

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

CRIMINAL APPEAL NO.541 OF 2006

The State of Maharashtra
through the Police Station Officer,
Neknoor Police Station, Dist. Beed.

... APPELLANT
(Orig. Complainant)

VERSUS

1. Dinkar Eknath Jagtap,
Age 30 years, Occu. Agri.
R/o Satra Potra, Taluka and
District Beed.
2. Ramhari Eknath Jagtap,
Age 25 years, Occu. and
R/o as above.
3. Eknath Ambadas Jagtap,
Age 65 years, Occu. and
R/o as above.
4. Kalinda Eknath Jagtap,
Age 60 years, Occu. and
R/o as above.
5. Chandrakala Baburao Havale,
Age 45 years, Occu. Household &
Agri. R/o Murshadpur Potra,
Taluka and District Beed.
6. Vasant Baburao Havale,
Age 30 years, Occu. Agri.
R/o as above.
7. Shrikavanar w/o Dinkar Jagtap,
Age 25 years, Occu. Household &
Agri. R/o Satra Potra, Taluka and
District Beed.

8. Ambadas Satwa Jagtap,
Age 85 years, Occu. Agri.
R/o as above. ... RESPONDENTS

**(Appeal abated against respondent
No.8s as per Court's order dated 6.10.2017)**

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Shri R.V. Dasalkar, A.P.P. for appellant/ State
Shri V.C. Patil, Advocate holding for
Shri S.M. Godsay, Advocate for respondents
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CORAM: T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.

Date of reserving judgment : 19th April, 2018.

Date of pronouncing judgment : 24th April, 2018.

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

1. This Criminal Appeal is directed by State of Maharashtra against the judgment of acquittal passed by I Adhoc Additional Sessions Judge, Beed in Sessions Case No.80/2005, acquitting all accused of the offences punishable under Sections 147, 148, 307 read with Section 149; Section 325 read with Section 149; Section 324 read with Section 149 and Section 323 read with Section 149 of the Indian Penal Code. Respondents are original accused No.1 to 8 respectively.

2. Prosecution case in brief is that, informant is resident of village Satra and at the relevant time of the occurrence, he

used to live jointly with his three sons namely Sunil (P.W.7), Laxmikant and Anant (P.W.9). On account of agricultural land dispute, accused and informant family are on inimical terms. On 14.7.2004, at about 1.30 p.m., informant had been to toilet situate at rear side of his residence. When he came outside the toilet, that time, accused No.1 to 9 reached on that spot, armed with sticks and stones. They assaulted informant Chandrakant (P.W.3) by sticks and stones and thereby injured him. Hearing shouts of Chandrakant, when his two sons namely Sunil (P.W.7) and Anant (P.W.9) rushed on the spot and when they tried to intervene, that time, they were assaulted by sword and axe. On the same day, Chandrakant Kulkarni lodged report to Police Station, Neknoor (Exh.38). Police referred the injured to Cottage Hospital, Neknoor. Dr. Prashant Palange (P.W.2) examined the injured and issued M.L.C. Certificates (Exh.33 and 34). P.S.I., Neknoor Police Station Shri Ingle conducted investigation of this crime and prepared spot panchanama Exh.29 and seized 4 sticks from the scene of offence. During the course of investigation, one axe was seized from accused Ramhari. After completion of the investigation, charge sheet was submitted against accused No.1 to 8 for the offences punishable under Sections 147, 148, 307, 325, 324 read with Section 149 of the Indian Penal Code.

3. Offence punishable under Section 307 of the Indian

Penal Code being exclusively triable by Court of Sessions, this case was committed to Sessions Court, Beed.

4. Charge Exh.11 was framed against accused No.1 to 8 for the offences punishable under Sections 147, 148, 307, 325, 324 read with Section 149 of the Indian Penal Code. Accused pleaded not guilty and claimed trial.

5. Prosecution examined total 10 witnesses. Defence of the accused is of total denial. They contended that, on the date and time of incident, the informant and his three sons assaulted accused No.1 to 5 by deadly weapons. They examined two defence witnesses.

6. After considering the evidence placed on record by prosecution, trial Court pleased to acquit all the accused of all the charges. Therefore this Appeal.

7. Learned A.P.P. for the State submitted that, the testimony of informant Chandrakant (P.W.3) is fully corroborated by testimony of eye witnesses Nivrutti (P.W.4), Vishwanath (P.W.6), Sunil (P.W.7), Sushma (P.W.8) and Anant (P.W.9). Learned A.P.P. submitted that, even the oral evidence is corroborated by testimony of Dr. Palange (P.W.2) who has proved the injuries found on the body of informant and his sons. According to learned A.P.P., the truthful version of prosecution

witnesses is disbelieved by trial Court on flimsy ground and, therefore the judgment and order of acquittal is perverse.

8. In reply, learned counsel for respondents submitted that, the evidence of informant Chandrakant and his two sons and so called eye witnesses is totally in conflict with each other on every material particulars about the occurrence.

9. His next submission is that, prosecution has conveniently suppressed the injuries found on the body of accused persons which are admitted by Dr. Palange (P.W.2). Contention of learned defence counsel is that, on account of suppression of injuries on the body of accused, conclusion can be drawn that the genesis of occurrence is suppressed by the prosecution and, therefore, benefit of doubt was rightly extended in favour of the accused persons.

10. Learned Advocate for respondents pointed out that, the oral evidence of injured witnesses and eye witnesses is totally in conflict with medical evidence and, therefore, the view taken by learned trial Court is possible view.

11. In the case at hand, prosecution has placed on record direct evidence of injured eye witnesses Chandrakant Kulkarni (P.W.3), Sunil Kulkarni (P.W.7) and Anant Kulkarni (P.W.9) and other eye witnesses such as Nivrutti Choudhary (P.W.4),

Vishwanath Kale (P.W.6) and Sushma Kulkarni (P.W.8). At the outset, we must observe that, the evidence of injured witnesses cannot be discarded unless there are sufficient reasons for disbelieving their testimony. So also, only because accused and prosecution witnesses are on inimical terms, their testimony cannot be disbelieved if otherwise they are proved to be trustworthy witnesses.

12. Chandrakant Kulkarni, his sons Sunil Kulkarni (P.W.7) and Anant Kulkarni (P.W.9) have brought on record that on 14.7.2004 at about 1.30 p.m., when Chandrakant (P.W.3) had gone to lavatory to answer the call of the nature, that time, near the lavatory, he was assaulted by accused No.1 to 8 by sticks, stones, sword and axes. According to Chandrakant, at the time of occurrence, accused Dinkar assaulted him by axe, accused Ramhari by sword, accused Ambadas by stick, accused Vasant and accused Kalinda, Chandrakala by stones. It is to be noted that, this witness has addressed accused No.4 and 5 only as women accused without taking their names. Anant (P.W.9), Sunil (P.W.7) and Chandrakant (P.W.3) have deposed regarding assault to Chandrakant by Dinkar by axe and by accused Ramhari by sword. However, medical evidence of Dr. Prashant Palange (P.W.2) together with M.L.C. Certificate of Chandrakant (Exh.33) shows that, only abrasions, contusions and lacerated

wounds were found on the body of Chandrakant (P.W.3). No incised or stab wound was noticed by Medical Officer Dr. Palange (P.W.2), which are only possible by axe as well as sword blow. Even Dr. Palange (P.W.2) has made it clear that the injuries found on the body of Chandrakant were caused by blunt object. Thus, contention of Chandrakant regarding assault to him by main accused Dinkar and Ramhari by axe and sword blows is falsified by medical evidence itself.

13. After going through evidence of Chandrakant (P.W.3), it further emerges that this witness claims that due to assault by accused persons he became unconscious and thereafter accused lifted him and thrown him in the ditch which was excavated in his land. From the cross-examination of this witness, it emerges that, he regained consciousness when he was in his house. He has further improved his version by admitting that, when he reached to Neknoor, he gained senses to full extent. However, in his examination-in-chief, he deposed that, hearing his shouts, his sons Sunil and Anant reached on the spot and Sunil fell down on his body and the stone blows, stick blows, axe blows and sword blows were received by Sunil in attempt to save this witness. This witness has gone to the extent that, even Sunil became unconscious and thereafter all accused persons went towards his son Anant (P.W.9), who was trying to contact police on phone

and they mercilessly assaulted Anant by weapons in their hand. Chandrakant has described the assault to Anant as blow of stick by Eknath on his private organ, women accused inflicted stone blows on private organ of Anant. It is to be noted that, when Chandrakant (P.W.3) became unconscious due to assault by all accused persons, it means that he was not in position to witness what incident occurred subsequently. Therefore, obviously he was not expected to know when Sunil and Anant reached on the spot and in what manner they were assaulted by accused persons. Thus, obviously Chandrakant (P.W.3) is making absolutely false statement regarding assault to two sons in his presence. The detailed description given by this witness regarding blows inflicted by each accused on the body of Anant (P.W.9) supports the contention of defence counsel that this witness is totally untrustworthy witness whose evidence is not free from improbabilities as well as falsity. Therefore, the conclusion drawn by trial Court is absolutely correct that Chandrakant (P.W.3) is not trustworthy witness to base the conviction of the accused.

14. Regarding testimony of Sunil (P.W.7), it must be observed that, though this witness claims that his father Chandrakant was assaulted by accused persons by axe, sword, sticks and stones, the testimony of this witness is also in conflict

with medical evidence regarding use of axe and sword by accused persons at the time of assault to Chandrakant. This witness has also gone to the extent that his brother Anant was assaulted near his house by stick on his private part and one axe blow was inflicted on his knee and, therefore, Anant became unconscious. This witness claims that, he sustained injury on his back due to axe blow inflicted by Dinkar and injuries due to stick blows inflicted by accused Eknath and others. He claims that, Nivrutti Choudhary and Vishwanath Kale as well as Baliram Havle intervened the quarrel and brought the incident to end. It means that, according to this witness, Nivrutti Choudhary, Vishwanath Kale and Baliram Havle were present on the spot at the time of occurrence.

15. However, Nivrutti Choudhary (P.W.4) nowhere deposed regarding intervening the dispute in between accused and injured persons. This witness claims that, only when Chandrakant became unconscious, this witness took Chandrakant to Neknoor. From the cross-examination of this witness, Nivrutti (P.W.4), it emerges that, though in examination-in-chief he claims that he is one of the eye witness in whose presence Chandrakant was assaulted by accused persons, from his cross-examination it emerges that, at the time of occurrence he was present at his house, which is at a distance of about 200 ft. from

the spot of the incident. This witness claims that, only Anant Kulkarni was unconscious and not Chandrakant and Sunil. This witness also admits that when he had gone towards spot, straightway he went inside the house of Chandrakant where Chandrakant and Sunil (P.W.7) were present in the house. Thus, this witness falsifies the claim of Sunil (P.W.7) that Chandrakant and other persons rushed on the spot, they intervened and separated the accused persons from the injured persons. The testimony of Nivrutti Choudhary is self contradictory as well as it is inconsistent with testimony of Chandrakant (P.W.3) and Sunil (P.W.7) on every material particulars.

16. So also, though Sunil claimed that he was assaulted by axe and stick, the medical evidence of Dr. Palange (P.W.2) falsifies this contention because this Medical Officer noticed only 5 simple abrasion imprints on the left arm, on the back, waist and on both thighs of Sunil. From the cross-examination of Dr. Palange, it becomes clear that, abrasion imprint is only mark on the skin, which vanishes naturally within couple of hours. He also admits that, abrasion imprints can be caused even by other means than violence and such abrasion imprints are not possible due to stick having smooth surface. Spot panchanama (Exh.29) shows that, Bomboo sticks were seized from the spot. Generally Bamboo sticks have smooth substance. Those seized sticks were

not referred to Dr. Palange (P.W.2) to prove that injuries found on body of witnesses were possible due to sticks seized from the spot. So also, X-ray plates were not proved by examining Radiologist who obtained X-ray to prove fracture of bone of Chandrakant (P.W.3) Thus, medical evidence placed on record totally falsifies the contention of Sunil (P.W.7) regarding assault to him by sticks and axe by the accused persons.

17. For the same reasons, even the evidence of Anant (P.W.9) is not trustworthy, whose testimony regarding assault to his father by accused by axe, sword and sticks is inconsistent with medical evidence placed on record. According to Anant (P.W.9), after witnessing the occurrence, he returned to his house and tried to contact police on mobile phone and that time, accused persons came near him and assaulted him by axe on his right knee. Accused Eknath inflicted stick blow and accused Shrikavanar inflicted stone blow on the penis of this witness. Anant claims that, accused Ramhari inflicted sword blow on his back and accused Vasant and women inflicted stone blows. He claimed that, even accused Ambadas, who is 85 years old person, inflicted stick blow on the body of this person and thereafter he became unconscious. However, cat has come out of the bag when prosecution examined Dr. Palange (P.W.2), who examined Anant (P.W.9) who found only one small abrasion on

right knee and abrasion imprints on left shoulder of this witness. Obviously, such abrasion is not possible by stick blow or by sword and axe blow. Thus, the evidence of Anant (P.W.9) is totally in conflict with medical evidence, as well as far away from probabilities. It is hard to accept that after receiving such simple injuries he would become unconscious.

18. Even testimony of Vishwanath Kale (P.W.6) who claims to have witnessed the occurrence, is not reliable for the simple reason that his testimony is in conflict with evidence of Nivrutti (P.W.4) as well as evidence of Sunil Kulkarni (P.W.7) on every material particulars. Though Sunil (P.W.7) claims that Nivrutti and Vishwanath Kale intervened and brought the incident to end, Vishwanath Kale (P.W.6) claims that though Nivrutti Choudhary and he reached on the spot, these witnesses were not able to understand how to intervene. As observed above, Nivrutti (P.W.4) admits that when he had gone on the spot, straightway he had gone inside the house of Chandrakant Kulkarni where all injured were present. Thus, the testimony of Vishwanath Kale (P.W.6) is totally inconsistent with evidence of other witnesses on every material particulars. Therefore, this witness is also not trustworthy witness.

19. Even the evidence of Sushma Kulkarni (P.W.8), who claims to be one of the eye witness, cannot be relied upon for the

same reason that her testimony is in conflict with medical evidence as well as with the version of above referred so called eye witnesses. The claim of this witness regarding intervention by Vishwanath Kale and Nivrutti Choudhary is also falsified by Nivrutti (P.W.4) and Vishwanath (P.W.6), as discussed above.

20. In the result, after careful examination of testimony of injured witnesses as well as eye witnesses, we have come to the conclusion that, none of these witnesses are trustworthy witnesses to base the conviction. As observed above, the evidence of these totally dubious witnesses is in conflict with medical evidence. Even seizure of sticks from the spot (Exh.29) and axe from accused Ramhari (Exh.42) is of no help to the prosecution as no blood stains were found on these seized articles.

21. So also, as rightly pointed out by learned defence counsel, prosecution has conveniently suppressed the injuries sustained by accused persons at the time of occurrence. By examining Dr. Palange as defence witness, the accused have also proved that on 14.7.2004, police referred accused Eknath Ambadas Jagtap, Dinkar Eknath Jagtap and Ramhari Eknath Jagtap to this Medical Officer and this witness found three lacerated wounds on the body of accused Eknath, which were caused within six hours from the time of examination. This

witness has also proved that, on the body of accused Dinkar, one incised wound on his back of the size 10 cm. x 0.5 cm. and one abrasion on his left knee were found. This witness opined that, the incised wound was caused by sharp weapon. Age of this injury was also within six hours from the time of examination i.e. from 1.45 p.m. It means that, defence has proved that the accused also sustained injuries on their bodies which were caused at the relevant time of the occurrence and one of the injury was caused by sharp cutting weapon.

22. By examining P.S.I. Gautam Ingle (D.W.2), the defence has also brought on record registration of counter criminal case against the informant Chandrakant, witness Sunil Kulkarni and Anant Kulkarni. This material on record is sufficient to draw adverse inference against the prosecution that they suppressed the genesis of the occurrence. The Hon'ble Apex Court, in **Bhagwan Sahai & anr. Vs. State of Rajasthan** reported in **(AIR 2016 SC 2714)**, ruled that when the Court came to a finding that the prosecution has suppressed the genesis and origin of the occurrence and also failed to explain the injuries on the person of the accused, the only possible and probable course left open was to grant benefit of doubt to the accused.

23. In view of the legal principles settled by the Apex

Court, on account of suppression of genesis of the occurrence by prosecution, benefit of doubt deserves to be extended in favour of the accused persons. The learned trial Court has minutely considered the above discussed evidence of prosecution witnesses which is in conflict with medical evidence. Trial Court has also considered the suppression of genesis of the occurrence by prosecution and extended benefit of doubt in favour of the accused. The view taken by learned trial Court is possible view and therefore, in this appeal against acquittal, this Court cannot interfere. It follows that, this appeal being devoid of merits, deserves to be dismissed. Hence we pass the following order :

ORDER

- (i) Criminal Appeal No.541/2006 is dismissed.
- (ii) Bail bonds and surety bonds of respondents accused shall stand cancelled.
- (iii) Under Section 437-A of the Code of Criminal Procedure, accused No.1 Dinkar Eknath Jagtap, accused No.2 Ramhari Eknath Jagtap, accused No.3 Eknath Ambadas Jagtap, accused No.4 Kalinda Eknath Jagtap, accused No.5 Chandrakala Baburao Havale, accused No.6 Vasant Baburao Havale and accused No.7 Shrikavanar w/o Dinkar Jagtap shall execute before the trial Court

bail bonds with sureties for the amount of Rs.5000/- (Rupees five thousand) each within a period of 15 days from the date of this order to appear before the Supreme Court as and when notices are issued to them in respect of any proceedings filed against this judgment and the said bail bonds shall remain in force for a period of six months from today.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

fmp/