

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1 OF 2010

1. Shahaji Sandipan Ingale.	]	
Age : 25 years,	]	
2. Shivaji Sandipan Ingale.	]	
Age : 25 years,	]	
Both R/at Sangam, Tal. : Malshiras,	]	
Dist. : Solapur.	]	... Appellants /
		Orig. Accd.Nos.1 & 2

Versus

1. The State of Maharashtra,	]	
(At the instance of Akluj Police	]	
Station)	]	
2. Ranjana Ingale,	]	
Age – Adult,	]	
R/at Ingale Vasti, Sangam, Malshiras,	]	
Dist. : Solapur.	]	... Respondents

ALONG WITH

CRIMINAL APPEAL NO.2 OF 2010

Ankush Laxman Ingale.	]	
Age : 20 years,	]	
R/at Sangam, Tal. : Malshiras,	]	
Dist. : Solapur.	]	... Appellant /
		Orig. Accd. No.7

Versus

The State of Maharashtra,	]	
(At the instance of Akluj Police Station)	]	... Respondent

ALONG WITH
CRIMINAL APPEAL NO.3 OF 2010

- | | | |
|------------------------------------|---|---------------------------|
| 1. Sudam Sopan Ingale. |] | |
| Age : 35 years, |] | |
| 2. Hanumant Sopan Ingale. |] | |
| Age : 55 years, |] | |
| 3. Laxman Sopan Ingale. |] | |
| Age : 42 years, |] | |
| 4. Shahaji Laxman Ingale. |] | |
| Age : 19 years, |] | |
| All R/at Sangam, Tal. : Malshiras, |] | |
| Dist. : Solapur. |] | ... Appellants / |
| | | Orig.Accd.Nos.3, 4, 5 & 6 |
| Versus | | |

- | | | |
|---|---|-----------------|
| 1. The State of Maharashtra, |] | |
| (At the instance of Akluj Police Station) |] | |
| 2. Ranjana Ingale, |] | |
| Age – Adult, |] | |
| R/at Ingale Vasti, Sangam, Malshiras, |] | |
| Dist. : Solapur. |] | ... Respondents |

ALONG WITH
CRIMINAL APPEAL NO.37 OF 2010

- | | | |
|---------------------------------------|---|------------------|
| Satish Vikram Maske. |] | |
| Age : 28 years, Occu : Agriculturist, |] | |
| R/o. Sangam, Tal. Malshiras, |] | |
| Dist. : Solapur. |] | ... Appellant / |
| | | Orig. Accd. No.8 |
| Versus | | |

- | | | |
|---------------------------------------|---|-----------------|
| 1. The State of Maharashtra, |] | |
| 2. Ranjana Ingale, |] | |
| R/at Ingale Vasti, Sangam, Malshiras, |] | |
| Dist. : Solapur. |] | ... Respondents |

Mr. D. G. Khamkar for Appellants in Cri. Appeal No.1 of 2010.

Mr. Ganesh Gole a/w Mr. Ateet Shirodkar for Appellants in Cri. Appeal No.2 of 2010 and Cri. Appeal No.3 of 2010.

Prof. Rohini Dandekar (Appointed Advocate) for Appellant in Cri. Appeal No.37 of 2010.

Mr. H. J. Dedhia, APP for State in All Cri. Appeals.

**CORAM :- A. A. SAYED &
SARANG V. KOTWAL, JJ.**

RESERVED ON :- 18 SEPTEMBER, 2017

PRONOUNCED ON :- 28 SEPTEMBER, 2017

JUDGMENT (PER : SARANG V. KOTWAL, J.) :-

1. The present Appeals are preferred by the original accused nos.1 to 8 challenging the Judgment and Order dated 30/11/2009 passed by the learned Additional Sessions Judge, Malshiras, in Sessions Case No.34 of 2008, whereby all these accused were convicted for the offence punishable under Section 302 read with 149 of the IPC and each of them was sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.1,000/- each and in default of payment of fine, each of the Appellants was directed to undergo rigorous imprisonment for three months. Out of the fine amount, 50% was directed to be paid to Ranjana Ingale, the widow of the deceased. The benefit of set off under Section 428 of the Cr.P.C. was given to all the Appellants.

2. Since all these Appeals arise out of the same Judgment and Order dated 30/11/2009, passed by the learned Additional Sessions Judge, Malshiras, in Sessions Case No.34 of 2008; all these Appeals are disposed off by this common Judgment.

3. Criminal Appeal No.1 of 2010 is preferred by the original accused no.1 – Shahaji Sandipan Ingale and original accused no.2 – Shivaji Sandipan Ingale. Criminal Appeal No.2 of 2010 is preferred by the original accused no.7 – Ankush Laxman Ingale. Criminal Appeal No.3 of 2010 is preferred by the original accused no.3 – Sudam Sopan Ingale, original accused no.4 – Hanumant Sopan Ingale, original accused no.5 – Laxman Sopan Ingale and original accused no.6 – Shahaji Laxman Ingale. Criminal Appeal No.37 of 2010 is preferred by the original accused no.8 – Satish Vikram Maske. For the sake of convenience, all these Appellants are hereafter referred to as the accused as per their serial numbers in the Sessions Case No.34 of 2008.

4. We have heard Mr. D. G. Khamkar, learned Counsel for Appellants in Cri. Appeal No.1 of 2010, Mr. Ganesh Gole learned for Appellants in Cri. Appeal No.2 of 2010 and Cri. Appeal No.3 of 2010, Prof. Rohini Dandekar learned Counsel (Appointed) for Appellant in Cri. Appeal No.37 of 2010 and Mr. H. J. Dedhia, learned APP for State and with their assistance, we have gone through the entire evidence and have perused the record.

5. The prosecution case pertains to the murder of one Arjun Ingale which was committed on 20/03/2008 at about 9.15 a.m. near the house of one Somnath Bhoi on the road leading to Ingale Vasti from village Sangam, District Solapur. It is alleged that the accused were carrying weapons like swords, scythes and sticks and all of them

assaulted the deceased. As per the prosecution case, all these accused, except the accused no.8, are close relatives of each other and also of the deceased. Accused no.8 was not related to them. It is alleged that the accused nos.1 and 2 were nephews of the deceased and the accused nos.3, 4 and 5 were the cousins of the deceased. Accused nos.6 and 7 were the sons of the accused no.5. Thus, all of them were closely related. The motive behind the murder was the dispute related to the boundary of their adjacent agricultural fields.

6. The FIR in the present case was lodged vide C.R.No.53 of 2008 on the statement given by PW 8 Somnath Tukaram Kale, who was examined as the sole eye witness to the incident. The FIR was lodged with Akulj Police Station which was about 20 kms from the spot of the incident. After registration of the FIR, the accused were arrested on various dates, the recovery of various weapons was effected at their instance from various spots and their houses. The statements of witnesses were recorded and after conclusion of the investigation, the charge-sheet was filed in the Court of JMFC and thereafter the case was committed to the Court of Sessions for trial.

7. During trial, the prosecution examined 13 witnesses. PW 9 Dr. Ramesh Sidramappa Ukarande had conducted the post-mortem examination on the dead body of the deceased. He found 10 incised wounds as follows :-

- (i) Incised wound 6" x 1" x 1½ on right tempero-parietal region, fracture of skull,

- (ii) Incised wound 1" x ½" x ½" on right hypochondriac region,
- (iii) Incised wound ½" x ½" x ½" on right hypochondriac region,
- (iv) Incised wound ½" x ½" x ½" on right hypochondriac parallel to injury no.3.
- (v) C.L.W. 2" x 2" x 1" on right elbow, compound fracture femorous on right lower third.
- (vi) Incised wound 1" x ½" x ½" on right ankle joint,
- (vii) Incised wound 6" x 1" x ½" on right calf region,
- (viii) Incised wound 4" x 1" x ½" on right calf region parallel to injury no.7,
- (ix) Incised wound 4" x 1" x 1" on left calf region,
- (x) Incised wound 2" x 1" x 1" on left calf region parallel to injury no.9.

PW 9 Dr. Ukarande has opined that the injury on the head was possible by a sword. He has also opined that the 3 injuries on the hypochondriac region were possible by the sword. The fracture on right hand was possible by a big stone and the rest of the injuries on the legs were possible by weapons like scythes. He has opined that the first injury on the head was sufficient to cause death. The cause of death was mentioned as 'shock due to severe haemorrhage (Polytrauma) and head injury'.

8. Most of the other witnesses were panchas for various panchanamas like recovery of weapons, spot panchanama etc. and the

remaining witnesses were the police witnesses who were part of the investigation. Besides the oral evidence, the prosecution has placed on record the CA reports in respect of the analysis of the weapons and clothes of the accused and on most of these articles, human blood was found but the blood group was inconclusive.

9. The prosecution case mainly relies on the evidence of the sole eye witness PW 8 Somnath Kale. Since he was the sole eye witness and also an interested witness, being the father-in-law of the deceased, we have scrutinized his evidence very cautiously.

10. According to PW 8 Somnath, his native place is village Shevre, Taluka Madha. One of his daughters was married to the deceased Arjun Ingale who was a resident of village Sangam. Arjun's marriage with this witness's daughter Nirmala was his second marriage. His first marriage was still subsisting and the name of his first wife was Ranjana. After his second marriage, even the first wife of the deceased started residing with him and thereafter all of them resided together. PW 8 Somnath has further deposed that he himself had 4 acres of agricultural land at village Shevre and that the deceased had 10 acres of land at village Sangam out of which 5 acres land was ancestral and the other land of 5 acres was purchased by him. PW 8 Somnath has further deposed that he cultivated his own field but he was also cultivating the field of the deceased on sharing of profit basis. His village Sherve was at a distance of 3 to 4 kms from the field of the deceased. He has further deposed that on one side of

the agricultural land of the deceased, there were lands of accused nos.3, 4 and 5. He has deposed that the deceased had purchased 5 acres of land from one Gavali. This witness has clearly stated that the accused had good relations with the deceased but there was some quarrel between the deceased and the accused nos.1 and 2 in respect of the boundary ('*Bandh*') of the land and two years prior to the incident, accused nos.1 and 2 had filed some criminal case against the deceased and his family as well as against this witness PW 8 Somnath.

11. PW 8 Somnath has further described about the events which took place on the date of the incident i.e. 20/03/2008. He has stated that on that day at about 9.00 a.m. he, along with the deceased Arjun, had gone to the house of one Somnath Bhoi for purchasing fish. The said Somnath Bhoi was not at his house and therefore they were returning on the motorcycle of the deceased. Before returning, this witness went near the hand-pump to drink water. When he turned back, he saw that the accused nos.1 and 2 were assaulting the deceased with swords on his head and ribs. Because of the assault, Arjun fell down and thereafter the accused no.2 assaulted on his abdomen. When this witness started shouting, the accused no.1 threatened him and the assailants ran away. He has deposed that he saw 5 to 6 persons running away from the spot of the incident. Thereafter, he has named the other accused nos.3 to 7 as the persons who had run away. Thereafter, almost as an afterthought, he has described as to how those 5 accused i.e. accused nos.3 to 7 assaulted Arjun. According to him, accused no.7 Ankush assaulted the deceased

with a stone on his arms and the other accused nos.3 to 6 assaulted Arjun on his legs and back with scythes. He has stated that, he has seen the incident from a distance of 25 ft. After the assailants ran away, he went near Arjun who had died on the spot. Then this witness went to the house of the deceased and informed his family and returned to the spot with the family members. In the meantime, somebody had already informed the police who came to the spot. He narrated the incident to the police. His statement was recorded.

12. The learned Counsel for the accused submitted that this witness is an unnatural witness. He had no reason to be present at the spot. They have invited our attention to the deposition of PW 9 Dr. Ukarande who, in his cross-examination, has stated that from the presence or rigor mortis all over over the body, he was of the opinion that the death must have taken place at least 12 hours before his examination. The record shows that he had conducted the post-mortem examination between 4 p.m. to 5 p.m. on 20/03/2008 which means that the incident must have taken place at least before 4.00 a.m. on 20/03/2008. The learned Counsels, therefore, submitted that the incident could not have taken place at 9.00 a.m. as deposed by the PW 8 Somnath. The learned Counsels have also questioned the reasons given by this witness to be present at the spot with the deceased at the time of the incident. They also submitted that the prosecution has not brought on record the motive as to why the accused committed murder of the deceased. They have further submitted that the medical evidence does not support the narration

given by this witness PW 8. They have further submitted that the conduct of this witness is very unnatural and the recording of the FIR given by him is a case of manipulation. They have invited our attention to the fact that a copy of the FIR was forwarded to the Magistrate after 4 days. They have also submitted that the recovery of weapons and clothes is not proved by the prosecution by cogent evidence. They have submitted that the recovery of weapons is either from the open space or from the houses of the accused. There was no reason for the police not to have searched their houses to recover the weapons before their arrest. They have submitted that none of the witnesses from near the spot of the incident or those who were residing near the road leading from the spot to the house of the deceased was examined. They further submitted that the prosecution has not brought on record any evidence to show that there really was any dispute in respect of the boundary of the land.

13. From the evidence of this witness PW 8, it does appear that he had no reason to be with the deceased in village Sangam when the incident took place. This witness tried hard to explain that he was residing with the deceased since past 3 years prior to the incident and was cultivating the land of the deceased. In the cross-examination, the omission from his police statement that he was residing at Sangam since past 3 years, was brought on record. The prosecution has not examined any other witness to corroborate this fact to show that this witness indeed was residing with the deceased. Significantly, this witness had his own house and his own agricultural field at a very

short distance of about 3 to 4 kms. Therefore, he had no reason to reside with the deceased. He has also stated that his own field was cultivated by himself and that the field of the deceased was cultivated by the deceased himself with his own son Navnath. As far as the dispute about the boundary is concerned, this witness PW 8 has not given any cogent evidence. The only quarrel which he has referred to had taken place about two years prior to the incident of murder and therefore there was no immediate cause or reason for the accused to commit the murder of the deceased. In para 6 of his cross-examination, he has specifically admitted that the accused nos.1 to 7 had cordial relations with the deceased. In the circumstance, it is hard to understand as to why the accused would commit the murder of the deceased who was their close relative.

14. In respect of the main incident of assault itself, his evidence is not very reliable. When he has described the incident, firstly he has stated that the accused nos.1 and 2 assaulted the deceased with swords on the head and abdomen and then he has stated that the assailants ran away and thereafter again he has gone on to explain how the other accused assaulted the deceased with their weapons. This portion of his evidence appears almost as an afterthought to give some role to the other accused. Moreover, his evidence and the narration in respect of the manner of assault is not exactly supported by the medical evidence, because, though he has stated that the assailants assaulted the deceased with the weapons like scythes on his back, there are no injuries on the back. This witness

has stated that the accused nos.1 and 2 gave a forceful blow on the ribs of the deceased after he had fallen on the ground. However, the medical record shows that the injuries around that area had not penetrated beyond half an inch. No major organs in the abdomen were damaged. The most significant part of the medical evidence is the time of death, as mentioned earlier, which is inconsistent with his evidence. The evidence of the doctor shows that according to his opinion, the death had been caused at least 12 hours before the post-mortem examination which was conducted between 4.00 p.m. to 5.00 p.m. on 20/03/2008. In that case, the time of the incident should be 4.00 a.m. or earlier on 20/03/2008. Even giving some latitude for the approximation of his opinion, the time gap between 4.00 a.m. to 9.00 a.m. is a long gap and therefore it is necessary for the prosecution to explain this discrepancy. This fact has to be tested in the light of the circumstance that no other witness had seen the incident though there were many houses in and around the area.

15. The spot panchanama is silent about the spot from which this witness had seen the incident and there is no mention of the hand-pump from where this witness had initially seen the incident. The prosecution has not brought on record location of such hand-pump. The spot panchanama does not show that any bag was found at the spot. As per the evidence of this witness, both of them had gone to the house of Somnath Bhoi to purchase fish and they were carrying a bag for the said purpose. Finding of the bag would have given credence to the story given by this witness PW 8 and absence

thereof has weakened his evidence. Even this Somnath Bhoi is not examined whose house was nearer to the spot.

16. Even otherwise, the conduct of this witness seems unnatural. After the assailants had run away, he merely went near his son-in-law. He did not raise any alarm and call for any help from the people of the locality. He did not immediately try to give medical help to the deceased. He had just walked a distance of one and half kms to the house of the deceased and on his way, he has not informed anybody and or has not sought any help; which, in itself, is unnatural and difficult to believe.

17. By the time he returned to the spot, somebody had already informed the police and they were at the spot. The prosecution evidence is absolutely silent on this point as to who had informed the police and what was the first information they had received and as to how they reached at the spot at 10.30 a.m. The police station was at least 20 to 22 kms away from the spot.

18. Recording of his FIR is also not above suspicion. The FIR was lodged at about 12.15 p.m. However, he has admitted that after the dead body was given to the relatives after the post-mortem, he was taken to police station and his signature was obtained on the statement. He was told that it was his complaint. This procedure, coupled with the fact that this FIR was sent to the Magistrate after 4 days, raises doubt about the authenticity of the FIR.

19. According to this witness PW 8, he and the deceased had gone to purchase fish. It is difficult to understand as to how all the accused came together and committed his murder at the spot and as to how they came to know about the plan of the deceased to go to purchase fish.

20. As far as the recoveries are concerned, the prosecution has examined PW 2 Dattatraya Chandankar for recovery of sword and clothes at the instance of accused no.1, scythe and clothes at the instance of accused no.6 and scythe and clothes at the instance of accused no.3. According to him on 26/03/2008, accused no.1 showed willingness to produce sword and clothes. Importantly, this witness has not deposed about the authorship of concealment of this witness or the place where the sword and clothes were concealed by this accused no.1. The sword was recovered from thorny bushes and the clothes were recovered from the house of the accused no.1. The place from where the sword was recovered was an open space and in the absence of substantive evidence of the panch regarding the statement leading to the recovery of weapon, this evidence cannot be said to be proved by the prosecution. This recovery was effected on 26/03/2008 and it is difficult to understand as to why the police officers did not search the house of the accused before that. On 29/03/2008, scythe and clothes were recovered at the instance of the accused no.6 from his house. Here again, the question remains why his house was not searched for 9 days and in the substantive evidence of PW 2, there is no reference of authorship of concealment and the statement

mentioning the place which this accused no.6 had showed his willingness to point out. On the same day at 4.00 p.m., scythe was recovered at the instance of accused no.3 and clothes were recovered from his house. Even here, recovery evidence is not proved by the prosecution particularly because in the substantive evidence before the Court, this witness has not narrated about the authorship of concealment and the willingness to show the place on the part of this accused no.6.

21. PW 3 Vijay Gaikwad was examined to show the recovery of stick and clothes at the instance of accused no.8. The only eye witness PW 8 has not spoken about the presence of this accused and his part in the incident and therefore this recovery at his instance is of no consequence. PW 8 has not referred to the accused no.8 in his deposition. Neither any role is ascribed to him nor even his presence is mentioned at the spot. However in the FIR, name of the accused no.8 is mentioned and a role too is ascribed to him. Thus, it can be seen that the said witness, while lodging the FIR at least, has implicated one person i.e. the accused no.8 against whom he has not deposed in the Court. That creates doubt about his inclusion of names of other accused in the FIR and his deposition as a whole.

22. PW 4 Sugriv Bhosale was examined to prove the recovery of sword and clothes at the instance of accused no.2. The sword was seized from thorny bushes and which were accessible to all and the clothes were produced from his house on 28/03/2008. Here again,

there is no substantive evidence about the statement leading to such recovery.

23. PW 5 Deepak Aute was examined to prove recovery of scythe and clothes at the instance of accused no.3 Sudam Ingale from his house. Here again, there is no substantive deposition about what was the exact statement which led to the recovery of the weapon and clothes. This witness has also deposed about production of clothes by the accused no.7 in the police station on 30/03/2008. This production in police station can hardly be described as the recovery under Section 27 of the Evidence Act. On 01/04/2008, at the instance of accused no.5 Laxman Ingale, scythe and clothes were recovered from his house. His statement is not mentioned in the evidence of this witness. On 04/04/2008 at the instance of accused no.4 Hanumant Ingale, scythe and clothes were recovered from his house. Here again, the statement leading to the discovery is not clearly mentioned in the deposition of this witness. In any case, this recovery from the house is highly suspicious because the police should have taken search of their houses immediately after coming to know about their participation in the crime. In any case, in respect of this recovery, the fact remains that the blood group on all these articles i.e. clothes and weapons, is not determined. Therefore, all these articles and clothes cannot be conclusively connected with the present crime.

24. PW 6 Appasaheb Algude was the panch for inquest panchanama. He was also the nephew of the deceased and he has

spoken about the quarrel between the deceased on one hand and accused nos.1 and 2 on the other. However in the cross-examination, it is brought on record that there was an omission from his police statement that such incident had taken place in his presence. He has also stated that there were cases, counter-complaints filed by both the parties against each other. However, that is also an omission from his police statement. Therefore, his evidence does not help the prosecution in establishing its case.

25. PW 12 PHC Balasaheb Jadhav has deposed about the information received at Akluj Police Station on 20/03/2008. According to him at about 10.30 a.m., he received a phone-call about a murder at village Sangem. He sent PSI Tanpure and other staff to the spot of incident at about 10.35 a.m. At about 11.15 a.m., PSI Tanpure asked him in respect of the next crime number which he gave as Crime No.53 of 2008 of Akluj Police Station. At 12.10 p.m., PC Kshirsagar came to the police station along with the complaint recorded by PSI Tanpure. The said complaint was registered at 12.15 p.m. He has deposed that a copy of the FIR was given to the complainant after one hour of the registration of the FIR which should be around 1.15 p.m. However, the evidence of the complainant shows that he had gone to the police station much later in the evening after the post-mortem. He has admitted that a copy of the FIR was received in the Court of JMFC, Malshiras, on 24/03/2008. There is no explanation as to why the copy of the FIR was sent after 4 days and thus, possibility of manipulation in the FIR is not ruled out.

26. PW 13 Dy.S.P. Dhondopant Swami had conducted major part of the investigation and had arrested some of the accused and had effected the recovery. He has not very clearly explained as to why the houses of the accused were not searched after the incident and therefore the recovery from these houses becomes doubtful. He has admitted that the sword recovered at the instance of the accused no.1 was recovered from an open space. He has further admitted that the spots from which the swords were recovered at the instance of the accused nos.1 and 2 were at a distance of 5 to 10 ft. from each other. In that case, it was highly suspicious that the other sword was not noticed when the first sword was recovered. Thus, we find that recovery evidence led by the prosecution is very doubtful.

27. The evidence of the sole eye witness does not inspire confidence. The other circumstantial evidence is not proved beyond reasonable doubt. No independent witness is examined. The motive is not proved.

28. Considering the above discussion in respect of the evidence led by the prosecution, we are of the opinion that the prosecution has failed to prove its case beyond reasonable doubt. Hence, we pass the following order :-

ORDER

- (i) The Appeals are allowed.
- (ii) The Judgment and Order dated 30/11/2009 passed by the learned Additional Sessions Judge, Malshiras, in Sessions

Case No.34 of 2008, convicting all the Appellants, are hereby set aside and the Appellants are acquitted of all the charges.

- (iii) The Appellants in Criminal Appeal No.1 of 1010 are in jail. They shall be released forthwith if not required in any other case.
- (iv) The Appellants in Criminal Appeal Nos.2 of 2010, 3 of 2010 and 37 of 2010 are on bail. Their bail bonds shall stand discharged.
- (v) The Appeals are disposed off accordingly.

(SARANG V. KOTWAL, J.)

(A. A. SAYED, J.)