

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 566 OF 2001

The State of Maharashtra,
Through P.S.O. Udgir,
District Latur.

....Appellant.

Versus

1. Gunderao s/o. Ganpat Badgane,
Age 30 years, Occu. Agriculture,
2. Bapurao s/o. Ganpat Badgane,
Age 32 years, Occu. Agriculture,
3. Rambhabai w/o. Ganpat Badgane,
Age 53 years, Occu. Agriculture,
4. Govinda s/o. Narsing Badgane,
Age 60 years, Occu. Nil,
5. Vithal s/o. Hulappa Badgane,
Age 34 years, Occu. Agriculture,
6. Narsing s/o. Govind Badgane,
Age 45 years, Occu. Business,

All R/o. Ravi, Tq. Mukhed,
Dist. Nanded.

(Appeal is abated as against
respondent Nos. 1 & 4 as per
Hon'ble Court's order dated
13.10.2017)

....Respondents.

Mr. V.S. Badakh, APP for appellant/State.

Dr. Supriya L. Pansambal h/f. Mr. V.D. Gunale, Advocate for
respondents.

**CORAM : T.V. NALAWADE AND
ARUN M. DHAVALA, JJ.**

DATED : November 8, 2017

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The appeal is filed against judgment and order of Sessions Case No. 19/2001 (Old No. 185/1997), which was pending in the Court of Additional Sessions Judge, Udgir. The respondents are acquitted of the offences punishable under sections 302, 201, 34 etc. of Indian Penal Code ('IPC' for short). Both the sides are heard.

2) In short, the facts leading to the institution of the present proceeding can be stated as follows :-

Deceased Ganpat Hulappa Badgane was the father of accused Nos. 1 to 3. Accused No. 5 is real brother of the deceased and accused No. 4 is the father of accused No. 6.

3) The incident in question took place on 16.6.1997 at 7.30 a.m. in the field of deceased bearing Survey No. 713 of Dhadaknal. The deceased was not listening to his sons and he was not allowing his sons to cultivate the land and he was not effecting partition of the property. At the time of incident, all the accused went to the field. The deceased was doing some agricultural operation and he was having axe. Same axe was used by the accused and by using that axe, Gunderao gave blows on the person of Ganpat. Others took part in the incident by holding the deceased when the assault was being made and the widow of the deceased was instigating others to

finish him. The dead body of Ganpat was taken to village Ravi and there, it was burnt by the accused persons. Nobody gave report in respect of this incident. One anonymous application was received in which the aforesaid incident was disclosed. Police of Udgir Rural Police Station made investigation of the matter and then the persons of that village disclosed the aforesaid incident.

4) Sundarabai Badgane is aunt of the deceased and Sopan is grandson of Sundarabai. Their land is adjacent to the land Survey No. 713 and on that morning by chance they had witnessed the incident.

5) During investigation, accused No. 1 Gunderao, son of deceased gave statement under section 27 of the Evidence Act to police and on the basis of that statement, one axe came to be recovered from the house. The axe came to be seized. The prosecution examined aforesaid two eye witnesses and examined witnesses to prove the recovery of weapon at the instance of accused No. 1 Gunderao. In all seven witnesses were examined by the prosecution. Accused took the defence of total denial.

6) The Trial Court convicted Gunderao, accused No. 1 for offence punishable under section 304, Part II of IPC and he was

sentenced to suffer rigorous imprisonment for ten years. In this appeal, it was submitted that accused No. 1 Gunderao and accused No. 4 Govinda are dead and after verification, the proceeding against them is ordered to be abated. The remaining respondents are acquitted by the Trial Court.

7) The prosecution case rests mainly on the evidence of Sundarabai (PW 5) and her grandson Sopan (PW 6). Only on the basis of their evidence, the case of prosecution that incident took place on 16.6.1997 at 7.30 a.m. in the land of Ganpat can be presumed. The evidence given by prosecution does not show that anything was noticed in this land in the month of July when police realized that incident had taken place in the land of Ganpat on 16.6.1997. It appears that some witnesses are examined like Gyanoba (PW 4) showing that many persons had attended the funeral which had taken place at village Ravi and he had even seen blood on the clothes of Ganpat. However, according to him, no initiative was taken by him and the information was not passed by him to anybody including the police. The evidence of Sayed Noor (PW 1) shows that he made some investigation which is mainly of recording statements and recovery of weapon. But, he could not collect material on the basis of which it can be inferred that incident did really take place in the field of Ganpat as stated by the aforesaid

two witnesses.

8) Police statements of the witnesses were recorded after more than one month of the incident. Both Sundarabai (PW 5) and Sopan (PW 6) have deposed that on that morning, they saw incident from their own field and they noticed that Gunderao was assaulting the deceased with axe and other accused were present in the vicinity. Accused Govind Badgane is brother of her husband. In her evidence, she has specifically taken names of Gunderao and widow of the deceased. The name of one Bapurao is also taken, but active role is attributed only to Gunderao. The evidence of Sopan, who was aged about 14 years on the date of deposition i.e. 6.7.2001 shows that he has taken the names of Bapurao, Gunderao, Vithal and Rambhabai. He has also attributed the role of assault to Gunderao only. The statements under section 164 of Criminal Procedure Code were recorded and they were confronted to them during cross examination.

9) The discussion of the evidence shows that the funeral was not completed secretly and more than 50 persons had attended the funeral. Only one of those persons had come forward, but his police statement was belated. Similarly, statements of so called aforesaid two eye witnesses were recorded late i.e. after about one

month of the date of incident. The map of scene of offence is not prepared and it is not possible to say anything as to from how much distance these two witnesses could have seen the incident.

10) Even if the evidence given by the aforesaid two witnesses is accepted and relied upon as it is, it can be said that the evidence is mainly against Gunderao and he is dead. In view of these circumstances, this Court holds that it is not possible to interfere in the decision of the Trial Court by which the remaining accused/ respondents are acquitted. In the result, the appeal stands dismissed.

[ARUN M. DHAVALA, J.]

[T.V. NALAWADE, J.]

ssc/