwear. There was a chaos and bustling among the villagers and the mob gathered on the ground of wrestling. That time, Mukinda Phad (deceased) and his son Krushna Phad (P.W.6), Sukdeo Vithal Phad (P.W.5), Angad Vithal Phad sustained injuries due to pelting of stones by accused No.1 to 7. The police staff present on the spot tried to intervene, but they could not succeed. There was great chaos and heavy pelting of stones. Mukinda Phad, his son Krushna Phad, Sukdeo and others tried to run away towards village, that time, accused No.1 to 7 chased them and pelted stones towards them. Ultimately, Circle P.I. H.N. Bhogle rushed on the spot with the additional police force and he started caning and dispersed the mob. During

that incident, Mukinda Phad, Shrikrushna Phad, Sukdeo Phad, Angad Phad, Padmakar Phad and police constable Shivaji Petkar as well as C.P.I. Shri Bhogle sustained injuries. They were referred for medical examination to Dr. Anant Deo (P.W.4) at P.H.C., Dharmapuri. He provided first aid to the injured and issued injury certificates (Exhs.62 to 72). On the same day, Padmakar Angad Phad (P.W.2) approached C.P.I. Bhogle at Brahmapuri and lodged F.I.R. (Exh.57), which was sent to Police Station, Parli. P.S.I. Sayed Misbahullah (P.W.10) received F.I.R.. and conducted investigation of this case. Mukinda Phad and other injured were referred to S.R.T.R. Hospital, Ambajogai. However, condition of Mukinda Phad deteriorated and at last he succumbed to his injuries on 1/2/1994. Dr. Goli (P.W.7) performed post mortem examination of dead body of Mukinda Phad and opined that the cause of death of Mukinda was due to head injury in the form of scalp contusion, extra dual haematoma, brain contusion, sub-dual haematoma and intra cerebral haemorrhage with fracture of skull vault and base. Accordingly, he issued provisional death certificate (Exh.76) and finally post mortem notes (Exh.77). On the basis of F.I.R., initially offences were registered under Sections 147, 148, 353, 325, 307 read with Section 149 of the Indian Penal Code. Subsequently, after death of Mukinda Phad, offence punishable under Section 302 of the Indian Penal Code was added.

3. During the course of investigation, spot panchanama (Exh.60) was prepared and blood stained clothes of Mukinda Phad, Govinda Phad and Sukhdeo Phad were seized under panchanama (Exh.53 and 54). After completion of the investigation, charge sheet was submitted before the Judicial Magistrate, First Class, Ambajogai.

4. Offence punishable under Section 302 of the Indian Penal Code being exclusively triable by Court of Sessions, this case was committed to the Sessions Court, Ambajogai. Charge (Exh.40) was framed against accused No.1 to 7 for the offence punishable under Sections 147, 148 of the Indian Penal code and under Sections 307, 338, 353, 302 read with Section 149 of the Indian Penal Code. Accused pleaded not guilty and claimed trial.

5. Prosecution examined 10 witnesses. Defence of the accused was of total denial.

6. After considering the evidence placed on record, learned trial Court pleased to acquit accused No.1 to 7 of the offences punishable under Sections 147, 148 of the Indian Penal Code and Sections 307, 338, 353, 302 read with Section 149 of the Indian Penal Code. Therefore, this appeal arises.

7. Learned A.P.P. for the State submitted that, the prosecution examined eye witnesses including injured witnesses

and though the testimony of eye witnesses is corroborated by medical evidence, learned trial Court erroneously acquitted the accused persons.

8. On the other hand, learned defence counsel supported the judgment passed by the trial Court pointing out that in F.I.R. (Exh.57), the particular role played by particular accused is not mentioned. He submitted that, because the mob gathered on the spot to watch the wrestling competition, there was no unlawful object of the assembly and no evidence is available that the accused persons were the members of unlawful assembly and in furtherance of object of their assembly they killed Mukinda Phad or injured other witnesses. Contention of the defence counsel is that, at the time of exchange of stone pelting, there was chaos and to disperse the rioting mob, police started cane charge, in the result, many persons sustained injuries. The deceased was one of those injured persons. He submitted that, the accused had no motive to commit murder of Mukinda Phad.

9. The prosecution examined 9 witnesses. Out of these witnesses, only Padmakar (P.W.2), Sukdeo (P.W.5), Krushna (P.W.6) and C.P.I. Shri Bhogle (P.W.9) are the injured witnesses as well as eye witnesses of the occurrence. Babu Phad (P.W.1) has merely acted as panch witness of seizure of clothes of the

deceased and injured (Exhibits 53 and 54). Therefore, his evidence does not carry material value. Even Laxman (P.W.3) is only panch witness who was present at the time of preparation of spot panchanama (Exh.60). From the spot panchanama (Exh.60), it emerges that, about 15 small and large stones were seized from the spot of the occurrence and only 2-3 stones were stained with blood. However, C.A. report of those blood stained stones is not placed on record to ascertain whose blood is found on the stones lying on the spot. Therefore, the oral testimony of Laxman (P.W.3) as well as spot panchanama (Exh.60) does not carry any importance.

10. From the testimony of Padmakar Phad (P.W.2), it emerges that, on the date and time of the occurrence in wrestling competition at village Dharmapuri, he was wrestling with one wrestler from Badwani and about 2500 spectators were watching that competition. According to this witness, he won that wrestling and at that time, some group amongst the mob started shouting that the wrestling was not over. From the testimony of this witness, it emerges that, accused No.6 Maroti threw footwear on the person of Shivaji Phad and that time, Mukinda Phad came on that spot and suggested that all should go towards house and accordingly, when this witness, his father, uncle Sukdeo and Shivaji Phad started towards the house, all accused except accused No.6 came forward and started pelting

stones. Due to stone pelted by accused No.2, Yankati, Mukinda Phad fell down and accused No.2 instigated by uttering that all should be beaten. Thereafter, accused No.1 Ramrao, accused No.3 Navnath, accused No.4 Prabhakar and accused No.5 Laxman as well as accused No.7 Vajinath started pelting stones towards Mukinda. When son of Mukinda namely Krushna Phad tried to intervene by falling on the body of Mukinda, he also sustained injuries. When Angad Phad tried to intervene, he sustained injury. Even Krushna Phad and Sukdeo sustained injuries on their head and forehead respectively. According to this witness, Angad sustained injury on chest and this witness sustained injury on the left side of his forehead on the upper scale of his eye-brow. This witness clarified that Krushna sustained injury due to stone pelted by accused No.2 Yankati, Sukdeo sustained injury due to stone pelted by accused No.1 Ramrao and Angad sustained injury due to stone pelted by accused No.2 Yankati and this witness sustained injury due to stone pelted by accused No.3 Navnath. From the testimony of this witness, it emerges that, thereafter police reached on the spot and they had flown sticks in the air and thereby dispersed the accused persons from the spot. This witness has proved his report to one P.S.I. who was present at Grampanchayat office at Dharmapuri (Exh.57).

11. It is to be noted that, after going through cross-

examination of this witness together with evidence of investigating officer (P.W.10), it emerges that, the major portion of the testimony of this witness regarding actual occurrence is proved as material omission. This witness has contradicted his previous statement before police on every material particular. Even the genesis of the occurrence i.e. throwing footwear by accused No.6 towards Shivaji Phad and thereafter appearance of Mukinda Phad on that spot is proved as omission. Therefore, due to total variance in between statement of this witness before the Court and before the police, the testimony of this witness cannot be treated as trustworthy to base the conviction.

. Even the testimony of so called witness Sukdeo Phad (P.W.5) that when Mukinda Phad, Padmakar Phad and other persons along with this witness started proceeding towards their village, that time accused No.2 Yankati reached on the spot and pelted stone on the head of Mukinda and accused No.1 Ramrao injured this witness by stone, is proved as material omission. The major portion of the testimony of this witness is in conflict with the statement before the police. It is to be noted that, this witness deposed that Krushna Phad (P.W.6) intervened and tried to save his father by falling over his body. However, Krushna Phad (P.W.6) though entered the witness box, nowhere deposed that he fell over the body of his father and tried to save him. On

the other hand, this witness has brought on record different theory that each accused came on the spot while running and the injured particular witness. From the cross-examination of this witness, it also emerges that, during the occurrence of the incident, he did not try to save his father in any manner and even he did not try to lift his father who was lying on the ground. Thus, due to totally contradictory statement of this witness, we hold that this witness is not trustworthy. On the other hand, from his cross-examination, it emerges that, there are major contradictions in his statement, which shakes the basic version of this witness.

12. On the other hand, Circle Police Inspector Shri H.N. Bhogle (P.W.9) who reached on the spot at about 3.00 p.m. and saw that accused were pelting stones and, therefore, he used police force to disperse the accused persons. This witness has proved the F.I.R. (Exh.57) lodged by Padmakar Phad. However, from his cross-examination, it emerges that, when he reached on the spot, mob of about 2500 persons was present on the wrestling ground and stones were coming on all sides. From his cross-examination, it also emerges that, he also directed to use sticks to the police force to disperse the mob. Thus, the picture on the spot of occurrence becomes clear that there was heavy stone pelting from all the sides on wrestling ground, and to disperse the said mob, police force started caning charge. Even

from the cross-examination of medical officers Dr. Deo (P.W.4) and Dr. Goli (P.W.7), it emerges that, injuries sustained by injured and even by deceased are possible due to stick blows. Therefore, possibility cannot be ruled out that injured persons including deceased Mukinda sustained injuries due to stick blows during caning by police or they sustained injuries during stone pelting by either sides. In the circumstances, by no stretch of imagination it can be said that, in furtherance of common object of unlawful assembly and being member of that unlawful assembly accused caused caused deadly injury to Mukinda Phad or caused any type of hurt to other prosecution witnesses. In fact, as per prosecution case itself accused persons, complainant party and other villagers gathered on the spot to watch the wrestling competition and there was no unlawful object of the assembly. The dispute started in spur of moment, which resulted bustling and chaos and exchange of stone pelting. Therefore, nobody can be individually blamed for the injuries sustained by deceased Mukinda Phad or the injured witnesses.

13. In the result, the conclusion arrived by learned trial Court that prosecution failed to establish guilt of the accused beyond reasonable doubt under Sections 147, 148 of the Indian Penal Code or under Sections 353, 307, 338, 302 read with Section 149 of the Indian Penal Code is correct. By no stretch of imagination it can be held that the view taken by learned trial

Court is improbable view which calls for interference by this appellate Court.

14. In the result, this appeal fails, deserves to be dismissed. Hence, the following order :

ORDER

- (i) Criminal Appeal No.193/2000 is dismissed.
- (ii) Under Section 437-A of the Code of Criminal Procedure, respondents No.2 to 7 shall execute before the trial Court bail bonds with sureties for the amount of Rs.5000/- (Rupees five thousand) each to appear before the Supreme Court as and when notices are issued to them in respect of any proceedings filed against this judgment and the said bail bonds shall remain in force for a period of six months from today.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

fmp/