

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1356 OF 2011

ALONG WITH

CRIMINAL APPLICATION NO.1036 OF 2018

- | | | |
|---|---|-----------------|
| 1. Ramesh Krushna Bhoir. |] | |
| Aged 36 years, |] | |
| Residing at - Village Ushid, |] | |
| Taluka - Kalyan, District - Thane. |] | |
| (At present at Kolhapur Central Prison, |] | |
| Kalamba). |] | ... Appellant / |
| | | Orig.Accd.No.3 |
| 2. Harishchandra Krushna Bhoir. |] | |
| Aged 36 years, |] | |
| Residing at - Village Ushid, |] | |
| Taluka - Kalyan, District - Thane. |] | |
| (At present at Kolhapur Central Prison, |] | |
| Kalamba). |] | ... Appellant / |
| | | Orig.Accd.No.21 |
| Versus | | |
| The State of Maharashtra. |] | ... Respondent |

ALONG WITH

CRIMINAL APPEAL NO.1321 OF 2011

- | | | |
|--------------------------------------|---|-----------------|
| 1. Dnyaneshwar @ Dnyana Walku Bhoir. |] | |
| Aged 20 years, |] | |
| Residing at - Village Ushid, |] | |
| Taluka - Kalyan, District - Thane. |] | ... Appellant / |
| | | Orig.Accd.No.6 |
| 2. Ashok Krushna Bhoir. |] | |
| Aged 35 years, |] | |
| Residing at - Village Ushid, |] | |
| Taluka - Kalyan, District - Thane. |] | ... Appellant / |
| | | Orig.Accd.No.8 |

3. Kamlakar @ Kamlya Balu Vishe.	]	
Aged 22 years,	]	
Residing at - Village Ushid,	]	
Taluka - Kalyan, District - Thane.	]	... Appellant /
		Orig.Accd.No.24
4. Appa Tukaram Bhoir.	]	
Aged 22 years,	]	
Residing at - Village Ushid,	]	
Taluka - Kalyan, District - Thane.	]	... Appellant /
		Orig.Accd.No.29
Versus		
The State of Maharashtra.	]	... Respondent

Mr. Rajiv Patil, Senior Advocate i/b Mr. Onkar Warange for Appellants in both Appeals.

Mr. Ajay Patil, APP for State in both Appeals.

CORAM :- B. R. GAVAI &
SARANG V. KOTWAL, JJ.
DATE :- 16 JULY, 2018

JUDGMENT (PER : SARANG V. KOTWAL, J.) :-

1. In both these Appeals, the Appellants have challenged the Judgment and Order dated 15/09/2011 passed by the learned Additional Sessions Judge, Kalyan, in Sessions Case No.43 of 2005. Since both these Appeals arise out of the same set of facts and since the Appellants in both these Appeals are challenging the same Judgment and Order, both these Appeals are decided by this common

Judgment. For the sake of convenience, the Appellants in these Appeals are referred hereinafter by their status as accused in the said sessions case.

2. Criminal Appeal No.1356 of 2011 is preferred by the original accused no.3 Ramesh Krushna Bhoir and original accused no.21 Harishchandra @ Anna Krushna Bhoir. Criminal Appeal No.1321 of 2011 is preferred by the original accused no.6 Dnyaneshwar @ Dnyana Walku Bhoir, original accused no.8 Ashok Krushna Bhoir, original accused no.24 Kamlakar @ Kamlya Balu Vishe and original accused no.29 Appa Tukaram Bhoir.

In all, 29 accused faced the trial and at the conclusion of the trial, the accused nos.3 and 21 were convicted for commission of offence punishable under Section 302 read with 34 of the IPC and were sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/- each and in default of payment of fine, to suffer further imprisonment for three months.

The accused no.21 was also convicted for the offence punishable under Section 324 of the IPC and was sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.3,000/- and

in default of payment of fine, to suffer R.I. for two months. The substantive sentences were directed to run concurrently.

The accused nos.6, 8, 24 and 29 was convicted for the offence punishable under Section 324 read with 34 of the IPC and were sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.3,000/- each and in default of payment of fine, to suffer further R.I. for two months.

All the accused were granted set off under Section 428 of the Cr.P.C.

The other accused, except the Appellants, were acquitted of all the offences. The charge was framed against all the accused under Sections 147, 148, 302, 307 read with 149 of the IPC.

3. The prosecution case, in nutshell, is as follows :

Accused no.3 Ramesh was a Sarpanch of Grampanchayat Ushidgaon. Four members of the Grampanchayat successfully brought no confidence motion against him and therefore, he lost his post as Sarpanch. According to the prosecution case, the accused no.3 and his family were holding grudge against their opposite group. It is the case of the prosecution that on 15/10/2004 at about 9.30 p.m., the

accused no.3 and his group assaulted the opposite group which included the brothers Nagesh and Sitaram Gharat. It is alleged that the accused no.3 assaulted Nagesh with knife on his chest and the accused no.21 assaulted Sitaram with barchi on his neck and stomach thereby causing their death. The other accused took part in the assault with their weapons causing injuries to some of the prosecution witnesses. The FIR was lodged by PW 1 Balaram Gharat who is brother of the deceased.

4. The investigation was carried out. The accused nos.3 and 21 were arrested on 16/10/2004. Between 16/10/2004 and 29/10/2004, all the accused were arrested. The weapons were recovered at the instance of some of the accused. The investigation was carried out and at the conclusion of the investigation, charge-sheet was filed. As the case was exclusively triable by the Court of Sessions, it was committed to the Court of Sessions for trial. The case was tried before the learned Additional Sessions Judge, Kalyan, vide Sessions Case No.43 of 2005 and at the conclusion of the trial, the learned Judge convicted and sentenced the accused / Appellants as mentioned earlier.

5. During trial, the prosecution examined 15 witnesses. Out of them, PW 1 Balaram Gharat, PW 3 Kanha Gharat, PW 4 Madhukar Egade, PW 5 Balkrishna Bhoir and PW 6 Jayawant Gharat were examined as the eye witnesses to the incident. Out of them, PW 1 and PW 3 were brothers of the deceased and PW 4, PW 5 and PW 6 were the injured eye witnesses. PW 11 Dr. Ashok Gwalani had conducted the post-mortem examination on the two dead bodies. He has also examined some of the injured who had suffered injuries in the incident. PW 15 PI Ishwarlal Bhavsar attached to Kalyan Taluka Police Station had recorded the FIR vide C.R.No.I-96 of 2004 under Sections 302 and 307 of the IPC.

6. We have heard Mr. Rajiv Patil, learned Senior Counsel for the Appellants in both Appeals and Mr. Ajay Patil, learned APP for State in both Appeals. Mr. Rajiv Patil, learned Senior Counsel for the Appellants, submitted that the evidence of the eye witnesses is not reliable. He submitted that the eye witnesses are either closely related to the deceased or were associates of the deceased. He submitted that the genesis of the incident is not brought on record. He further submitted that there were material omissions from the police

statements of these witnesses. In the alternative, he submitted that in any case, the offence will not fall under the definition of 'murder' but will be a much lesser offence. On the other hand, Mr. Ajay Patil, learned APP for State, submitted that the evidence of the eye witnesses is consistent and cogent. He submitted that just because the witnesses were related and were from the group of the deceased, that by itself would not be a ground to disregard their evidence completely. He further submitted that there were other corroborating circumstances in the nature of recovery of weapons, clothes etc.

7. Since the prosecution has based its case on the direct evidence of the eye witnesses, it is necessary to refer to the evidence of such witnesses.

8. PW 1 Balaram Bhoir was the first informant and brother of the deceased. He has deposed that the accused no.3 was the Sarpanch who had lost his post because of the no confidence motion brought against him by four members including PW 1's brother Kanha. He has further deposed that in the legislative assembly elections, PW 1's group had supported the rival party of the accused no.3 and

therefore, the enmity had become more serious. He has deposed that on 15/10/2004 at about 9.30 p.m., his brother Sitaram had gone to purchase candles. PW 1 heard his shouts for help. When he rushed there, he saw that the accused had caught his brother. Some of the accused went to the house of the accused no.4 Krushna and brought weapons like swords, knives, barchi, iron rods, wooden logs etc. He further deposed that the accused no.3 stabbed PW 1's brother Nagesh on his chest. Accused no.29 gave a blow of sword on PW 1's left hand. Accused no.8 assaulted him with an iron rod on his left hand. He further deposed that Sitaram was also assaulted by the accused and thereafter the accused went away. The villagers came to the spot and removed Nagesh and Sitaram to a hospital at Goveli. At the hospital, both of them were declared dead. At that time, the police reached there and recorded PW 1's statement and treated it as the FIR. The said FIR is produced on record at Exh.265. In the cross-examination, he has stated that he did not remember whether he had mentioned in his FIR that accused no.3 had assaulted Nagesh on his chest with knife. His FIR was recorded at about 11.30 p.m.

9. PW 3 Kanha Gharat is another eye witness to the incident. PW 3 was also a brother of the deceased Nagesh and Sitaram. He has deposed about the history of enmity between the two groups. In respect of the incident dated 15/10/2004 which took place at about 9.30 p.m., he has deposed that Sitaram had returned after purchasing candles. PW 3 has deposed that he heard a commotion near the house of Bango Gharat. Therefore, he and Nagesh went to the spot and found that a quarrel was going on between Sitaram on one hand and the accused no.4 Krushna and his sons Ashok (accused no.8), Harishchandra (accused no.21) and Ramesh (accused no.3) on the other. He has deposed that the accused were blaming Sitaram for bringing in a rival party in the village politics which had created a rift in the village. PW 3 deposed that he himself, Nagesh and others went there to pacify them. However, the accused did not pay any heed. He has deposed that the accused no.3 said that Sitaram's group had betrayed them and they should be taught a lesson. He further deposed that while the quarrel was going on, the other accused reached there with knives, stumps, swords, iron rods etc. in their hands. PW 3 has further deposed that the accused no.3 went to his house and brought a knife, accused no.21 went to his house and

brought a barchi. Accused no.3 assaulted Nagesh with knife on his chest. PW 3 has further deposed that Sitaram caught collar of the accused no.21 and at that time, the accused no.21 assaulted Sitaram on his neck and stomach. Accused no.24 assaulted this witness with a sword. Accused no.6 assaulted him with a bamboo. After the assault, all the accused went away. The injured were brought to the hospital. Nagesh and Sitaram were declared dead on admission. The other prosecution witnesses and other injured were treated for their injuries. In his cross-examination, he has deposed that there was altercation between Sitaram and others and while the altercation was going on, Nagesh was assaulted with knife. He has further deposed that even Sitaram was assaulted with knife. He denied a suggestion that the window panes of the accused no.4's house were smashed by their group.

10. PW 4 Madhukar Egade was an injured eye witness. He has deposed that on 15/10/2004 at about 9.30 p.m., he heard commotion near the house of accused no.4. PW 4 went to the spot and saw that accused no.4 Krushna's son Ramesh (accused no.3), Harishchandra (accused no.21), Ashok (accused no.8) and Dilip

(accused no.9) were quarreling with Sitaram on account of dispute in the election. PW 4 has further deposed that he, along with others, tried to intervene but the accused were not in a mood to listen to them. At that time, other accused reached there armed with knives, swords, iron rods, stumps etc. He has further deposed that the accused no.3 was armed with knife and the accused no.21 was having a barchi. He has deposed that during the course of quarrel, the accused no.21 gave a blow of barchi on the stomach and neck of Sitaram and the accused no.3 gave a blow of knife on the left side chest of Nagesh. The accused no.21 gave a blow of barchi on this witness's stomach. Some of the accused were instigating others. After the assault, all the accused went away. The injured were taken to Government Hospital and were treated. PW 4 himself was taken to Sion Hospital at Mumbai where he was admitted till 24/10/2004.

11. The prosecution further examined PW 5 Balkrishna Bhoir as another injured eye witness. He has deposed about the incident dated 15/10/2004. He had heard the commotion and came in front of the house of Bango Gharat. He found that the accused Krushna, Ashok, Harishchandra and Ramesh were quarreling with Sitaram

regarding some dispute about the village politics. This witness and others tried to intervene and pacify the parties. He has further deposed that then the accused no.3 said that those people should be taught a lesson and that they should be killed. At that time, the other accused armed with weapons came there. The accused no.3 went to his house and brought a knife and the accused no.21 brought a barchi. Thereafter, he has described the incident as was deposed by PW 4. This witness was assaulted on his right thigh by accused Krushna. Accused Bharat and accused no.6 Dnyaneshwar assaulted him with wooden stump and accused no.2 Kamlakar gave a blow of sword on this witness's head and then the accused went away from the spot. The injured were brought to the hospital by the other villagers and his statement was recorded by the police when he was in the hospital.

12. PW 6 Jayawant Gharat was was another injured eye witness and he has deposed on the same lines as deposed by PW 5. He has deposed that during the quarrel, accused no.3 went to his house, brought a knife and assaulted on the chest of Nagesh. Accused no.21 Harishchandra brought a barchi. Sitaram caught accused no.21 when he assaulted Sitaram on the stomach and neck. This witness

was assaulted by Kaluram Tarmale with sword and Gharat Vise with stick. The accused went away from the spot and this witness came to the Government Hospital.

13. Apart from these eye witnesses, the prosecution examined various panchas. Since we are dealing with the Appeals of the Appellants before us, the evidence of panchas in respect of the alleged recovery of weapons at the instance of other accused is not relevant for the purpose of deciding these Appeals.

14. PW 8 Kashinath Patil was examined as a pancha in whose presence the iron rod was recovered at the instance of the accused no.8. However, this pancha had turned hostile and did not support the prosecution case. Insofar as the recovery of weapons at the instance of accused no.3 is concerned, the prosecution has relied only on the evidence of PW 15 PI Bhavsar who has deposed that the knife was concealed under the floor tiles of his uncle Ganpat Bhoir.

15. Before analyzing the evidence of the eye witnesses and other circumstantial evidence, it is necessary to refer to the medical

evidence in this case. The prosecution has examined PW 11 Dr. Ashok Gwalani. He had conducted post-mortem examination on both dead bodies. On Sitaram's dead body, he found the following injuries :

- (i) Near the right side of the base of the neck 6 cm X 4 cm X 9.5 cm in oblique direction deep up to the trachea,
- (ii) Near the opigastic region 2.5 cm X 2.5 cm deep upto the heart of such that upto the left ventricle,
- (iii) Near the right hypochondriac region 10 cm from above wound, 7.5 cm X 1.5 deep up to the right lobe of liver,
- (iv) Near the left side of umbilicus 5 cm X 1.5 cm deep upto the omentum / intestine,
- (v) Posterior aspect of the base of the neck right side 2.5 cm X 1.5 cm X 1.5 cm oblique in direction.

On the dead body of Nagesh, he found one injury on the left side of chest 6 cms below the nipple having dimension 3 cms X 1.5 cms having depth up to both ventricles of the heart. The ventricles were cut because of the injury. The same witness had medically examined PW 6 Jayawant Gharat and had found one incised wound over his right forearm having dimension of 2.5 cms X 1.5 cms bone deep. He had examined one Bango Gharat who had suffered one CLW on the

chest and another CLW on the forearm. He had examined PW 5 Balkrishna Bhoir who had suffered two incised wounds on right thigh and on left parietal region respectively. He had also examined PW 1 Balaram Gharat who had suffered one incised wounds on the elbow. He had examined PW 3 Kanha Gharat, Dinesh Bhoir, Naresh Bhoir and PW 4 Madhukar Egade. All of them had suffered injuries which were either incised wounds or abrasions. He has deposed that the injuries suffered by Sitaram and Nagesh were sufficient in the ordinary course of nature to cause death. However, he has not deposed about the nature of injuries suffered by the other injured, including the injured eye witnesses. Therefore, for the injuries suffered by the other persons except the deceased, the learned trial Judge has recorded conviction under Section 324 of the IPC. In our view, his conclusion in that behalf is correct.

16. There is one more aspect which needs to be discussed in this case and that is spot panchanama. The prosecution has examined PW 2 Govind Tarmale as the pancha who was present during the spot panchanama. The spot panchanama is produced on record at Exh.274. The significance of this spot panchanama is that it mentions

that accused no.4 Krushna Bhoir's house had suffered damage and the window panes were broken. In the courtyard of his house, there were stones and broken pieces of bricks lying scattered. When the spot panchanama was conducted, some weapons like scythe, barchi and about 5 wooden sticks were recovered.

17. Thus, the prosecution has relied mainly on the evidence of 5 eye witnesses. Out of them, PW 1 and PW 3 were brothers of the deceased and PW 4, PW 5 and PW 6 were injured in the incident. The evidence of these witnesses is consistent in respect of the assault on Sitaram and Nagesh. The presence of PW 4, PW 5 and PW 6 at the spot is corroborated by the injuries suffered by them. Those injuries do not appear to be self-inflicted injuries and it can safely be concluded that all these witnesses were present on the spot when the incident took place. Therefore, there is no doubt that the convicted accused were authors of the injuries for which they were held responsible by the trial Court.

18. However, the question still remains as to whether the Appellants Ramesh and Harishchandra can be said to have committed

the offence punishable under Section 302 of the IPC. The evidence of the witnesses shows that they had reached the spot on hearing commotion. PW 3 who was the brother of the deceased, had categorically deposed that when he and Nagesh went to the spot, they found that quarrel was going on between Sitaram on one hand and Krushna Bhoir and his sons on the other. From the evidence of these witnesses, it is clear that in spite of intervention of the other villagers, the quarrel escalated resulting in the attack on Sitaram and Nagesh. Thus, even the prosecution evidence shows that the incident had occurred out of sudden quarrel. PW 4 Madhukar Egade, in his deposition, had stated that during the course of the quarrel, accused no.21 Harishchandra gave a blow of barchi on the stomach and neck of Sitaram. PW 3 Kanha has deposed that Sitaram caught hold of collar of Harishchandra and at that time, Harishchandra assaulted Sitaram on his neck and stomach. PW 5 Balkrishna Bhoir has deposed that accused no.3 Ramesh's collar was caught by Nagesh and at that time, Ramesh stabbed Nagesh with knife on the chest. PW 6 Jayawant has deposed that when Sitaram caught hold of Harishchandra, then Harishchandra assaulted Sitaram with barchi on stomach and neck. Thus, during the quarrel when the deceased had

tried to hold the accused by their collar, they were assaulted with their weapons. Nagesh had suffered only one serious blow on his chest and Sitaram had suffered one blow on the neck, the other on the stomach up to right lobe of liver and there were 3 other serious blows. However, accused no.21 Harishchandra was attributed 2 injuries out of these 5.

19. PW 3 Kanha Gharat, in his cross-examination, has admitted that while the altercation was going on, Nagesh was assaulted with knife and at the same time, Sitaram was also assaulted with knife which shows that besides Harishchandra, Sitaram was assaulted by others with knife. Moreover, the spot panchanama shows that stones and broken pieces of bricks were lying in the courtyard of accused no.4 Krushna who is the father of accused nos.3 and 21. The window panes of their house were broken which shows that there was a fight between two groups and there is a strong possibility that the deceased's side had attacked the house of the accused. In this background of the evidence led by the prosecution, the defence has created sufficient possibility that the offence alleged against accused nos.3 and 21 would fall under Exception 4 mentioned

under Section 300 of the IPC and therefore, the accused nos.3 and 21 are liable for their individual acts which will not amount to the offence of murder. However, looking at the nature of injuries, it is also clear that they had intention to cause those injuries and therefore, in our opinion, they have committed the offence punishable under Section 304 Part I of the IPC.

20. Insofar as the other Appellants i.e. accused nos.6, 8, 24 and 29 are concerned, we have already noticed that the injuries caused to the injured witnesses are attributed to these accused and those injuries are not shown to be grievous injuries. These injuries are also caused during the course of the quarrel and therefore, these accused are convicted rightly by the trial Court under Section 324 read with 34 of the IPC. However, looking at the nature of injuries and also because of the fact that the incident had taken place long time ago i.e. in the year 2004, we are inclined to reduce the sentence awarded to them.

21. Hence, the following order :

ORDER

- (A) I) Criminal Appeal No.1356 of 2011 is partly allowed.
- II) The order of conviction as recorded by learned Additional Sessions Judge, Kalyan, by judgment and order dated 15th September 2011 for the offence punishable under Section 302 of the IPC is converted to the one under Part I of Section 304 of IPC.
- III) The accused are directed to undergo sentence of nine years for the said offence.
- IV) Since both the Appellants have undergone sentence more than nine years, they are directed to be set at liberty forthwith, if not required in any other case.
- V) The order of conviction and sentence for the offence punishable under Section 324 is maintained.
- VI) In view of disposal of Criminal Appeal No.1356 of 2011, Criminal Application No.1036 of 2018 does not survive and accordingly stand disposed of.

- (B) I) Criminal Appeal No.1321 of 2011 is partly allowed.
- II) The order of conviction of the Appellants i.e. original Accused Nos.6, 8, 24 and 29 for the offence punishable under Section 324 of the IPC is maintained.
- III) However, the sentence of two years is reduced for already undergone. The order of fine etc. is maintained.
- IV) The accused are on bail, their bail bonds shall stand discharged.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)