

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

CRIMINAL APPEAL NO. 594 OF 2005

The State of Maharashtra,
Through Police Station
Hasnabad, Tq. Bhokardan,
Dist. Jalna.

....Appellant.

Versus

1. Damodhar s/o. Laxman Kolte,
Age 50 years,
2. Ashok s/o. Damodhar Kolte,
Age 28 years,
3. Pradeep s/o. Damodhar Kolte,
Age 22 years,
4. Rangnath s/o. Laxman Kolte,
Age 65 years,
5. Deelip s/o. Rangnath Kolte,
Age 26 years,
6. Sarubai Rangnath Kolte,
Age 60 years,
7. Nanubai Damu Kolte, Age 45 years,

All R/o. Takli Kolte,
Tq. Bhokardan, Dist. Jalna.

....Respondents.

Mr. M.M. Nerlikar, APP for appellant.

Mr. S.J. Salunke h/f. Mr. R.V. Gore, Advocate for assisting APP.

Mr. Satej S. Jadhav, Advocate for respondent Nos. 1 to 7.

**CORAM :T.V. NALAWADE AND
SMT. VIBHA KANKANWADI, JJ.**
DATED : 11/09/2018.

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

1) The appeal is filed by the State against the decision of acquittal given by 2nd Ad-hoc Additional Sessions Judge, Jalna in Sessions Case No.12/2002. The Trial Court has acquitted all the respondents of the offences punishable under sections 307, 325, 149 etc. of Indian Penal Code (hereinafter referred to as 'IPC' for short). Both the sides are heard.

2) The first informant, who was injured in the incident namely Pundlik Kolte was a member of Village Panchayat of village Takali Kolte. Accused No. 1 was Sarpanch of the village. Accused Nos. 2 and 3 are sons of accused No. 1, accused No. 4 is brother of accused No. 1, accused No. 5 is son of accused No. 4, accused No. 6 is wife of accused No. 4 and accused no. 7 is wife of accused No. 1. All of them were living in the same village at the relevant time. There was dispute in Village Panchayat and the first informant was of the group which had intention to move No Confidence Motion against Sarpach – accused No. 1. They had decided to submit the requisition to Tahsildar on 10.9.2001 and they had made their intentions open in their village.

3) The incident in question took place on 9.9.2001 at 11.30 a.m. near Village Panchayat Office. The first informant had just returned from the side of bus stand on his motorcycle and when he

was putting motorcycle on stand, all the accused came there. It is the case of first informant that accused were holding weapons like sticks and iron bars and to create fear in his mind, all of them assaulted him by using the weapons. It is the case of prosecution that when the first informant collapsed, the accused persons attempted to finish him by throwing big stones on his head. But, somehow, he warded off the blows and one stone hit his right hand. He sustained fracture injury to his right hand and to his right leg and blunt trauma on other parts of the body. After the incident was over, some villagers rushed there and they shifted him to Government Hospital, Aurangabad. His report was recorded on the same day and the crime came to be registered for aforesaid offences.

4) During course of investigation, statements of the persons living in the vicinity of the spot of incident came to be recorded. Spot panchanama was prepared. Blood was found on the spot. The first informant sustained five injuries and out of them, one was grievous injury like fracture of right tibia fibula right upper third. The chargesheet was filed for aforesaid offences.

5) The prosecution examined injured Pundlik (PW 1), one Ramdas (PW 2) living in the vicinity, Latabai (PW 3) wife of Ramdas and Bhausahab (PW 5), son of Pundlik (PW 1). They have given direct evidence. Doctor is examined to prove the injuries found on the

person of first informant when doctor examined him on 9.9.2001 at 1.00 p.m. in Government Hospital of Aurangabad.

6) The F.I.R., Exh. 67, is duly proved in the evidence of Pundlik (PW 1). In the F.I.R., names of witnesses who had rushed to the spot after starting of the assault were not given. In the F.I.R., vague allegations were made against all the accused including the two lady accused that they were holding weapons like stick and iron bar and all of them assaulted him by using sticks and iron bars. There was vague allegation that an attempt was made on his life by throwing two big stones at his head. The names of specific accused in that regard were not mentioned in the F.I.R. In substantive evidence, the first informant tried to give the particulars by deposing that accused Deelip had given him beating by using iron rod and accused Nos. 1 to 4 and 6 and 7 gave him beating by using sticks. Though he has given evidence that his right hand was also fractured, there was no such injury. He has given specific evidence that Deelip gave blow of stone on his leg and the accused Damu gave blow of stone on his head which was avoided by him. In the Court, he tried to say that persons like Namdev, Bhanudas, Sudam, Vishnu rushed to the spot and after that, the accused persons ran away. Thus, in substantive evidence Pundlik (PW 1) tried to attribute particular role played by each accused and tried to say that the witnesses had rushed to the spot and they had seen all the accused. He has given

evidence that he was shifted to Civil Hospital, but the names of the persons, who shifted him to Civil Hospital are not given in substantive evidence. The name of even his son Bhausahab (PW 5) was not mentioned in the F.I.R. and his name is not given in substantive evidence. These circumstances cannot be ignored.

7) The evidence of Ramdas (PW 2) and his wife Latabai (PW 3) is improbable in nature. They have given evidence that at about 11.30 a.m. when they were present in the house and they were taking the lunch, they heard shouting and then they saw the incident through the gap of the entrance door of their house. They have given evidence that they noticed that their door was closed by putting latch from outside. The evidence shows that PW 2 tried to say that he then came out of the house by using other way from other lane. In the cross examination, he tried to say that there was virtually scuffle for about five minutes and all the accused were giving blows horizontally on the head of complainant. He tried to say that when Pundlik (PW 1) collapsed, all the accused gave beating to him by using iron rods and sticks. Some omissions in the previous statement were brought on the record in the cross examination and they are proved. He had not stated before police that he had heard shouting of the injured and when the first informant collapsed, accused Damodar and Deelip hit the stones on the head of complainant, on right leg of the complainant and other part of the body. The evidence

of his wife Latabai (PW 3) is vague and she has given only one particular like the weapon which was in the hand of Deelip like iron rod. She has further given evidence that all the seven accused were giving beating by sticks and iron rods. She has given evidence against Damu and Deelip that they used stones also which hit on head and leg. If the evidence of these two witnesses is compared with the evidence of PW 1, it can be said that the evidence of PW 2 and PW 3 is not consistent with the evidence of PW 1. Different roles are attributed to the accused persons by these two witnesses than the roles given by PW 1. Further, it does not look probable that only through the gap of door of the house, they could see the entire incident. Though an attempt is made to show in the panchanama that the spot is visible from the house or from the door of these two witnesses, it does not look probable that somebody had put latch on the door from outside and they were inside of the house and they could see the incident. Suggestion is given to them that they were not at home. In view of the nature of evidence, that probability is there. Further, their names are not there in the F.I.R.

8) Bhausahab (PW 5) has given evidence that when he reached the spot after hearing about the incident, he saw that all the accused were giving beating by using weapons like iron rod and sticks and when some persons rushed there, in their presence also Damu attempted to hit the stone on the head, which was taken on

hand by the first informant and Deelip hit stone on the leg of his father. If he was really present there, he would have definitely intervened in the incident to save his father. That did not happen and his name was not mentioned in F.I.R. He and other two eye witnesses gave statement to police on 10.9.2001. No other witness is examined to prove the incident. Due to these circumstances, the Trial Court has not believed the eye witnesses including the first informant. Suggestion is given to the first informant that he sustained injury due to accident. Though the suggestion is denied, in view of the nature of aforesaid evidence and as the truth cannot be separated from the falsehood, this Court holds that the view taken by the Trial Court is a possible view and the accused persons cannot be convicted for the offences for which charge was framed.

9) The learned APP and learned counsel Shri. S.J. Salunke, who was assisting the learned APP placed reliance on following cases reported as :-

(i) AIR 2007 SC (Supp) 111 [Chandrappa & Ors. Vs. State of Karnataka],

(ii) 2008 AIR SCW 1170 [Vijay Shankar Shinde and Ors. Vs. State of Maharashtra],

(iii) AIR 1981 SC 1237 [Krishna Pillai Sree Kumar and Anr. Vs. State of Kerala],

(iv) AIR 2013 SC (Supp) 882 [Kusti Mallaiah Vs. State of Andhra Pradesh] and

(v) AIR 1999 SC 3717 [Leela Ram (D)

through Duli Chand Vs. State of Haryana and Anr.].

The facts and circumstances of each and every case are always different. Relevant facts of the present matter are already mentioned. As the truth cannot be separated and it cannot be ascertained as to which accused caused injuries and as there is no circumstantial check to the direct evidence, this Court holds that the observations made in the aforesaid cases are of no help to the State. In the result, the appeal stands dismissed.

[SMT. VIBHA KANKANWADI, J.]

[T.V. NALAWADE, J.]

SSC/

Salim
Shafi
Choudhari

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signed by
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