

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

CRIMINAL APPEAL NO. 179 OF 2004

The State of Maharashtra,
through Shevgaon Police Station,
Taluka Shevgaon,
District Ahmednagar

..The Appellant

- [1] Bapu Janaji Bade, age 36 years
- [2] Babasaheb Arjun Sanap, age 19 years
- [3] Sachin Vinayak Walhekar, age 30 years
- [4] Vishnu Kisan Walhekar, age 32 years
- 5. Sunil Sulshiram Jarhad, age 25 years
- [6] Bhivsen Bala Sanap, age 45 years
- 7. Satava Laxman Bare, age 30 years
- [8] Tulshiram Shivram Jarhad, age 48 years
- 9. Arjun Bala Sanap, age 46 years
- [10] Lahnu Aba Walhekar, age 55 years
- [11] Radhakisan Bala Sanap, age 35 years
- 12. Namdeo Kamlakar Walhekar, age 20 years
- 13. Gitaram Salveram Goykar, age 45 years
- [14] Sindhubai Kamlakar Walhekar, age 40 years
- [15] Kausabai w/o Bapu Bade, age 35 years
- [16] Hausabai w/o Arjun Sanap, age 40 years
- [17] Indubai w/o Bhivsen Sanap, age 30 years
- [18] Asarabai w/o Radhakisan Sanap, age 40 years

All R/o Thakur Pimpalgaon,
Taluka Shevgaon, Dist.Ahmednagar

.. The Respondents

Mr P.N. Kutti, A.P.P. for appellant
Mr S.S. Jadhavar, Advocate for respondent no.12
Appeal is abated as against respondents no.1 to 4, 6, 8, 10, 11, 14 to 18 as per Court's orders

**CORAM : S.S. SHINDE AND
A.M. DHAVAL, JJ**

DATE : 6th January 2018

ORAL JUDGMENT (Per A.M.Dhavale, J.)

1. This is appeal by the State against acquittal of eighteen accused of offences punishable under Sections 147, 148, 452, 364, 302, 427, 504, 506 read with Sec. 149 of Indian Penal Code and Section 37, 39 and 40 read with Sec. 135 of Bombay Police Act.

2. The statement given by the deceased Revan Limbaji Kekan, r/o Thakur Pimpalgaon, Taluka Shevgaon, District Ahmednagar at Shevgaon police station on 10.12.1996 which turned out to be dying declaration is the F.I.R. Unfortunately, the person who recorded the dying declaration was also dead and, therefore, the F.I.R. could not be proved. As per the F.I.R., deceased Revan aged 45 years was agriculturist. He was also working as a labourer for sugarcane cutting. On 9.12.1996 in the evening, he returned after working as a labourer at Nipani, Karnataka State. He had disputes on account of water with the accused Babu Bade and others, who were residing in the same village. About one year earlier, accused Babu Bade and his accomplice assaulted him for which criminal case is pending in Shevgaon Court. Accused no.1 Babu Bade (A-1) and others used to abuse and intimidate him. On the fateful day, at 9.00 a.m. deceased Revan was sitting in the house of Bhagchand Khedkar. That time, accused nos.1

to 13 came in front of the house of Bhagchand with iron pipes in their hands and accused no.9 Arjun was carrying a Koyta. They started abusing and intimidating Revan and challenged him to come out and threatened him. Revan got frightened and concealed himself in the house but they broke open the door and forcibly dragged him out of the house and assaulted him with iron pipes and Koyta on his both the hands and legs. Accused nos.14 to 18, five ladies joined them. They also abused and gave fist and kick blows to him. They dragged him upto the house of Babu Bade (A-1) and threw him in front of his house. He was told that they had received Rs.1 lakh for killing him and assaulted on his both the legs and both arms and caused him fracture injuries. His statement to that effect was recorded by A.S.I. of Bodhegaon outpost. The same was forwarded to Shevgaon police station at 4.15 p.m. and crime was registered at C.R.No.I-189/1996. P.W.10 P.I. Baban Ithape investigated the same. During investigation, the spot panchnama was drawn. The injured was referred to medical hospital. He died at Rural Hospital, Shevgaon. The inquest panchnama was drawn and post mortem was conducted on dead body by Dr. Gajanan P.W.11. The Investigating Officer recorded statements of witnesses including two eye witnesses P.W.1 Haridas and P.W.7 Kantabai. The accused were arrested and during interrogation, they gave voluntary statements pursuant to which, weapons of offence were recovered. Blood stained clothes of the accused were also recovered. The seized articles were forwarded to Chemical Analyst through carrier P.W.9 Dadasaheb. After obtaining Chemical Analyst's report, the charge-sheet was filed. In due course, the case was committed to the Court of Sessions. The learned Sessions Judge,

Ahmednagar framed charge at Exh.3 for above referred offences. The accused pleaded not guilty. The prosecution examined eleven witnesses. The defence of the accused is of total denial, as according to them, there was political as well as personal enmity and litigations between the parties and, therefore, they have been falsely implicated. The learned Additional Sessions Judge, Ahmednagar, after hearing the arguments found the evidence of P.W.1 Haridas and P.W.7 Kantabai unreliable. There was no evidence on the point of dying declaration. He held that the prosecution failed to prove the offences beyond reasonable doubt and all the accused, therefore, were acquitted. Hence this appeal.

3. Mr P.N. Kutti, learned A.P.P. for the State argued that the victim himself has lodged the F.I.R. at the police station, immediately after the incident. IT was a brutal assault witnessed by P.W.1 Haridas and P.W.7 Kantabai. The prosecution has examined the Medical Officer who has opined that the injuries sustained by the deceased were sufficient in ordinary course of nature to cause death. The accused have discovered weapons of offences and their blood stained clothes. Though prosecution witnesses have turned hostile, there is reliable evidence of police Officers and the learned trial Judge should have believed the eye witnesses and should have convicted the accused.

4. Per contra, learned Advocate Mr S.S. Jadhavar for the accused supported the judgment of the trial Court. He argued that the evidence of P.W.1 Haridas and P.W.7 Kantabai is not credible and trustworthy. They have falsely implicated accused nos.14 to 18 and at

the time of evidence, they have not taken their names at all. Even in respect of other accused, there is material variance between the evidence of P.W.1 Haridas and P.W.7 Kantabai *inter se* as well as in evidence and previous statements before police. Their evidence is too vague. It does not inspire confidence. Learned trial Judge properly appreciated the evidence. Prosecution witnesses No.3, 4, 5 and 6 all have turned hostile. The deceased had sustained only six injuries, all on hands and legs. Three are contusions and three are fractures. The oral evidence does not match with the ocular evidence. The injuries were not sufficient in ordinary course of nature to cause death. The view taken by the learned trial Judge is reasonable and probable view and, therefore, it should not be interfered with. On the basis of arguments advanced, the points for our consideration with our findings are as follows:

- (I) Whether accused nos.1 to 18 formed an unlawful assembly and in prosecution of common object of assembly, they were armed with deadly weapons and committed rioting punishable under Sections 147, 148 of Indian Penal Code ? .. In the negative
- (II) Whether accused nos.1 to 18 by forming unlawful assembly and in prosecution of common object of assembly, committed housebreaking, abduction for committing murder and committed murder and mischief punishable under Sections 452, 364, 302 and 427

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| read with Sec. 149 of Indian Penal Code ? | .. | In the negative |
| (III) Whether any interference is necessary in the judgment of acquittal of the trial Court ? | .. | In the negative |
| (IV) What order ? | .. | The appeal is dismissed. |

- REASONS -

5. The prosecution has examined eleven witnesses. Out of which, following are the material witnesses:

P.W.1 Haridas - Eye witness

P.W.7 Kantabai - Eye witness

P.W.8 Dr. Gaikwad, who conducted post mortem (P.W. Notes Exh.77)

P.W.11 Dr. Tarpe who had examined Revan and given endorsement about his physical and mental status to make a statement.

6. Evidence of following witnesses as rightly observed by the learned trial Judge is not relevant.

P.W.2 Eknath - seizure of blood stained clothes of the deceased (Panchnama Exh.58) - turned hostile.

P.W.3 Ashok, panch to the inquest panchnama Exh.65 formal witness. He did not describe the injuries noted.

P.W.4 Raichand, panch to the discovery panchnama, turned hostile

P.W.5 Balasaheb, panch to the discovery panchnamas, turned hostile

P.W.6 Deepak, panch to the seizure of blood stained clothes of the accused - turned hostile

P.W.9 Police Constable Dadasaheb, the carrier. He has not produced office copy of the covering letter with acknowledgment.

P.W.10 – P.I. Ithape, Investigating Officer

7. P.W.1 Haridas P.W.7 Kantabai have deposed the prosecution story in a very broad and vague manner. P.W.1 Haridas is maternal uncle of deceased Revan, but younger to him and handicapped. He stated that on the fateful day, he was sitting on the *ota* of his house. That time, Bapu (A-1), Vishnu (A-4), Lahanu (A-10), Radhakisan (A-11), Bhivsan (A-6), Babasaheb (A-2), Satwa (A-7), Gitaram (A-13) and two three female came there. On seeing them, Revan entered the house of Bhagchand. The above referred persons broke open the door of the house with the iron rod and crow bars Revan was dragged out of the house and was assaulted by all of them. Then, Revan was taken while assaulting, to the house of accused no.1 Bapu. The evidence shows that the said house is situated 1 Km. away from the spot and in between, there is a river, which is required to be crossed. Further evidence is only in respect of enmity. He deposed that Revan had filed two-three cases against the accused over the dispute of tap water. Earlier also, he was assaulted by Bapu (A-1), Vishnu (A-4), Satwa (A-7), Tulshiram (A-8), Rajaram Sanap, Bhivsen Sanap (A-6), Lahanu (A-10) and Geetaram (A-13) and with regard to the same a complaint was filed by Revan. They had a grudge against Revan for the said reason. He has stated that Revan was also assaulted by chopper (Koyta). He identified plank as a part of broken door of Bhagchand – Article 'A'.

8. P.W.7 Kantabai is also eye witness, but she was not present at the spot, where P.W.1 Haridas had seen the assault. Her evidence shows that deceased Revan was assaulted in front of the house by Bapu (A-1), Babasaheb (A-2), Radhakishan (A-11), Vishnu (A-4). Then he was taken towards the road near neem tree towards Bade locality, which is about 500 feet away and he was assaulted there by Sunil (A-5), Satwa (A-7), Tulshiram (A-8), Arjun (A-9), Lahanu (A-10), Gitaram (A-13). She is Sarpanch of the village and accused no.1 Bapu was Vice Sarpanch of the village.

9. As rightly noted by the learned trial Judge, there is absolutely no evidence to show that accused nos.14 to 18 were the female persons present and participated in the assault. There is reference of presence of two/three females but both the eye witnesses have not taken the names of accused nos.14 to 18.

10. The evidence shows that P.W.1 Haridas has deposed against assault by Bapu (A-1), Babasaheb (A-2), Vishnu (A-4), Lahanu (A-10), Radhakishan (A-11), Bhivsen (A-6), Satwa (A-7), Gitaram (A-13). He did not deposed the names of accused nos.3, 6 and 12. Kantabai has taken names of accused nos.1, 2, 4, 6, 7, 10 and 13. She did not take the names of six others. The evidence shows that P.W.1 Haridas has deposed the name of accused no.6 Bhivsen for the first time in the Court. He had not disclosed it in his statement before the police. Omission has been duly proved.

11. As rightly observed by the learned trial Judge, the evidence of both the eye witnesses is extremely vague. They have not deposed, which accused was carrying which weapon and which accused inflicted injuries on which part of Revan. When their evidence is extremely vague, it becomes difficult to determine whether the particular accused was present and participated in the assault or not. This is more significant as P.W.1 Haridas and P.W.7 Kantabai are showing names of 18 assailants whereas the injuries to deceased were only six.

12. The injury certificate discloses that deceased Revan had following injuries:

- (I) C.L.W. On right upper arm 6 x 6 x 2 cms. Above wrist joint front side;
- (II) Fracture above right wrist joint 2 cms;
- (III) Fracture tibia and fibula below right knee joint 4 cms.;
- (IV) C.L.W. below right knee joint below front side 4x3x3 cms;
- (V) C.L.W. over right left front side 8 x 3 x 3 cms;
- (VI) Fracture left extremities below knee joint left lower leg.

These injuries were ante mortem and all were caused on the arms and legs and not on vital parts of the body. P.W.1 Haridas and P.W. 7 Kantabai have stated about use of pipes and iron rods, but 'iron rods' is an improvement. The fracture injuries can be caused by pipes, but contused lacerated wounds cannot be caused by smooth pipes. Those must have been caused by hard and blunt object with some sharpness. In our opinion, these injuries were certainly not sufficient in ordinary course of nature to cause death. The certificate

of Medical Officer to that effect cannot be believed as no injury was life threatening. It is quite possible that a main artery might have been cut in the assault, which might have caused profused bleeding and hemorrhagic shock, but nature of injuries does not disclose intention or knowledge to assault to cause death.

13. The deceased Revan has sustained only six injuries whereas P.W.1 Haridas and P.W.7 Kantabai have deposed that the assault was by eighteen persons. In evidence, P.W.1 Haridas has disclosed names of ten accused, while P.W.7 Kantabai has disclosed names of seven accused. If the prosecution story is accepted, then the deceased was taken out from the house of Bhagchand and he was continuously assaulted by eighteen persons from the house of Bhagchand to the house of accused no.1 Bapu, which is 1 Km.away from the house of Bhagchand. If there was continuous assault by pipes and iron rods, large number of injuries would have been caused on person of Revan, but there are only six injuries and mostly on upper and lower parts of the body.

14. The incident had taken place in broad day light in the residential locality. Several villagers and relatives of deceased Revan might have seen the incident, but the prosecution has not examined any independent witness. The learned trial Judge observed that the evidence of P.W.1 Haridas and P.W.7 Kantabai is not inspiring confidence as they have led evidence very vaguely with respect to assault and they have disclosed names of some persons, which might be false implication as they are disclosing their names for the first

time in the Court. P.W.1 Haridas disclosed names of accused Nos.1, 2, 4 5, 7 to 11 and 13, while P.W.7 has taken names of accused nos.1, 2, 4, 6, 7, 10 and 13. There were not shown to have weapons capable of causing contused lacerated wounds. Besides, they have not deposed names of any lady accused.

15. We find that there is no corroborative evidence in the form of spot panchnama showing as to how the house of Bhagchand was broken open. The prosecution witnesses have turned hostile, whereas P.I. Ithape has led vague evidence.

16. There is also no proper evidence that the clothes of the accused were stained with blood or that the accused have recovered blood stained weapons. The weapons were not shown to the witnesses and got them identified. There is also no evidence of Medical Officer to show that the injuries caused to the deceased could have been caused by the weapons before the Court.

17. There is admitted evidence on record about the enmity which is a double edged weapon. There were litigations between the parties, which can be a cause for assault as well as for false implication.

18. The dying declaration of deceased Revan was recorded as F.I.R., but the prosecution could prove the same. No attempt was made to record the dying declaration through a Judicial Officer. The bed head ticket showing the history is not brought on record. The medical papers do not disclose that dying declaration of Revan was recorded.

Large number of witnesses have turned hostile. Considering all the facts, the learned trial Judge carried a reasonable doubt in her mind about the truthfulness of the prosecution story and considering the evidence on record, the credibility of witnesses and probability of the events having taken place as described by the witnesses, we also have reasonable doubts about the prosecution story as disclosed by P.W.1 Haridas and P.W.7 Kantabai. There are material infirmities in their evidence. There is no corroboration to their evidence. We, therefore, find that the view taken by learned trial Judge is reasonable and probable view. We, therefore, answer point nos.1 to 3 in the negative and hold that the appeal deserves to be dismissed. Hence the order.

- ORDER -

The Criminal Appeal is dismissed.

(A.M. DHAVAL, J.)

(S.S. SHINDE, J.)

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