

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

CRIMINAL APPEAL NO. 614 OF 2002

The State of Maharashtra,
Through Police Station
Tad-Kalas, Dist. Parbhani.

....Appellant.

Versus

1. Ganesh s/o. Dnyanoba Wagh,
Age 27 years, Occu. Agril.,
2. Namdeo s/o. Dnyanoba Wagh,
Age 30 years, Occu. Agril.,
3. Kerba Dnyanoba Wagh,
Age 34 years, Occu. Agril.,
4. Uttam s/o. Ramrao Wagh,
Age 29 years, Occu. Agril.,
5. Raosaheb s/o. Dajiba Wagh,
Age 30 years, Occu. Agril.,
6. Prakash s/o. Dajiba Wagh,
Age 35 years, Occu. Agril.,
7. Vishnudas s/o. Ramrao Wagh,
Age 32 years, Occu. Agril.,

All Accused R/o. Takal-Gavan,
Tq. & Dist. Parbhani.

....Respondents.

Mr. S.D. Ghayal, APP for appellant/State.

Mr. S.B. Bhapkar, Advocate for respondent Nos. 1,2,3,5 & 6.

Mr. S.S. Rathi, Advocate for respondent Nos. 4 & 7.

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

DATED : November 14, 2017

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

1) The appeal is filed by the State to challenge the judgment and order of acquittal of present respondents/accused given in Sessions Case No. 222/2000, which was pending in the Court of learned Additional Sessions Judge, Parbhani. The respondents are acquitted of the offences punishable under sections 302, 325, 341, 149 etc. of Indian Penal Code ('IPC' for short) and some provisions of Bombay Police Act. Both the sides are heard.

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

First informant Tukaram Janardan Korde is resident of Taklgavan. On 21.2.2000 his uncle Pandurang had quarrel with Ganesh Ashruba Wagh on the count of use of way passing through the land of Pandurang.

3) The incident in question took place on 24.2.2000 at about 10.00 a.m. Janardan, father of first informant was taking she-buffalo towards the field for grazing. Near the school of village, his father was intercepted by persons like Namdev (accused No. 2), Kerba (accused No. 3), Ganesh (accused No. 1) and Uttam (accused No. 4). They picked up quarrel with Janardan by saying that his

brother Pandurang was unnecessarily picking up quarrels with them. Then these persons assaulted Janardan by using sticks. He sustained bleeding injuries to left hand, left leg and he sustained bleeding injuries to other portions of the body. When Tukaram, first informant went ahead to make inquiry, he was also assaulted. Rama, other relative of first informant went there, but he was also assaulted. These three persons were shifted in bullock-cart to Parbhani Government Hospital. There Tukaram gave report and the crime came to be registered for offences punishable under section 325, 34 etc. of IPC at C.R. No. 13/2000 in Tadkalas Police Station. The report was recorded in hospital and it was sent to Tadkalas Police Station.

4) During the course of investigation, three injured were referred for medical examination. Police prepared spot panchanama on 25.2.2000. No blood or other article was found on the spot of offence. The statements of injured eye witnesses and others came to be recorded. Janardan died due to aforesaid injuries in the hospital and the crime came to be converted to offence punishable under section 302 of IPC. The names of other accused were also given and so, the chargesheet came to be filed against as many as seven accused persons. Accused pleaded not guilty when the charge was framed. Eleven witnesses came to be examined. The Trial Court has not believed the eye witnesses and benefit of doubt is given to the

accused persons.

5) For proper appreciation of the evidence given by the eye witnesses, it is necessary to consider the spot panchanama first. The spot panchanama, Exh. 27 is not seriously disputed. This document and the hand sketch map prepared shows that the incident had taken place on main road having width of 20 ft. The school was at the distance of 300 ft. from the spot of incident and on both the sides of road, there were bushes. On western side of spot of incident, there was land and house of Prakash Wagh. On eastern side, there was land of Ramdas Wagh. Thus, in the vicinity, there was the house of only Prakash Wagh and the school was situated at the distance of 300 ft. from the spot of offence. In the F.I.R., it was mentioned that deceased had left with cattle for the field and when he was on the way to field, the incident took place.

6) Tukaram (PW 1), the first informant has given evidence that Rukminibai told him that accused were assaulting Janardan and so, he went there. He has given evidence that when he reached there, they decided to make arrangement like brining bullock-cart for shifting Janardan to the hospital as he was lying there in injured condition. He has given evidence that accused assaulted to him and also to his cousin brother Ramdas by using sticks. He has given

evidence that they all were required to be shifted due to assault made on them and he became unconscious due to the assault. He has deposed that he regained consciousness on the mid night and his father expired on the next day i.e. on 25.2.2000.

7) Ramdas (PW 4) is the other injured eye witness and he has deposed that he learnt from Rukminibai that some persons were assaulting Janardan. He has deposed that he asked Tukaram to take bullock-cart and he went ahead towards the place of incident. He has deposed that when he reached the spot, he noticed that Janardan was lying in injured condition and he had sustained bleeding injuries. He has deposed that accused then assaulted him and when Tukaram came with bullock-cart after some time, Tukaram was also assaulted by using sticks by all the accused.

8) The evidence of PW 1 and PW 4 shows that they learnt about the incident from Rukminibai (PW 2). She is the wife of real brother of Janardan and there was quarrel with her husband in the past as there was dispute between her husband and the accused. Thus, she is interested witness. Her evidence is very vague. She has deposed that she went to the spot after hearing from crowd about the incident. She has given evidence that after going to the spot, she noticed that all the accused persons were giving beating to

Janardan and she returned to home and narrated the incident to Tukaram and Ramadas. She has given evidence that when Tukaram, Ramdas and she went to the spot, they noticed that accused were still giving beating to Janardan. She has given evidence that accused persons pulled down Tukaram from bullock-cart and they gave beating to him and beating was given to Ramdas also.

9) Meerabai (PW 3) is examined as other eye witness. She has given evidence that when she heard noise of quarrel and shouting, she was present inside of the house and to see what happened, she went to the roof of the house and from there she noticed that fighting was going on behind the school. She has deposed that accused were present there. She has given evidence that after going to the place of incident, in her presence beating was given to Janardan by accused and Janardan was lying on the ground. She has deposed that Ramdas came there and he was also beaten and thereafter, Tukaram came there, but Tukaram was also beaten by the accused. The statement of this witness was recorded after 18 days of the incident and that is admitted by this witness. She has tried to say that the distance between the place of incident and her house is around 200 ft. That is not correct. The evidence of other witnesses and even spot panchanama show that after the distance of 300 ft., there are structures like school building and house of one

Wagh. No map was prepared by investigating agency to show the exact location of the house of this lady. Due to belated disclosure of this lady and other circumstances, this Court holds that the evidence of this lady cannot be relied upon in such a serious case.

10) The evidence of Tukaram (PW 1) shows that the distance between the school and place of incident is around 1000 to 1200 ft. and spot is not visible from the side of school or from the side of temple. The temple is at the distance of 300 to 350 spaces from the school. The place of incident is at the distance of 1000 to 1500 ft. towards western side of village and it is away from the temple. The evidence of this witness shows that there is always traffic on this road, where the incident took place. But, there is no independent eye witness with the prosecution. He has admitted that it is not possible for him to hear the hue and cry from his residential place if the incident takes place at the place of the present matter.

11) The evidence of Ramdas (PW 4) also shows that it was not possible for him to reach the spot before incident was over. Both these witnesses have given evidence that Rukminibai had informed them about the incident, but her evidence is very vague and distance between spot of offence and residential place of these two witnesses needs to be kept in mind. These circumstances have

created a probability that these witnesses had no opportunity to see the actual incident of assault made on Janardan.

12) No explanation is given by Tukaram (PW 1) as to why the names of only four accused were mentioned in the F.I.R., Exh. 19. When the evidence is very vague and no particular part played by each accused is mentioned, such omission cannot be ignored. Tukaram (PW 1) has given evidence as injured eye witness and so, he would have given names of all the seven accused in the F.I.R. if seven accused persons were really involved in the incident and they had really given beating to him also. But names of only four accused were mentioned in F.I.R. and that omission was confronted to first informant.

13) Prosecution has examined two doctors to prove the injuries which were found on the person of Janardan. Dr. Ramesh (PW 10) had noticed following three injuries on the person of Janardan.

(i) Contusion with fracture, right ulna-right hand, lower in size 5 cm. x 3 cm. Grievous injury, weapon hard and blunt object, age within 12 hours.

(ii) Contused lacerated wound : right arm, size 7 cm. x 1 cm. x 1/2 cm., simple, caused by hard and blunt object,

age within 12 hours,

(iii) C.L.W. with fracture, tibia, in left leg, of size 7 cm. x 1 cm. x 1/2 cm, grievous in nature, caused by hard and blunt object, age within 12 hours.

The age of aforesaid injuries was within 12 hours and Janardan was shifted to Civil Hospital and examined immediately and so, it can be said that these injuries were noticed by Dr. Ramesh (PW 10).

14) Dr. Rajeshwar (PW 9) conducted P.M. examination on the dead body of Janardan on 26.2.2000 between 8.00 a.m. and 9.00 a.m. He found following five injuries :-

(i) Contusion right fore-arm 6 x 3 cm. skin bluish discolouration evidence of fracture Radio-Ulna, age of injury within 24 to 48 hours.

(ii) C.L.W. on left leg 2 x 1 x 1/2 cms. clotted blood over injury. Skin around C.L.W. bluish colour. Age within 24 to 48 hours.

(iii) Contusion right leg 4 cm. x 3 cm. Skin Bluish colour, Age 24 to 48 hours.

(iv) Contusion scalp over occipital region, 3 cm. x 2 cm. bluish black discolouration of skin, age 24 to 48 hours.

(v) Abrasion chest on right side 4 cm. x 1 cm. Skin bluish

colour, age 24 to 48 hours.

Janardan died on the night between 25th and 26th i.e. 4.30 a.m. of 26.2.2000. Injury No. 4 found by Dr. Rajeshwar (PW 9) on the dead body was not noticed by Dr. Ramesh (PW 10). Injury No. 4 proved to be fatal as injury No. 4 had caused intra carnial haemorrhage and death is caused due cardio-respiratory arrest due to intra-carnial haemorrhage. It is already observed that the evidence of so called eye witnesses is very vague and it is difficult to believe that they actually witnessed the incident of assault. If seven accused were giving beating, in ordinary course, more injuries would have been found on the person of Janardan, but the first doctor noticed only three injuries. It is not certain as to who gave blow on the head of the deceased. As genesis of the incident is not known and all the witnesses have deposed that they went to the spot after hearing about the incident, it is difficult to hold that all the accused gave the beating and caused the death. It is difficult to ascertain as to which accused was present when the incident was started and as to which accused came later on or whether any accused came to the spot later on. There was previous enmity and due to that, there is clear possibility of false implication. It is not possible to separate the truth from the falsehood in the present matter.

15) For not believing Tukaram and Ramdas, there is one more strong circumstance. The evidence of Dr. Ramesh (PW 10) and the injury certificates in respect of Tukaram and Ramdas at Exhs. 42 and 43 show that age of their injuries was within 24 hours. Thus, they were not having fresh injuries. Injuries were contusions, caused by hard and blunt object. At the cost of repetition, it needs to be mentioned that the same doctor has mentioned that the age of the injuries of Janardan as within 12 hours. These circumstances create probability that these two so called eye witnesses were not involved in the incident and they were not assaulted at the spot where Janardan was found. Thus, the first version given by Tukaram was different and the evidence given before the Court has no corroboration of F.I.R. on material particulars. Due to all these circumstances, this Court holds that it is not possible to give conviction to accused persons in such a serious case. This Court holds that Trial Court has not committed any error in giving decision of acquittal in favour of accused persons. In the result, the appeal stands dismissed.

[ARUN M. DHAVAL, J.]

[T.V. NALAWADE, J.]

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