

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

CRIMINAL APPEAL NO. 16 OF 2002

The State of Maharashtra,
Through P.S.O. Bori,
Tq. Jintoor, Dist. Parbhani.

... Appellant

VERSUS

1. Limbaji S/o Panditrao Poundal
Age : 30 years, Occu. Agriculture.
2. Prakash S/o Panditrao Poundal,
Age : 25 years, Occu. Agriculture.
3. Pama @ Parmeshwar S/o Tukaramji Poundal,
Age : 27 years, Occu. Agriculture.
4. Pandit S/o Umrao Poundal,
Age : 55 years, Occu. Agriculture.
5. Purabhaji S/o Shankarrao Giram,
Age : 27 years, Occu. Agriculture.
6. Namdeo S/o Tukaram Poundal,
Age : 32 years, Occu. Agriculture.

All accused R/o. Sonna, Tq. Jintoor,
Dist. Parbhani.

... Respondents
(Ori. Accused)

.....
Mr S. J. Salgare, APP for the appellant/State
Mr P. N. Nagargoje, Advocate for respondents (appointed).
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**CORAM : T. V. NALAWADE &
A. M. DHAVAL, JJ.**

DATE : 24th November, 2017.

JUDGMENT (A. M. DHAVALE, J.) :-

1. In Sessions Case No. 149/98, the ld. Addl. Sessions Judge, Parbhani by judgment dt. 07.09.2001, acquitted all six accused who were charged for offences u/s 147, 148 and 302 r/w 149 of IPC. Aggrieved thereby the State has preferred this appeal.

2. The prosecution was set into motion on the FIR lodged by PW3-Shyamrao Nagare on 18.06.1998 at 09:45 p.m. at Bori Police Station, Tq. Jintur, Dist. Parbhani. As per the FIR, PW3 Shamrao was having agricultural land at Koudgaon and Sonna. Deceased Munjaji was son of his sister in law. He was previously serving in Police Department but his services were terminated. He thereafter purchased land of 1 acre and 5 guntha at Sonna from accused no. 4—Pandit and accused No. 1-Limbaji. Both of them were always telling him that he should return his agricultural land and take back his money. On 18.06.1998, PW3 Shamrao resident of Koudgaon had gone to Sonna for getting his agricultural equipments repaired. That time, Munjaji met him and told him that he had brought seeds and was going to sow seeds. At 01:00 p.m., he requested him to accompany him in the operation of sowing. Both of them found that three labourers including two ladies of accused no.2-Prakash were doing the work in the field of Munjaji. Munjaji told them that he had

purchased the said land and they should not sow the said land. Then those labourers left the spot. Accused No. 4 Pandit that time came there and directed his labourers to go to the village and requested Munjaji to come to him for talk. After sometime Munjaji and PW3-Shamrao again met accused no. 2 – Prakash, accused No. 1 Limbaji and accused no. 4 Pandit near the house of Ranga Poundal. They discussed that the agricultural dispute between them should be compromised. Then PW3 Shamrao went to a carpenter. At about 05:00 p.m., he heard voices of quarrel from the side of road and he came there. He found that, Munjaji was lying there and accused nos. 1 to 6 were beating him. PW3 Shyamrao found that there were profusedly bleeding injuries on the thighs of both legs of Munjaji. Munjaji told him that, accused nos. 1 to 6 were annoyed as he was not returning their field and assaulted him with axe, stone, sticks and also gave blows of stone on his private parts. Then PW3 called PW4 Nathrao PW5 Shrirang from Jalalpur with their bullock-cart. They came by bullock-cart upto Asegaon and then brought Munjaji in a Jeep from Asegaon to Bori. By the time Munjaji came into the hospital, he became unconscious and he was declared brought dead.

3. On the basis of such FIR, the crime was registered at C.R. No. 0056/98 u/s 147, 148, 149, 302 IPC and the offence was

investigated into. The investigation reveals that, there were oral dying declarations given by deceased Munjaji before three witnesses Pws 3, 4 & 5. Besides, there is additional evidence of recovery of blood stained axe and blood stained clothes from the accused persons. After completion of usual investigation, the charge-sheet was submitted in the court. In due course, the case was committed to the court of sessions.

4. Ld. Addl. Sessions Judge, Parbhani framed charge at Exh.9. The accused pleaded not guilty. The prosecution examined eight witnesses. It is the defence of the accused that, due to long standing land dispute, they have been falsely implicated. The ld. Addl. Sessions Judge accepted the defence case and acquitted the accused. Hence, this appeal.

5. Ld. APP - Mr S J Salgare has argued that there is convincing evidence of enmity and dying declarations given by Munjaji before Pws 3 to 5. There is also recovery of axe by accused no. 1 - Limbaji and accused no. 2 - Prakash. The clothes of the accused were also seized and those disclosed blood stains of human.

6. Per contra, Mr Nagargoje, learned counsel (appointed) for the respondents/accused argued that, the evidence of PWs 3 to 5 on dying declarations is contradictory to each other. There is no proper discovery as the evidence did not disclose that any of the accused had disclosed the spot where the muddemal weapons or clothes were concealed. The admissions disclosed that the statements allegedly made by accused for discovery were not voluntary as their hands were tied with a rope. the articles seized were not properly seized. There is delay in lodging the FIR. There are only two incised wounds and the evidence on record that Munjaji was assaulted by six persons is not consistent with the medical evidence. The evidence cannot be accepted partly only against some of the accused when it is a clear case of false implication. The view taken by the Id. trial Judge is reasonable and probable and no interference is called for.

7. The points for our consideration with findings thereon are as follows.

Sr. No.	Point	Finding
(i)	Whether deceased Munjaji met with a homicidal death?	In the affirmative.
(ii)	Whether accused nos. 1 to 6 have committed murder of Munjaji?	Not proved.

(iii)	Whether accused nos. 1 to 6 in prosecution of the common object used criminal force and thereby committed rioting?	Not proved.
(iv)	Whether accused nos. 1 to 6 were armed with deadly weapons at the time of being members of unlawful assembly?	Not proved.
(v)	What order?	The appeal is dismissed.

REASONS

8. The prosecution has examined eight witnesses and produced documents as follows.

(A) **Witnesses to oral dying declarations :**

- (i) PW3-Shamrao, the informant (FIR Exh. 62).
- (ii) PW4 - Nathrao, maternal uncle of the deceased Munjaji.
- (iii) PW5 - Shrirang.

(B) **Panchas :**

- (i) PW1 Rambhau is a panch to the seizure of clothes of the accused [Panchanama Exh. 49 to 58]. His evidence is of no use for the prosecution. Ld. APP has cross-examined him

with the permission of the court. Nothing useful is brought on record.

- (ii) PW2 Narayan, panch to the Spot Panchanama Exh. 60, turned hostile.

(C) **Medical Evidence :**

- (i) PW6 Dr. Nusarat Sultana, who has conducted post-mortem (PM notes Exh. 73) and issued provisional death certificate.

(D) **Investigating Officer :** PW7 Laxman Mankawar, PSI has drawn

- (i) Inquest panchanama Exh. 47.
- (ii) Spot panchanama Exh. 60.
- (iii) Memorandum of accused No. 1 - Limbaji Exh. 56 and discovery of Axe (article 1).
- (iv) Memorandum of accused no .2 -Prakash, Exh. 57 and discovery of another axe (article 2).
- (v) He has also deposed about seizure of guru shirt and pant (articles 3 and 4) and discovery statements of accused - Prabhakar (?) Exh. 58 and recovery of stick (article no. 5). He had seized clothes of the deceased under seizure memo

Exh. 52.

9. PW8 - PSI Subhash Bhujang, he has seized clothes of accused nos. 3, 4 and 6 vide seizure panchanama Exh. 49 to 51. He had sent clothes and other articles to the Chemical Analyzer. The CA reports are at Exh. 82 to 87.

10. **Point No. 1** : Whether the death is homicidal?

There is evidence of PW3 to PW5 that the deceased was having profusely bleeding injuries on his thighs. They had taken him to Rural Hospital, Bori where he was declared dead. Inquest panchanama is at Exh. 47. PW6 Dr. Sultana has conducted post-mortem. Her evidence and PM notes disclose that the deceased was having two external injuries namely (i) Incised wound over right thigh medially in middle 1/3, oblique 7 cm x 3 cm x 4 cm. and (ii) Incised wound on lt. Leg upper 1/3, laterally just below knee jt. Oblique 2 cm x 3 cm x 1 cm x 1cm. The PM report Exh. 73 proved by PW6, shows the cause of death and the same is deposed by PW6 Dr. Sultana that it was cardio respiratory failure due to haemorrhagic shock due to injury to large blood vessel (rt. Femoral artery). Those injuries were caused by sharp weapon. Those could be caused by axe article 16 but could not be caused by axe court article 15. In the light

of the evidence on record, it is not disputed and the evidence proves it was a case of homicidal death.

11. The main evidence against the accused is in the form of oral dying declarations. PW3 Shamrao is husband of sister of mother of deceased Munjaji. He was also having agricultural field at Sonna where Munjaji had purchased one field from the accused persons. He deposed that, on 18.06.1998, he had gone from Kaudgaon to Sonna for repair of agricultural equipments. He met Munja there. He had accompanied Munjaji and found that the labourers of the accused were doing sowing operations in the field of Munjaji. On their arrival, those labourers left the spot. Thereafter, Munjaji was talking with all the accused near the house of Rangubai and he was standing beside them. The accused were asking Munjaji to return the land and Munjaji was asking to refund the money. They agreed to settle the dispute on the next day. Then PW3 went to a Carpenter and after 10-15 minutes, he heard commotion. He came there and found that Munjaji was lying on the road and all the accused were seen by him near Munjaji. On seeing him, they left the spot. He found that, Munjaji was having injuries on his right and left legs caused by means of axe. Munjaji asked him to call his uncle Nathrao PW4 and he called Nathrao and PW5 Shrirangrao and one Balasaheb. Then

PW3 brought bullock-cart of his brother-in-law and Munjaji was put into it. He was taken in bullock-cart upto Asegaon. PW3 Shamrao stated that, Munjaji was taking the names of all the accused and told him that all of them had assaulted him and he should be immediately taken to the hospital. Then at Asegaon, a Jeep could be arranged and in the Jeep the deceased Munjaji was moaning. They went to Rural Hospital Bori in Jeep where the doctors declared him brought dead. His FIR is at Exh. 62.

12. PW4 Nathrao has supported PW3. He stated that on the day of incident at 05:00 p.m. Shamrao came running to him and told that Munjaji was attacked and they should go there. He found Munjaji lying in a pool of blood with injuries to his thighs and private parts. They were followed by Shrirang and Balasaheb. His further evidence of taking Munjaji by bullock-cart and Jeep is as per evidence of PW3. He also deposed that in the Bullock-cart, Munjaji told him that Limbaji, Prakash, Pandit, Namdeo, Pramod and Purbha (the accused) assaulted him with axe, stone and stick. He stated that, Munja was talking with them till they reached village Asegaon.

13. PW5 Shrirang seems to be an independent witness. He stated that, on the day of incident when he was going to his home, he

heard hue and cry. Son of Nathrao told him that, Munjaii was to be brought. Hence, he went from Jalalpur to Sonna. He saw Munjaji lying in a pool of blood with injuries to his thighs. Munja started weeping and told him that he should be carried to the doctor. Munja told that he would die as his both the legs were cut off by axe by accused no.2-Prakash and accused no. 1- Limbaji. He also stated that, Munjaji was talking till they reached Asegaon.

14. Thus, this is a case of oral dying declarations before three persons. It is not a case of three different oral dying declarations but all the dying declarations are made simultaneously before PW3, PW4 and PW5. We find that, this oral dying declaration is not reliable and trustworthy for the following reasons.

- (i) As per medical evidence, deceased Munjaji had sustained only two incised injuries both on the thighs. He had not sustained any injury to the genitals. It is incomprehensible that assault by six persons would cause only two injuries.
- (ii) Both the injuries found on the person of the Munjaji were incised wounds. Therefore, the so-called dying

declaration as disclosed in the FIR and in the evidence of PW3 and PW4 that he was assaulted by six persons by sticks and stone also and assault on private parts is not supported by medical evidence.

- (iii) The evidence of PW3, PW4 and PW5 is contradictory to each other. According to PW3 and 4, all the six accused assaulted deceased Munjaji. They have not stated specifically as to who had inflicted injuries by axe, who inflicted injuries by stone and who inflicted injuries by stick. PW5 Shrirang however stated that deceased-Punjaji told him that only accused nos. 1 and 2 inflicted injuries of axe on his person.

- (iv) As per evidence of Medical Officer - PW6 - Dr. Nusarat Sultana, the incised wounds found on the person of Munjaji were possible by one of the two axes article 16 and not possible by article no. 15. It is not clear who has discovered axe article 16. The panchas to the discovery of axe have turned hostile.

The evidence of Investigating Officer PW7 PSI Mankawar discloses that the accused no. 2 made a statement. It was recorded as his version and thereafter he led him and panchas to his house and discovered one axe with long wooden handle. He identified muddemal article 2 as the said axe. He does not refer to articles no. 15 and 16. Similarly, his evidence shows that, accused no. 1-Limbaji made a statement and discovered one axe with short handle, which is article 1. Now the axes shown to the Medical Officer are articles 15 and 16 and she opined that the injuries of the deceased Munjaji were not possible by article no. 15 but were possible by article no. 16. PSI Mankawar does not refer to articles no.15 and 16 but articles no. 1 and 2. It is thus not clear which axe was deadly weapon and which was discovered by which accused. (Learned Sessions Judge should have been careful to avoid such confusion).

- (v) Besides, when Munja was taken to Rural Hospital, Bori, he was declared brought dead. It is not clear when he died, upto what time he was conscious and

whether he was physically and mentally fit to make oral declaration.

15. Besides, the evidence regarding discovery is not at all convincing. The panch witnesses to the discovery have turned hostile. PW7 PSI Mankawar has not deposed the statement made by accused nos. 1 and 2 in *verbatim*. He ought to have disclosed which spot was shown by the accused from where he was going to discover the weapon of offence. He has not disclosed the spot. PW7 PSI Mankawar has admitted that he did not seal the articles seized. He has not deposed about keeping them in a safe custody till sending them for chemical analysis. There is also evidence that when the alleged discovery was made, the hands of the accused were tied with rope and therefore the alleged statements made by them cannot be said to be voluntary. In view of these lacunae, it is difficult to connect the CA report disclosing the blood of the accused to the muddemal weapons axes. Besides, these axes were not shown to PW3 who had seen all the accused present on the spot and stated that on his arrival they had left the spot.

16. In view of the material inconsistencies in the evidence of PW3 to PW5 regarding the dying declarations, the evidence of oral

dying declaration is not reliable and trustworthy. When the said evidence cannot be relied, mere recovery of blood stained clothes or blood stained axe, which are also not properly proved, will not be of any help to the prosecution to prove the involvement of accused nos.1 to 6.

17. It is disclosed that, accused nos. 3 to 6 were not armed with any sharp weapon like axe. According to the alleged dying declarations, they assaulted with stones and sticks. There are no injuries of stone and sticks on the person of Munjaji and therefore it is certain that PW3 and PW4 have tried to falsely implicate accused nos. 3 to 6. In the light of these facts, the evidence of PW3 Shyamrao and PW4-Nathrao as against accused nos. 1 and 2 also becomes untrustworthy, incredible and unreliable.

18. Besides, it is noticed that the incident took place at about 5:00 p.m. The Police Station and Rural Hospital are at Bori, around 20 kms. away from village Sonna. Even considering the difficulty of conveyance, looking to the nature of injuries, the injured could have reached the hospital within one hour and when he was declared dead, immediate and prompt lodging of FIR was expected from PW3 to PW5 but FIR is lodged at 09:45 p.m. i.e. almost around four hours

after the incident. Time of around one and half hour journey and inquiry in the hospital was justified but the further delay is not explained. Looking to the enmity and contradictory evidence regarding dying declaration, the delay is highly suspicious.

19. Mr. Nagargoje has also rightly argued that, the Jeep driver and bullock-cart driver were material witnesses and they could have been independent witnesses. Their evidence would have been more reliable but they are not examined.

20. In the result, we find that, the view taken by Id. trial Judge for acquittal of the accused is not only reasonable and probable but the correct view and no interference is called for in the judgment of acquittal. Hence the order.

ORDER

- (i) Criminal Appeal is dismissed.
- (ii) We appreciate the valuable assistance given by Shri. P. N. Nagargoje, learned counsel appointed to represent the respondents. His fee is quantified at Rs.5,000/-.

[A. M. DHAVALE]
JUDGE

[T. V. NALAWADE]
JUDGE