

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.84 OF 2006

The State of Maharashtra,
through Police Inspector,
Ghansawangi Police Station,
Tq. Ghansawangi, District Jalna

... APPELLANT
(Original Complainant)

VERSUS

1. Uttam s/o Ganpat Kale,
Age 62 years, Occu. Agriculture,
2. Laxman s/o Sonaji Kale,
Age 35 years, Occu. Agriculture,
3. Ashok s/o Uttam Kale
Age 32 years, Occu. Agriculture,
4. Vithal s/o Uttamrao Kale,
Age 29 years, Occu. Agriculture,

All R/o Village Limboni,
Tq. Ghansawangi, District Jalna.

... RESPONDENTS
(Original Accused)

.....
Mrs. D.S. Jape Ansingkar, A.P.P. for appellant/ State
Shri Joydeep Chatterji, Advocate for respondents
.....

CORAM: T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.

Date of reserving judgment : 18th January, 2018.

Date of pronouncing judgment : 24th January, 2018.

JUDGMENT (PER SUNIL K. KOTWAL, J.) :

1. The acquittal of respondent Nos.1 to 4 of the offence punishable under Sections 302, 324, 504 read with Section 34 of

the Indian Penal Code and under Section 135 of the Bombay Police Act by Additional Sessions Judge, Dhule in Sessions Case No.83/2003 is challenged by State in the present Criminal Appeal.

2. The facts of the prosecution case in brief are that, on 19.5.2003, brother of Pandit Kale (deceased) was ploughing his agricultural land and that time, the quarrel arose in between Dnyanoba (P.W.12) and accused Nos.1 and 4, which resulted into assault by stick and manhandling of Dnyanoba Kale. On the same day, at about 7.00 p.m., when Dnyanoba (P.W.12) was returning to his residence, that time accused No.1 assaulted Dnyanoba near his residence. Hearing the cries of Dnyanoba (P.W.12), the deceased Panditrao came outside of his residence and that time accused No.1 Vithal, who was hiding by the side of door of the house of deceased, inflicted stick blow on the head of deceased, resulting into severe head injury. When sons of the deceased namely Ramesh (P.W.8), Sarjerao (P.W.14) tried to rescue their father, that time they were also assaulted by all the accused persons by stick, fists and kicks. Even Sarjerao (P.W.14) sustained head injury. As deceased became unconscious on the spot, initially he was rushed to hospital at Ambad and from there, he was referred to Civil Hospital, Jalna and thereafter to Government Medical College & Hospital (Ghati),

Aurangabad. On 22.5.2003, Ramesh (P.W.8) lodged F.I.R. Exh.53 to Police Station, Ghansawangi at about 1.00 p.m. and as a result, initially, offences punishable under Sections 307, 325, 324, 323, 504 read with Section 34 of the Indian Penal Code and under Section 135 of the Bombay Police Act was registered. After the death of deceased Panditrao on 23.5.2003 at about 12.35 p.m., Section 302 of the Indian Penal Code was added. By that time, the investigation was started and accused came to be arrested. The investigating officer (P.W.15) prepared spot panchanama Exh.82 on 22.5.2003. On 27.5.2003, accused No.1 Uttam made disclosure statement before the investigating officer and panchas, and in pursuance of that statement, blood stained stick (Article 7) came to be recovered which was hidden in the sugarcane crop. By that time, post mortem examination of the dead body of the deceased was performed. Even injured witness Sarjerao was also medically examined. Blood stained clothes of the deceased, weapon of the offence (Article 7) and other seized articles were referred to Chemical Analyser. After completion of the investigation, charge sheet was filed against accused Nos.1 to 4 before the Judicial Magistrate, First Class, Ambad.

3. Offence punishable under Section 302 of the Indian Penal Code being exclusively triable by Court of Sessions, this case was committed to the Sessions Court, Jalna. The then

Additional Sessions Judge, Jalna framed charge (Exh.24) against accused Nos.1 to 4 for the offences punishable under Sections 302, 324, 504 read with Section 34 of the Indian Penal Code. Accused pleaded not guilty and claimed trial.

4. Prosecution examined total 15 witnesses. Defence examined one defence witness namely Dr. Sharad Kale. Defence of the accused is of total denial. According to them, in the evening of the incident, Dnyanoba Kale assaulted accused No.1 Uttam when he was standing in front of his Wada. Even deceased Panditrao took part in the said assault and there was scuffle. Deceased got hit his head to a cement electric pole situated nearby that spot and sustained head injury. According to accused, they also lodged F.I.R. To Police Station, Ghansawangi against Dnyanoba Kale and others and as a counterblast, the informant Ramesh and his companions concocted story of assault and lodged false complaint on 22.5.2003 involving the accused persons.

5. After considering the oral and documentary evidence placed on record by both the parties, the learned trial Court pleased to acquit the accused on the ground of unreliable testimony of eye witnesses and unexplained delay in lodging F.I.R. The trial Court also considered the suppression of genesis

of the occurrence by prosecution on account of not giving explanation for the injuries found on the body of accused persons and their family members.

6. Heard strenuous submissions of learned A.P.P. for the State and Shri Joydeep Chatterji, the learned counsel for the respondent Nos.1 to 4. Learned A.P.P. submits that, the incident occurred on 19.5.2003 and evidence of the witnesses was recorded by the trial Court after lapse of about two years i.e. in the year 2005 and, therefore, the discrepancies emerging in the testimony of eye witnesses cannot be viewed with suspicion. Her next limb of the argument is that, delay of more than two days in lodging the F.I.R. is explained by the prosecution for the circumstances that after the occurrence, the deceased was in urgent need of medical aid and all the family members of the deceased were busy in attending the deceased in the hospital and, therefore, they could not contact the police at Police Station, Ghansawangi. According to learned A.P.P., when all eye witnesses including injured witness have fully corroborated the version of each other on every material particulars, merely on the ground of non-explanation of injuries sustained by accused and their family members, benefit of doubt cannot be given to the accused.

7. On the other hand hand, learned counsel for the respondents has pointed out number of inconsistencies emerging in the evidence of P.W.5. He submits that, prosecution has not examined independent witnesses though incident occurred on the public road. He points out that, there were many opportunities to the family members of the deceased to promptly lodge the F.I.R. to Police Station, Ghansawangi. He submits that, even the recovery of blood stained stick as per disclosure statement of accused No.1 is absolutely doubtful and tampering of seized articles cannot be ruled out by the prosecution. The sum and substance of the arguments advanced by learned defence counsel is that, no explanation has been furnished by the prosecution for the injuries proved on the body of accused persons and their family members. Therefore, on account of suppression of genesis of the occurrence benefit of doubt goes in favour of the accused persons.

8. In the case at hand, undisputedly there is no political rivalry or personal enmity in between family of the accused and deceased. On the other hand, as per prosecution case, the incident occurred in front of the house of accused and deceased, only on account of quarrel in between Dnyanoba Kale, who is brother of the deceased and the accused persons, which occurred on 19.5.2003 at noon hours in the field of Dnyanoba Kale. Even

accused have not disputed the occurrence of this quarrel in the field of Dnyanoba Kale. The testimony of Dwarkadas Kale (P.W.3) examined by prosecution is not challenged by defence counsel that on the date of the incident, when he was ploughing in the field of Dnyanoba Kale by tractor, that time accused No.4 and Dnyanoba Kale (P.W.12) abused each other and there was scuffle in between them. Thus, the root cause for occurrence of incident at evening hours is not disputed by both the parties. However, at the same time, it cannot be ignored that, such type of trifling quarrel in between villagers cannot be treated as motive for commission of murder. However, if the direct evidence is trustworthy and reliable to base the conviction, even the absence of motive does not play any role.

9. To prove the occurrence, prosecution has placed reliance on testimony of eye witnesses namely P.W.6 Sudamatibai Kale , wife of the deceased; P.W.8 Ramesh Kale, P.W.14 Sarjerao Kale (sons of the deceased), P.W.11 Parmeshwar Kale, P.W.12 Dnyanoba Kale (both brothers of the deceased). Thus, obviously, prosecution has examined only the witnesses who are closely related with the deceased. However, trite law is that, if the testimony of related witnesses is free from infirmity, then conviction can be based on such testimony even without any corroboration.

10. Before proceeding to analyse the oral testimony of eye witnesses, we prefer to refer the medical evidence of Dr. Naresh Zanzad (P.W.9), who is doctor, Government Medical College & Hospital at Aurangabad and who performed autopsy examination of the dead body of Panditrao on 23.5.2003. This witness has proved one sutured wound over right parietal region at vertex horizontal place and one contused abrasion over left side of the face, just lateral to left eye. This witness noted following internal injuries on the head and brain of the deceased :

- (i) Haemorrhage under scalp over right temporo parietal region measuring 8 cm. x 3 cm.
- (ii) Linear fracture of right temporo parietal region horizontal in direction with infiltration staining.

This witness also noticed injuries to the brain as under :

- (i) Subdural haematoma at the left temporo parietal occipital lobe measuring 12 cm. x 6 cm x 1 cm.
- (ii) subarachnoid haemorrhage.
- (iii) Contusion on left temporo parietal lobe measuring 4 cm. x 2 cm.

11. Dr. Naresh (P.W.9) opined that the above injuries were ante mortem injuries and the probable cause of death was head injury in the form of fracture to skull bone with subdural haematoma. He has duly proved the post mortem notes (Exh.66). He opined that the above injuries are possible by stick blow on the head. It is to be noted that, in his entire cross-examination, the cause of death of the deceased is not at all disputed by the defence.

12. Even by examining Dr. Rajkumar Gothwal (P.W.10), the prosecution has duly proved M.L.C. Certificate Exh.60. This witness has proved contused lacerated wound on the right parietal tempero region of deceased and simple abrasion on the left hand index finger on the dorsal aspect. In addition to this, this witness has proved medical examination of Sarjerao Panditrao Kale (P.W.14) and proved the simple abrasion with swelling on the skull at right parietal region of Sarjerao, caused within 12 hours. However, from his cross-examination, it emerges that, the abrasion sustained by Sarjerao (P.W.14) could be self inflicted injury and the head injury sustained by deceased Panditrao is possible due to forcible dash on vertical cement pole.

13. After careful scanning of the evidence of Sudamati (P.W.6), Ramesh (P.W.8), Sarjerao (P.W.14), Dnyanoba

(P.W.12) and Parmeshwar Kale (P.W.11), it emerges that, they had contradicted each other on every material particulars. regarding occurrence of the incident. Ramesh (P.W.8) claims that, at the time of assault to Dnyanoba Kale, he was standing in front of the door of his house. On the other hand, Sudamati (P.W.6) deposes that, when she heard cries of Dnyanoba Kale, that time deceased Panditrao and her both sons (including Ramesh P.W.8) were sitting inside the house. On the other hand, Parmeshwar (P.W.11) has not whispered a word regarding presence of Ramesh (P.W.8) outside of his house at the time of assault to Dnyanoba Kale. According to Ramesh Kale (P.W.8), when Dnyanoba Kale came in front of the house of this witness, that time accused Uttamrao caught hold Dnyanoba and assaulted him on his back by stick and manhandled him. To the contrary, according to Parmeshwar Kale (P.W.11), when Dnyanoba Kale was proceeding towards his residence, that time initially accused Uttam, accused Ashok and accused Laxman (accused Nos.1 to 3) were sitting in front of their residence and accused Uttam teased Dnyanoba that he was proceeding calmly like cat and he had power while in the field. Parmeshwar (P.W.11) deposed that accused No.1 Uttam asked accused Nos.2 and 3 to catch hold Dnyanoba and thereafter accused Nos.2 and 3 started beating Dnyanoba by stick. Thus, Ramesh (P.W.8) and Parmeshwar (P.W.11) have contradicted each other on every particular as to

who had assaulted Dnyanoba Kale, which was the initial part of the occurrence. On the other hand, Sudamati (P.W.6) has not whispered a word regarding assault to Dnyanoba by stick by accused Nos.2 and 3. Climax is that, Dnyanoba Kale (P.W.12) deposed that, when he reached in front of his house, that time accused No.1 Uttam was alone sitting in front of his residence and when he was about 5 ft. away, accused No.1 got up and made Dnyanoba to fall on the ground and assaulted him by fists and kicks. Thus, the prosecution theory regarding assault to Dnyanoba Kale by the accused persons at about 7.00 p.m., which was the reason for deceased to come outside his house after hearing shouts of Dnyanoba, has become a doubtful circumstance.

14. It is to be noted that, including Sudamati (P.W.6), Ramesh (P.W.8), Sarjerao (P.W.12) and Parmeshwar (P.W.11), every witness deposed regarding hiding of accused No.4 Vithal near the door of the house of deceased and assault to deceased Pandit by accused No.4 Vithal by stick on his head as soon as he came outside his house. However, it is most important to note that, at the time of assault to Dnyanoba Kale, deceased Pandit was sitting inside his house along with his wife Sudamati and son Sarjerao. Thus, accused No.4 Vithal was not expected to know that deceased Panditrao would come outside his house. Even on

the date of incident, none of the accused had any dispute or quarrel with deceased Panditrao. Therefore, obviously, accused No.4 Vithal had no reason to hide near the door of house of Panditrao with preparation to assault the deceased. Thus, theory of the prosecution that accused No.4 Vithal was hiding near the door of the house of deceased and assaulted the deceased as soon as he stepped outside his house, appears to be most doubtful.

. Even the testimony of these all eye witnesses regarding actual assault to deceased Panditrao by other accused is totally contradictory to each other as to which accused assaulted Panditrao when he was lying on the ground and who assaulted and beaten Sarjerao. As every witness has contradicted each other on every material particular of the occurrence, and as theory put up by prosecution is doubtful and improbable regarding sudden attack by accused No.4 on Panditrao, the evidence of these all related witnesses does not inspire confidence. Learned trial Court has rightly considered these all inconsistencies in detailed manner and rightly disbelieved the testimony of these eye witnesses.

15. Another important circumstance before the Court is that, by examining defence witness Dr. Sharad Kale (D.W.1),

defence has proved that on 20.5.2003 i.e. on next day of the incident, Medical Officer Dr. Sami (who is not available in India), had clinically examined accused Ashok Kale, Vithal Kale, Laxmibai Sonaji Kale, Sumanbai Vithal Kale, accused Laxman Sonaji Kale and issued injury certificates (Exh.102 - Exh.106). According to this witness, as per record, these all accused and their family members sustained various injuries including contused lacerated wound on the head of accused Uttam, contused lacerated wound on the head of accused Ashok and swelling on forehead of accused Vithal together with other injuries specified in the certificates. Even the female family members of the accused sustained many external injuries as noted in the above injury certificates. However, prosecution has conveniently suppressed these injury certificates which were easily available to investigating officer at the time of investigation.

16. Even investigating officer (P.W.15) has admitted in his cross-examination that, when accused No.1 Uttam was arrested, he had head injury and even then, he was not referred to medical officer for examination. Even Head Constable Pandit Bhosle (P.W.13) has admitted in his cross-examination that he had investigated Crime No.52/2003, registered under Sections 143, 147, 148, 324, 337 read with Section 149 of the Indian

Penal Code, registered against witnesses Ramesh Kale, Dnyanoba Kale, Ashok Kale, Parmeshwar Kale and Sarjerao Kale as well as deceased Panditrao. He also admits that, charge sheet was filed before the Magistrate's Court against these all prosecution witnesses. In view of these circumstances on record when defence of the accused is of counter attack by deceased and his family members on the date and time of the occurrence, it was duty of the prosecution to explain the injuries sustained by accused persons and their family members. Prosecution should not have suppressed the filing of this counter criminal case against the prosecution witnesses. The Hon'ble Apex Court, in **Laxmisingh & ors. Vs. State of Bihar** reported in **[1976 (4) SCC 394]**, ruled that, in murder case, the non-explanation of injuries sustained by accused at about time of the occurrence or in the course of altercation is a very important circumstance, from which the Court can draw the following inferences :

- (1) that, the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;
- (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable.
- (3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

No doubt, in the same case Apex Court also held that, "Where evidence is so clear and cogent, so independent and disinterested or so probable, consistent and creditworthy, the non-explanation of injury by prosecution may not affect the prosecution case.

17. In the case at hand, as observed above, the entire prosecution theory appears to be doubtful and witnesses have contradicted each other on very material particulars. Prosecution has suppressed genesis of occurrence. In the peculiar circumstances, the suppression of injuries on the person of accused persons by prosecution is sufficient to extend the benefit of doubt in favour of the accused.

18. Even if the circumstantial evidence is considered, the trial Court has rightly rejected the recovery of blood stained weapon stick (Article 7) as per disclosure statement of the accused No.1 Uttam. Because panch witness Shrirang Sangle (P.W.4) and investigating officer P.W.15 have totally contradicted each other as to from which place the weapon of the offence was recovered at the instance of accused No.1. According to Shrirang (P.W.4), the stick was recovered from sugarcane crop and to the contrary, investigating officer (P.W.15) deposes that, the stick was taken out by accused No.1 Uttam from his residence.

Similarly, seizure of blood stained earth from the spot on 22.5.2003 i.e. after passage of more than two days from the date of occurrence is rightly discarded by trial Court.

19. Learned counsel for the respondents has also drawn our attention towards unexplained delay in lodging F.I.R. The incident occurred on 19.5.2003 and the F.I.R. was lodged by Ramesh (P.W.8) on 22.5.2003 at about 1.00 p.m., i.e. after delay of more than two days. The immediate need of medical aid to the deceased cannot be a acceptable ground for delay of more than two days in the circumstances of this particular case for the reason that, in the family of deceased, his two young sons namely Ramesh (P.W.8) and Sarjerao (P.W.12) were available and any one of them could have immediately approached Police Station, Ghansawangi to inform the police about the occurrence. In addition to these two sons, two brothers namely Parmeshwar Kale and Dnyanoba Kale could have also informed the police about the occurrence. However, despite availability of these family members, no action was taken by any family member of deceased to inform the police about the occurrence. On the basis of F.I.R. lodged by Ramesh (P.W.8), Crime No.53/2003 was registered at Police Station, Ghansawangi. On the other hand, on the basis of F.I.R. lodged by accused persons against deceased and prosecution witnesses, Crime No.52/2003 was

registered. Thus, possibility cannot be ruled out that after knowledge of the F.I.R. lodged by accused persons, the family members of the deceased concocted false story and lodged F.I.R. after inordinate delay of more than two days, only as a counterblast. In the circumstances, unexplained delay in lodging the F.I.R. is also one of the ground to extend benefit of doubt in favour of the accused persons.

20. Therefore, neither trustworthy and reliable direct evidence is available nor the circumstantial evidence is available to connect the accused with the death of the deceased Panditrao. Learned trial Court has taken probable view while acquitting the accused persons of all the charges. We hold that, this appeal being devoid of merits, deserves to be dismissed. Hence we pass the following order :

ORDER

- (i) The Criminal Appeal is dismissed.
- (ii) Bail bonds of respondents/ accused shall stand cancelled.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE