

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 590 OF 1995***

The State of Maharashtra
Versus

...Appellant
(Orig. complainant)

- | | | |
|----|--|---|
| 1) | Dhoniba Ravaji Bhandalkar
Age about 25 yrs. Occ. Driverr |)
) |
| 2) | Thaksen Ravji Bhandalkar
Age about 20 yrs. Occ.Labourer. |)
) |
| 3) | Tukaram Mahadu Shirtar
Age about 40 yrs.Occ.Labourer |) Abated as per Court's order
) dated 3.2.2017. |
| 4) | Pandit Mahadu Waghmare
Age about 38 yrs.Occ: Labourer |) Abated as per Court's order
) dated 3.2.2017. |
| 5) | Savitra Ravji Bhandalkar
Age about 52 hrs.Occ: Labourer
All R/o. at Village Ale, Ramoshi Vasti.
Tal. Junnar, District Pune. |)Abated as per Court's order
)dated 3.2.2017.
)
).. Respondents
(Orig. Accused) |

**WITH
CRIMINAL REVISION APPLICATION NO. 260 OF 1995**

Eknath Shivaji Shirtar
R/o. Ale, Tal. Junnar, District Pune.

)
).. Petitioner
(Orig. Complainant)

Versus

- | | | |
|----|---------------------------|---|
| 1) | Dhoniba Ravaji Bhandalkar |) |
| 2) | Thaksen Ravji Bhandalkar |) |
| 3) | Tukaram Mahadu Shirtar |) |

- 4) Pandit Mahadu Waghmare)
5) Savitra Ravji Bhandalkar)
All R/o. at Village Ale, Ramoshi Vasti.)
Tal. Junnar, District Pune.)
6. The State of Maharashtra .. Respondents
(Orig. Accused)

Ms. Sharmila S. Kaushik, APP, for the Appellant-State.

Mr. Rahul S. Kate, Advocate for the Applicant in Revision No.260 of 1995.

Mr. S.A. Ingawale i/b. Mr. R.R.Bhonsale for respondent Nos. 1 & 2 in Appeal No.590 of 1995 and in Revision No.260/1995.

Ms. S.S.Kaushik, APP, for the State.

**CORAM : R.M.SAVANT &
SMT. SADHANA S.JADHAV, JJ.
RESERVED ON: 25th July, 2017.**

PRONOUNCED ON: 19.12.2017.

JUDGMENT (Per SMT. SADHANA S.JADHAV, J.) :

1. Being aggrieved by the Judgment and order dated 29.7.1995 passed by the Addl. Sessions Judge, Pune, in Sessions Case No.535 of 1992, the State has filed the present appeal.

2. The respondents herein were acquitted by the Sessions Court of the offences punishable under Sections 147, 148, 149, 302, 326 read with Section 34 of the Indian Penal Code.

3. The facts of the case, in a nutshell, are as follows :-

(a) Accused No.1 – Dhondiba Ravji Bhandalkar and accused No.2 – Thaksen Ravji Bhandalkar are the sons of accused No.5 – Savitra Ravji Bhandalkar. They were neighbours of the complainant – Eknath and his mother Laxmibai. The accused Nos. 3 and 4 are related to accused No.5. The complainant as well as accused are residents of Village Ale, Taluka Junnar, Dist. Pune.

(b) It is the case of the prosecution that the complainant had a dilapidated structure adjacent to their dwelling house. The accused used to park their bicycles near the dilapidated house and, therefore, there were intermittent quarrels between the complainant and the accused.

(c) It is alleged that on 15.5.1992 at about 8.30 p.m., when the complainant Eknath, Ramesh, Laxmibai and Chandrakala were present in the house, the accused had parked their cycles to the adjoining wall of the dilapidated structure. Ramesh (deceased) had objected to the same. Soon thereafter, the accused persons formed an unlawful assembly and went to the house of the complainant. They mounted assault upon Ramesh who was standing next to the complainant. They had also assaulted Laxmibai and had then fled from the spot. It is alleged that the father of deceased

Ramesh – Dhondiba had rushed to the house and found Ramesh was lying in front of the house in an injured condition. Upon enquiry by the father, Ramesh had disclosed the names of the accused persons as assailants. From there, Ramesh was taken to Kanse Hospital at Ale Phata. In transit, Ramesh had expired. Eknath approached the Narayangaon Police Station and lodged a report on the basis of which Crime No.52 of 1992 was registered against the accused for the offences punishable under Sections 302, 323, 147, 148, 149, 504 and 506 of the Indian penal Code. Investigation was set in motion. Charge-sheet was filed. The case was committed to the Court of Sessions and registered as Sessions Case No. 535 of 1992.

4. The prosecution has examined as many as 13 witnesses to bring home the guilt of the accused. The prosecution has examined PW-4 – Eknath, PW-5 Chandrakala and PW-6 Laxmibai who, according to the prosecution, are the eye-witnesses to the incident. PW-7 Shivaji has been examined in order to prove the oral dying declaration made by the deceased Ramesh and it is the case of the prosecution that the accused had motive for committing the offence as the complainant had objected to

parking of the bicycle adjoining to their dilapidated structure. It would therefore be necessary to appreciate the evidence of PWs 4, 5 and 6 at the outset.

5. PW-4 Eknath has deposed before the Court that their family consisted of parents i.e. Laxmibai and their sister Chandrakala and deceased Ramesh who was the brother of the complainant and the complainant himself. That the accused were in a habit of parking bicycles adjoining to their house. According to him, on 15.5.1992, Ramesh had been to the house of the accused to register his objection in respect of parking of the cycles and soon thereafter all the accused persons armed with deadly weapons like iron rods, sticks and axe, had gone to their house. Ramesh was standing by the side of the complainant. They mounted assault upon Ramesh with deadly weapons. He sustained injuries on various parts of his body. PW-4 also had sustained injuries. Thereafter, Chandrakala had been to call their father. That his father had enquired with Ramesh, who had disclosed the names of the accused persons and narrated the incident.

6. The injured was taken to the clinic of Dr. Kanse, wherein they they were advised to go to Government Hospital at Narayangaon. The injured was then taken to Dr. Phadtare and Ramesh i.e. the brother of

PW-4 had expired in transit. He has proved the contents of the FIR at Exhibit 25. In the cross-examination, PW-4 has categorically stated that the quarrel between both the families was regarding parking of the cycles near the dilapidated condition. He has specifically stated that portion marked 'A' in his statement is not correct. There are inherent omissions and contradictions in his evidence. He has also stated that portion marked 'B' in his supplementary statement is incorrect. The portion marked 'A' is to the extent that the accused had approached the Police Station prior to the complainant and had lodged a report in respect of this scuffle. It is also stated that Ramesh had died on the spot. It appears that in the first information report, the complainant had specifically stated that there was a scuffle between the complainant and the accused persons and that Ramesh died on the spot.

7. PW-4 has further stated that there was a quarrel between both the families over parking of cycles adjoining to the wall of their house for about 5 – 10 years. There are omissions and contradictions in the evidence of PW-4, more particularly in respect of the overt act attributed to each of the accused. PW-4 was confronted with his previous statement wherein he had stated that he had left the spot soon after he was assaulted. However, he

has denied to have said so in the course of cross-examination. According to PW-4, he had disclosed to the police that he was assaulted with an axe on his head. However, the said allegation does not find place in the first information report.

8. PW-4 had contended in his supplementary statement that Ramesh was lying in an injured condition in front of their house, but has denied to have said so in the cross-examination.

9. PW-5 Chandrakala Shirtar happens to be the sister of deceased Ramesh. She has reiterated the contentions of PW-4. According to her, all the accused had simultaneously mounted assault on Ramesh with the respective weapons which they were holding. According to her, Ramesh was crying for help, but nobody in the village intervened and, therefore, she went to the village to call her father whom she met on the way. According to her, when they returned, her brother was still crying for help. He had sustained bleeding injuries and was lying on the ground. He was taken to the hospital. She has stated in the cross-examination that the incident of slapping and commotion was going on the road while she was in the house. She has denied that she had rushed to call her father upon hearing commotion. According to P.W.5, she had attributed the overt act to

each of the accused in her previous statement, but cannot assign any reason as to why it does not find place in her earlier statement. There are material omissions and contradictions in the evidence of PW-5.

10. PW-6 – Laxmibai Shirtar happens to be the mother of the deceased Ramesh. She has also deposed before the Court that she had attributed specific role to each of the accused. According to her, the said incident had occurred at night. She had asked her daughter to call her husband Shivaji. Her son was crying and demanding water. As far as the overt act is concerned, there is omission in her statement which she had admitted. According to her, she had witnessed the incident in the moon light. She has denied to have stated the portion marked “A” in her statement wherein she had stated that she was not present on the spot when the incident had occurred.

11. PW-7 Shivaji Shirtar is the father of deceased Ramesh. He has deposed before the Court that on 15.5.1992, while he was returning to his house, his daughter Chandrakala met him on the way and disclosed to him about the incident and when he rushed home, he found that his son Ramesh was lying in front of their house on the road in an injured condition. According to him, he had enquired with Ramesh about the incident and at

that time, Ramesh was only demanding water. Thereafter PW-7 had taken Ramesh in an auto rickshaw to Dr. Kanse at Ale-phata. His daughter Chandrakala had accompanied him. Before he reached the hospital at Alephata, Ramesh had expired and therefore PW-7 brought him home. They have then approached the Narayangaon Police Station where his son Eknath lodged a report.

12. PW-8 Dr. Sadashiv Jagdale has proved the post-mortem notes. The post-mortem notes are at Exhibit 31. The death certificate is at Exhibit 50. According to PW-8, Ramesh had sustained fracture of ribs, fracture of left side sterno clavicular joint. Liver was lacerated. There was laceration of spleen. The left lung was contused and lacerated over fracture sides of ribs with blood clots.

13. In the examination-in-chief, he had specifically stated that injuries Nos. 1 and 2 in Column 17 are on vital parts of the body. The said injuries can be possible by an axe, whereas injuries Nos. 3 to 12 may be possible by iron rod and stick.

In the cross-examination, he has specifically admitted that there was no internal damage corresponding to injury Nos. 1 and 2 in Column No.17. Individually and externally, both the injuries were simple

in nature. Similarly, injury Nos. 3 to 7 and 8 to 12 were individually simple in nature, but the cause of death could be multiple fracture of ribs.

14. On perusal of the evidence adduced by the prosecution, it is apparent on the face of the record that the evidence of the eye-witnesses do not inspire confidence inasmuch as it was the case of the prosecution initially that the incident of assault had taken place in the house, whereas the body of deceased Ramesh was found on the road when the father arrived. It is not the case of the prosecution that in the course of scuffle, the accused had brought the deceased outside the house. Therefore, it can be safely inferred that PW-3 to 7 are not the eye-witnesses to the incident of assault. Moreover, according to the mother of the deceased, she had seen the incident in the moon light which further fortifies that the incident had occurred on the road. The scene of occurrence is the most relevant aspect in a case of direct evidence, more particularly when there are eye-witnesses to the incident.

15. PW-4 has specifically stated in his previous statement that when he saw the assault on Ramesh, he had rushed indoors, the said contention is denied in his substantive evidence. It is a matter of record that the evidence of the eye-witnesses is self-contradictory. Moreover, the

record shows that the first information report was ante-timed. The learned trial Court has rightly recorded that in order to introduce the eye-witnesses to the incident, the first information report has been ante-timed.

16 The alleged oral dying declaration as narrated to PW-6 also does not inspire confidence of the Court as it is clear that Ramesh was not in a position to speak at the time when his father arrived on the scene of offence.

17. On Perusal of the evidence on record and the submissions advanced by the learned AGP Mrs. Kaushik, this Court is of the opinion that the findings recorded by the trial Court in the judgment and order dated 29.7.1995 do not call for any interference. The learned Court has assigned justifiable reasons for recording acquittal in favour of the accused and hence the same deserves to be confirmed.

18. In view of this, the Appeal stands dismissed.

19. In view of the dismissal of the Appeal, nothing survives in Criminal Revision Application No.260 of 1995 and the same stands disposed of.

(SMT. SADHANA S.JADHAV, J.)

(R.M.SAVANT, J.)