

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.653 OF 2003

The State of Maharashtra
Through Naldurg Police Station,
District Osmanabad = APPELLANT
(Orig.Applicant)

VERSUS

- 1) Yuvraj Parasram Rathod,
Age: 29 Yrs., occu. Service.
- 2) Raju Tukaram Rathod,
Age: 24 Yrs.
- 3) Ashok Ram Banjare,
Age: 20 Yrs.
All R/o Naldurg, Tq. Tuljapur,
District Osmanabad. = RESPONDENTS
(Orig. Accused)

Mr. S.M.Ganachari, APP for Appellant-State;

Mr.S.A.Deshpande, Advocate for Respondents(absent)

**CORAM : SUNIL P.DESHMUKH &
P.R.BORA, JJ.**

DATE : 2nd February, 2018.

JUDGMENT :- (PER P.R.BORA,J.)

- 1) Judgment delivered by Additional Sessions
Judge, at Osmanabad on 30th April,2002 in Sessions Case

No.186 of 1996 is challenged by the State in the present appeal.

2) Respondent Nos.1 to 3, who are herein after referred to as accused Nos.1 to 3, were prosecuted in the aforesaid Sessions Case for the offences punishable under Sections 324, 504 read with 34 of Indian Penal Code. The incident, which gave rise for initiation of prosecution against the accused, happened on 15th May, 1995 at Naldurg. As is revealing from the case of prosecution, Kashinath Reku Pawar, lodged FIR against four persons, viz. Jagdish Ram Banjare, Yuvraj Parasram Rathod; Raju Tukaram Rathod and Ashok Ram Banjare in Police Station Naldurg, alleging that the aforesaid persons had entered into quarrel with him and made assaults on him with an axe as well as stone and severely injured him.

3) On report lodged by said Kashinath, Crime was registered against the aforesaid four persons for the offences punishable under Sections 324, 504 read 34 of IPC. Since Jagdish Ram Banjare died during the course of

investigation in the said crime, charge sheet came to be filed only against present three respondents-accused in the court of JMFC at Naldurg for the offences punishable under Sections 324 and 504 read with 34 of IPC. It has to be stated that arising out of the same incident allegedly happened on 15th May, 1995, another complaint was already filed by Yuvraj Parasram Rathod – accused No.1 in the present case against Kashinath, i.e. informant in the present case and Babu Reku Pawar; Uttam Hira Jadhav and Rekhu Gangaram Pawar. In the said complaint lodged by Yuvraj, it was alleged that Kashinath and other accused named in the said complaint made assault on Jagdish Ram Banjare with a wooden log; tommy and axe, making him severely injured and the injuries caused to Jagdish in the assault so made on him by Kashinath and others, has resulted in causing his death. On the report so lodged by Yuvraj, crime was registered against Kashinath Reku Pawar; Babu Reku Pawar; Uttam Hira Jadhav and Rekhu Gangaram Pawar for the offences punishable under Sections 302 read 34 of IPC in the court of JMFC at Naldurg. However, since the offence under Section 302 of

IPC was exclusively triable by the Court of Sessions, the aforesaid criminal case was committed to the Court of Sessions at Osmanabad and was registered as Sessions Case No.140/1996. The offence registered on the complaint of Kashinath Reku Pawar was arising out of the said incident. In other words, since there were cross-complaints which have resulted in registration of Crime against each other, an application was moved to the learned Sessions Judge, Osmanabad for trying both the aforesaid cases arising out of the one incident by the learned Sessions Judge to whom Sessions Case No.140/1996 was assigned for trial. The learned Sessions Judge Osmanabad, vide order passed on 18.11.1996, issued necessary directions for clubbing these matters and in pursuance of the said order, the JMFC, Naldurg committed the criminal case filed by Kashinath Reku Pawar also to the Court of Sessions and the same was registered as Sessions Case No. 186/1996.

4) After the aforesaid case was committed to the Court of Sessions, the learned Additional Sessions Judge

framed the charge against accused Nos.1 to 3 for the offences punishable under Sections 324, 504 read with 34 of IPC. The accused did not plead guilty and claimed to be tried.

5) In order to bring home guilt of the accused, the prosecution examined total eight witnesses in Sessions Case No. 186/1996. Dr.Vyankatesh Gopinath Mule (PW 1) was the first witness examined in the aforesaid Sessions Case, who had examined complainant – Kashinath on 15th May, 1995 and had issued the Injury Certificate describing the injuries noticed on person of Kashinath. Complainant – Kashinath deposed as second prosecution witness. Babu Reku Pawar, who was posed to be an eye-witness to the alleged incident, was the 3rd witness. Subhash Vitthalrao Patil (PW 4) was also examined as another eye-witness to the alleged incident. PW 5 – Ashok Bhimrao Shinde was the panch witness for the spot panchanama. PW 6 – Vijaykumar Maindargi was the police officer, who had recorded the FIR lodged by Kashinath. The Investigating officer viz. Revansidha Bansode was the last but one

witness examined by the prosecution. The prosecution evidence was concluded with the testimony of Mahadev Hande, who had done part of the investigation in the matter. The defense of the accused was of total denial.

6) The learned Additional Sessions Judge, after having assessed the oral and documentary evidence on record, acquitted the accused of the charges leveled against them. Aggrieved by, the State has preferred the present appeal.

7) Shri S.M.Ganachari, learned APP appearing for the Appellant – State criticized the impugned judgment on various grounds. The main thrust of the learned APP was on the issue that the learned Additional Sessions Judge has failed in properly appreciating the medical evidence on record as well as the evidence of the eye-witnesses. It was the further contention of the learned APP that on some minor omissions and contradictions, the learned Additional Sessions Judge has improperly rejected the prosecution evidence in the form of testimonies of the eye-

witnesses; recovery of weapons and the medical evidence. Taking us through the evidence of PW 1- Dr. Vyankatesh Mule and PW 2 – Kashinath, the learned APP submitted that the facts, as were deposed by informant Kashinath, have been duly corroborated by the medical evidence on record. It was also contended by the learned APP that the eye-witnesses did also fully corroborate the version of the complainant Kashinath. In such circumstances, according to the learned APP, the learned Additional Sessions Judge must have held all the accused guilty for the offences charged against them. The learned APP further submitted that the acquittal recorded by the learned Additional Sessions Judge is unmeritorious. He, therefore, prayed for setting aside the impugned judgment and consequently to hold the accused persons guilty for the offences punishable under Sections 324, 504 read with 34 of IPC and to award them adequate punishment.

8) After having hearing the arguments advanced by learned APP and on perusal of the impugned judgment and the evidence on record, apparently it is revealed that

no such credible evidence had come on record so as to prove the complicity of the accused in commission of the alleged crime. As noted herein above, the entire thrust of the prosecution was on the evidence of PW 2 – Kashinath and PW 1 – Dr. Vyankatesh Mule. It has to be stated that in the cross-complaint filed against the present accused, which was registered as Sessions Case No.140/1996, it was the specific defense of the accused therein that the present accused had initiated the quarrel and had made severe assaults on Jagdish Ram Banjare, because of which, he ultimately suffered death. In the present case informant Kashinath deposed before the Court that Yuvraj, when was attempting to give second blow with the help of the axe on him, he slightly moved aside and avoided the said blow, but then the said blow with the axe was suffered by Jagdish and that ultimately became cause of his death. As has been observed by the learned Additional Sessions Judge, the fact so stated by PW 2 – Kashinath was the most material fact and as such, it must have been existed in the FIR also. The learned Additional Sessions Judge has observed that the FIR at

Exh. 42 does not contain any such fact which creates serious doubts about the facts stated by PW 2 – Kashinath in his testimony before the Court. The learned Additional Sessions Judge has also observed that the FIR was lodged first by the rival group against informant Kashinath and thereafter Kashinath lodged the report against the present accused persons. The learned Additional Sessions Judge has also observed that there was reason to believe that just to give counter-blast to the FIR registered against him, Kashinath also did file the report against Jagdish Ram Banjare and others.

9) It has come in the evidence of Kashinath that Ashok Ram Banjare (accused No.3) beat him by a stone on his back. The Medical Officer, however, has not noticed any injury on the back of Kashinath. The allegation so made by Kashinath against accused Ashok Ram Banjare has thus been falsified by the medical evidence. Secondly, though it was the contention of Kashinath that Mainu Jamadar and Subhash Patil intervened and pacified the quarrel, the prosecution did not examine said Mainu

Jamadar as its witness. Subhash Patil though was examined as PW 4, his evidence has not been believed by the learned Additional Sessions Judge. In Para 19 of the judgment, the learned Additional Sessions Judge has elaborately discussed the evidence of PW – 4 Subhash Patil. It does not appear to us that the learned Additional Sessions Judge has committed any error in not relying on the evidence of PW 4 - Subhash Patil having regard to the fact that the evidence of Subhash Patil was inconsistent with the evidence of another witnesses and more particularly PW 2 – Kashinath.

10) Perusal of the oral evidence of PW 3 – Babu Pawar demonstrates that though he deposed that he himself, Mainu Jamadar, Subhash Patil, Uttam Jadhav and Reku Pawar intervened and rescued PW 2 – Kashinath, PW 2 in his evidence before the Court has not stated about the intervention of the aforesaid persons. As has been rightly observed by the learned Additional Sessions Judge, the prosecution witnesses have also avoided to disclose about the incident of assault on Jagdish wherein he was severely

injured and ultimately suffered the death.

11) Perusal of the impugned judgment further reveals that seizure of the axe at the instance of accused Yuvraj has also not been believed by the learned Additional Sessions Judge. Further, having considered the entire evidence on record, it does not appear to us that any such believable and trustworthy evidence had come on record so as to hold the accused persons guilty of the charges leveled against them. As has been observed by the learned Additional Sessions Judge in Para 24 of the impugned judgment, the evidence of main witnesses viz. PW 2 – Kashinath Pawar; PW 3 – Babu Pawar and PW 5 Ashok Shinde was not consistent with each other and no reliance could have been, therefore, placed on such evidence.

12) It is necessary to state that in the companion appeal, i.e. Criminal Appeal No.448/2002 arising out of the judgment delivered in Sessions Case No.140/1996, we have categorically observed that there was a scuffle

between the two groups, one group comprising of the accused in Sessions Case No.140/1996 and the other, comprising of the accused in Sessions Case No.186/1996 and no such evidence had come on record in both the Sessions Cases so as to hold the accused persons in the respective Sessions Cases guilty for the offences with which they were charged in the respective Sessions Cases.

13) After having considered the entire material on record, we do not see any reason for causing any interference in the impugned judgment and order. The prosecution has failed to make out any case for reversing the impugned judgment. The appeal, therefore, fails and is accordingly dismissed.

(P.R.BORA)
JUDGE

(SUNIL P.DESHMUKH)
JUDGE

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