

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

CRIMINAL APPEAL NO. 255 OF 2007

The State of Maharashtra
Through Police Station, Chakur,
District Latur.

....Appellant.

Versus

1. Hamid Dadusab Bakriwale,
Age 56 years, Occu. Agri.,
2. Nazir Dadusab Bakriwale,
Age 60 years, Occu. Agri.,
3. Samadali Dadusab Bakriwale,
Age 40 years, Occu. Agri.,
4. Maheboob Fakirsab Bakriwale,
Age 32 years, Occu. Agri.,
5. Jakir Nazirsab Bakriwale,
Age 35 years, Occu. Agri.,
6. Sadiq Nazirsab Bakriwale,
Age 24 years, Occu. Agri.,
7. Irshad Nazirsab Bakriwale,
Age 22 years, Occu. Agri.,

All R/o. Nalegaon, Tq. Chakur,
District Latur.

(Respondent Nos. 4 to 7 are
deleted as per the Court's order
dated 4.7.2005)

....Respondents.

Mr. R.V. Dasalkar, APP for appellant/State.

Mr. Y.B. Pathan, Advocate for respondent Nos. 1 to 3.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
DATED : APRIL 20, 2018.**

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

1) The appeal is filed against judgment and order of Sessions Case No. 3/2006, which was pending in the Court of learned 1st Ad-hoc Additional Sessions Judge, Latur. The Trial Court has acquitted the respondents of the offences punishable under sections 307, 324, 149 etc. of Indian Penal Code (hereinafter referred to as 'IPC' for short). Though the appeal was filed by the State against all the seven accused persons, this Court has admitted the appeal only as against original accused Nos. 1 to 3. Both the sides are heard.

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

Syed Abdul is resident of village Nalegaon, Tahsil Chakur, District Latur. He was cultivating his land and he was also doing tailoring work. He was living with his two sons and wife in the village in his house and adjacent to his house, there was the house of Abdul Gafoor, brother of Syed Abdul. These brothers and one more brother were together having 20 Acres of agricultural land bearing Gat Nos. 758 and 759 of Nalegaon.

3) There was some dispute between Syed Abdul, the first informant and the accused persons over the possession of land. On

14.2.2005 the first informant and two other persons did agricultural operation like ploughing in land Gat Nos. 758 and 759. In the same tractor, the first informant was reached near his house by the other two persons at about 1.30 a.m. of 15.2.2005. When he entered the compound of his house, he noticed that all the accused were already sitting there and they were waiting for him. They picked up quarrel with him and then all the accused persons assaulted him with wooden log and knife. Accused Hamid used knife and he gave 2-3 blows on the back of first informant. Accused Nazir assaulted the first informant with wooden log. Others also assaulted him and gave threats of life. Due to the incident, he started shouting and then Abdul Gafoor, Jilani, Usman rushed there. After seeing these persons, all the seven accused ran away. But, the persons, who had rushed, had seen the accused persons when they were running away from the compound of the house of complainant.

4) Due to the blows given by knife, there was excessive bleeding and so, the first informant was shifted first to Government Hospital at Nalegaon by his brother. From there, he was taken to Latur Government Hospital. But, as per the advise given to him he was shifted to Ambajogai Government Hospital, District Beed. His statement came to be recorded in Ambajogai Government Hospital on 15.2.2005 at about 11.30 a.m. The crime was registered for the

offences punishable under sections 324 r/w. 149 etc. of IPC. This F.I.R. was sent to Chakur Police Station as the offence was committed within local jurisdiction of Chakur Police Station. On the basis of this report, the crime came to be registered for aforesaid offences at C.R. No. 27/2005 at Chakur Police Station.

5) From Ambajogai Hospital, the first informant was shifted to Pune and for the treatment, he was indoor patient for about 25 days. In Pune, one more statement was recorded by police and that was probably as dying declaration of the first informant. In view of the nature of injuries inflicted on the first informant, the crime was converted to make it for the offence punishable under section 307 r/w. 149 of IPC. During Investigation, statements of aforesaid persons including Abdul Gafoor came to be recorded. Police prepared spot panchanama and collected the record of medical treatment. All the accused persons came to be arrested. Chargesheet came to be filed for aforesaid offences.

6) The charge was framed and plea was recorded. The respondents pleaded not guilty. The prosecution examined in all twelve witnesses for proving the offences. Accused persons took the defence of total denial. The Trial Court has not believed both the first informant and Abdul Gafoor. There is circumstantial check of only

injuries found on the person of first informant but there is no other circumstantial check and so, the Trial Court has acquitted the respondents.

7) This Court has carefully gone through the F.I.R. which was recorded in Ambajogai Hospital. Though the names of seven accused were taken, specific allegations were made only against accused Nazir that he used weapon, wooden log and accused Hamid used knife for assaulting him. He had informed that more than four persons had noticed the accused when they were running away from the compound of his house. In the Court, he has deposed that when he entered the compound of his house at about 1.30 a.m. of 15.2.2005, he noticed that all the accused were present inside of the compound of his house and they were sitting there. He has deposed that they picked up quarrel with him by asking him as to why he had ploughed their land. He has deposed that accused No. 2 then asked as to why he had ploughed the land in the night time and then accused No.2 first assaulted him by using weapon wooden log on his back. He has deposed that due to blow given on his back, he fell on the ground and then accused No. 3 assaulted him by using iron rod on his back. He has deposed that accused No. 1 then used knife and gave blows of knife at three places on back. He has deposed that only after that he started shouting loudly and then many persons

gathered. He has deposed that Abdul Gafoor, Hakani Shaikh, Abdul Raheman and others had come there and then he was shifted by Abdul Gafoor in a jeep to Government Hospital Nalegaon.

8) Abdul Gafoor (PW 10) has given evidence that coincidentally he had returned to home on that day at about 12.30 hours of the night and at about 1.30 a.m. when he heard hue and cry coming from the side of house of first informant, he went outside and in the light of bulb, he saw that all the accused were giving beating to the first informant. He has deposed that accused Hamid was beating by knife and accused Nazir was beating by wooden log and so, he started shouting loudly and after that all the accused ran away. He has deposed that after that witnesses Shaikh Hakani, Shaikh Rahemansab and Gilani Mujawar rushed there and they shifted the first informant to the hospital as he had sustained bleeding injuries.

9) In the cross examination of Abdul Gafoor (PW 10), the previous statement given by him to police was confronted. Before police he had not stated that in his presence assault was made by aforesaid persons and he had stated that when he came out, assault was over and he felt that these persons had assaulted the first informant. This material omission is duly proved by the defence.

Further, his evidence does not show that the first informant was lying on the ground when accused were giving blows of weapons to him.

10) The prosecution has proved another statement of first informant recorded in Pune. This statement was confronted to Syed Abdul (PW 3) as it was recorded as dying declaration and it was exhibited as Exh. 52. In the statement, he had not made specific allegations against accused No. 1 Hamid that he had given three blows of knife on his back or accused Nazir had given blow by using wooden log on his back and the third accused had given blow of iron rod on his back.

11) The spot panchanama is proved in the evidence of Syed Gilani (PW 2). It was prepared on 16.2.2005. This document shows that the house of first informant is situated at corner created by two roads. By keeping some space from the road, wall like structure was created by using stones by first informant on northern, western and eastern sides. The eastern side of the property of first informant was closed firstly by the structure of his house and then by the stone wall. Beyond that there was the house of Abdul Gafoor (PW 10) and the hand sketch map appearing on the spot panchanama does not show that Abdul Gafoor could enter in the compound of the first

informant directly from eastern side. Further, the spot of offence was shown as north west corner which was exactly on western side of the house of first informant and there is nothing on the record to show that this place was visible to Abdul Gafoor from eastern side. If Abdul Gafoor had rushed to the spot after hearing shouting of the first informant, he would have come across all the accused persons before leaving of the compound wall by the accused persons, but that did not happen. This spot panchanama creates reasonable doubt about the versions given by Abdul Gafoor (PW 10) and Syed Abdul (PW 3), the first informant.

12) In the spot panchanama at Exh. 39, it is mentioned that there was bulb fixed above the entrance door of the room of the first informant. The first informant has tried to say that in the light of that bulb, he saw all the accused and they were sitting there inside of his compound. The evidence given by the first informant shows that first the accused picked up quarrel with him by saying that he had done wrong thing by ploughing their land and that too, in the night time. Thus, initially there was a quarrel, according to the first informant, between him and the accused persons. The quarrel must have been in loud voice, if at all there was such quarrel and in ordinary course, firstly his wife and two sons, who had crossed the age of 14 years would have rushed outside of the rooms and they

would have witnessed the incident and quarrel also, but that did not happen. Abdul Gafoor (PW 10) has tried to say that he heard the voice of quarrel and he went towards the spot. This story itself shows that the versions given by both the witnesses are not probable.

13) It was night time and as per the medical evidence, only three visible injuries like three incised wounds were found on the back of the first informant. Dr. Madhav Shinde (PW 4) has given evidence that there was tenderness all over the abdomen, but that tenderness was not described as injury caused by weapon like rod. The doctor has deposed that the injuries, three incised wounds and tenderness can be caused by weapons produced in the Court. The weapons are knife, wooden log and metal rod. Metal rod was found in the courtyard of the house of the first informant. No blood was present on any of the weapon. It is not the version of the first informant that assault was made on his abdomen. He has specifically stated that blows of three weapons were given on his back. On the back, there were only three injuries like three incised wounds. This circumstance also creates reasonable doubt about the version of the first informant. If the medical evidence and the direct evidence are considered together, this Court holds that the probability is created that only one person inflicted the injuries on his back and there is

possibility that he fell on the ground after assault and he had no opportunity to see the assailants. If that probability is there, even accused No. 1 Hamid cannot be convicted. In view of the number of injuries found on the person of complainant, it can be said that the things are very much exaggerated and when probably only one person had assaulted him, he took the names of as many as seven persons who were known to him. There is no independent corroboration to this version. There is clear probability that Abdul Gafoor (PW 10) had no opportunity at all to see any of the assailants in view of the aforesaid circumstances.

14) In the statement, which was recorded as dying declaration by Pune Police, specific role was not attributed to any of the accused by the first informant. The F.I.R. which was recorded in Ambajogai Hospital was recorded after about 10 hours of the incident. If Abdul Gafoor (PW 10) had witnessed the incident, in the Government Hospital situated within local jurisdiction of Chakur Police Station itself, Abdul Gafoor would have given the F.I.R. This did not happen. An attempt is made to see that the first informant was not in a position to speak for few hours after the incident, but the first informant did not say like that. Abdul Gafoor (PW 10) had not disclosed the incident to anybody and the statement of only Syed Abdul (PW 3), the first informant was required to be recorded

by police, that too in Ambajogai Hospital. These circumstances have created possibility of concoction, false implication.

15) Admittedly, there is dispute of civil nature between the parties. There are aforesaid circumstances. Due to these circumstances, the Trial Court has given benefit of doubt to the respondents. That view is possible view. This Court sees no reason to interfere in the decision given by the Trial Court. In the result, the appeal stands dismissed.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/