

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.603 OF 1997

The State of Maharashtra.] ... Appellant

Versus

1. Tukaram Rambhav Pawar.]
 Age about 38 years, Occupation - Service.]

2. Shri Dagdu Rambhav Pawar.]
 Age about 50 years, Occupation - Service.]

3. Shri Dattatray Rambhav Pawar.]
 Age about 32 years,]
 Occupation - Agriculturist.]

4. Shri Manik Rambhav Pawar.]
 Age about 41 years,]
 Occupation - Agriculturist.]

All residing at Manjri Khurd, Pawar Vathi,]
 Taluka - Haveli, District - Pune.] ... Respondents

Mrs. M. M. Deshmukh, APP for State / Appellant in Criminal Appeal No.603 of 2007 and for Respondent No.5 in Criminal Revision Application No.9 of 1996.

Mr. Sanjeev Kadam a/w Mr. Aditya Singh & Mr. Aakash Kothari i/b Little & Co. for Respondents in Criminal Appeal No.603 of 2007 and for Respondent Nos.1 to 4 in Criminal Revision Application No.9 of 1996.

**CORAM :- INDRAJIT MAHANTY &
SARANG V. KOTWAL, JJ.**
RESERVED ON :- FEBRUARY 08, 2019
PRONOUNCED ON :- FEBRUARY 18, 2019

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

1. This is an Appeal preferred by the State of Maharashtra against the acquittal of Respondent Nos.1 to 4 (original accused nos.1 to 4) in Sessions Case No.445 of 1993 on the file of the learned Additional Sessions Judge, Pune. These Respondents were tried for commission of offences punishable under Sections 302 and 326 read with 34 of the IPC. By the impugned Judgment and Order dated 13/10/1995, the learned trial Judge had acquitted them.

2. The prosecution case, in brief, is as follows :

The Respondents were residing at Pawar Vasti which was situated near village Manjri-Khurd. One Kisan Undare and his family used to reside at Manjri-Khurd. Respondent No.1 Tukaram was on friendly terms with Kisan and his brother Maruti. It is the prosecution case that on one occasion when Tukaram had gone to Mumbai with Maruti and Kisan, he tried to poison Kisan's mind against his brother

Maruti. Afterwards, the misunderstanding between the brothers Kisan and Maruti was cleared and they realized that the Respondent No.1 had tried to play mischief. It is the prosecution case that Kisan then stopped talking with the Respondent No.1. From then onwards, the Respondents' group and Kisan's group were on inimical terms. It is the prosecution case that on 08/06/1993, there was an incident where these Respondents assaulted Kisan and his brothers. Kisan and his group tried to lodge complaint at the police station. Their complaint was not taken down in writing. Kisan and his brothers were referred to Civil Hospital. On the way, they met one Nandkumar Ghule who was related to Kisan's brother Maruti. Nandkumar suggested to Kisan and his brothers that they should not lodge a police complaint and instead, they should settle the matter with the Respondents. According to the prosecution case, in the night of 09/06/1993, Nandkumar, along with Kisan's brother Parshuram, went to the Vasti where the Respondents used to reside. On the way, they picked-up Maruti. They were accompanied by Nandkumar's friend Parmeshwar. When all of them reached Pawar Vasti, they knocked on the door of the Respondents' house. Initially, there was no response but, the Respondents came from the rear door and assaulted

Nandkumar and his friend Parmeshwar with sticks. As per the prosecution case, the Respondent No.1. assaulted Nandkumar with sword on his head due to which Nandkumar fell down. Nandkumar's friend Parmeshwar was also assaulted with sticks on his head due to which he fell unconscious. Parshuram, Maruti and jeep driver then left the place and went to Nandkumar's house to inform his relatives. The jeep driver refused to come back to Pawar Vasti. Parshuram, Manik and Nandkumar's relatives came to Pawar Vasti in a three wheeler. They noticed that Nandkumar was lying dead on the spot and Parmeshwar was lying unconscious. Parmeshwar was removed to hospital. The police were informed. FIR was lodged at Loni-Kalbhor Police Station vide C.R.No.171 of 1993 under Sections 302 and 326 read with 34 of the IPC.

3. The Respondents were arrested. The investigation was carried out. As per the prosecution case, 4 sticks were recovered at the instance of the Respondent No.1. During investigation, the spot panchanama was conducted. Some articles lying at the spot were recovered. The sword was lying near the dead body. Post-mortem was conducted on the dead body of the deceased. Bloodstained earth

and sandles were collected from the spot. The seized articles were sent to Chemical Analyzer. The clothes of the accused as well as the sticks were sent for chemical analysis. After the investigation was over, the charge-sheet was filed and the case was committed to the Court of Sessions.

4. During trial, the prosecution examined 7 witnesses. PW 1 Kisan Mahadu Undare was the first informant. He had lodged the FIR but he was not an eye witness to the incident. He had given the background of the incident. The FIR was produced on record at Exh.18. PW 2 Parshuram Mahadu Undare was PW 1's brother and was an eye witness to the incident. PW 3 Parmeshwar Khelba Vaidya was the injured eye witness. He was Nandkumar's friend and had accompanied him to Pawar Vasti where the incident had taken place. PW 4 Maruti Mahadu Undare was PW 1 and PW 2's brother and also an eye witness to the incident. PW 5 Dr. Laxman Govindam Ferwani had conducted the post-mortem examination. The post-mortem examination notes were produced on record at Exh.23. PW 6 Somnath Maruti Shendage was a panch in whose presence the Respondent No.1 had produced sticks from behind his house. This

witness did not support the prosecution case and was declared hostile. PW 7 PI Dileep Arjunrao Shinde was the Investigating Officer who had conducted the investigation and filed the charge-sheet.

5. The defence of the accused - Respondents was that the deceased Nandkumar and others came to their house in the night. There was darkness. Nandkumar and others banged on the door of their house. The Respondents and others thought that they were some robbers or dacoits who had come to commit robbery. The residents of the entire Vasti gathered there and to prevent any such robbery, assaulted them. According to the defence case, the deceased suffered injuries in the incident and succumbed to death. It is also their version that the Respondent No.4 Manik was assaulted by Nandkumar on his chest with a sword. In short, according to the defence version, Nandkumar himself was an aggressor and had come to their house to assault the Respondents at the behest of Kisan, Parshuram and others.

6. After recording the evidence and the statements of the accused, the learned Judge heard both sides. At the conclusion of the

trial, the learned Judge acquitted the Respondents holding that the prosecution had failed to prove its case beyond reasonable doubt. The learned Judge held that the defence of the Respondents was probable and it was apparent that the Complainant's group had hired deceased Nandkumar to cause an assault on the Respondents.

7. We have heard Mrs. M. M. Deshmukh, learned APP for State of Maharashtra and Mr. Sanjeev Kadam, learned Counsel for the Respondents. With their assistance, we have read the evidence.

8. The evidence of PW 5 Dr. Laxman shows that the deceased Nandkumar had suffered 4 CLWs on his head. There was a fracture of the skull and the cause of death was 'traumatic haemorrhagic shock due to head injury'. In the opinion of the doctor, all these injuries were possible either by sword or by stick. PW 5 has categorically stated that he did not find any other injuries on the body of the deceased. This evidence shows that the deceased had met with homicidal death caused due to the injuries on head. The question was whether the Respondents had caused those injuries.

9. To prove its case against the Respondents, as mentioned earlier, the prosecution has examined PW 2, PW 3 and PW 4 as the eye witnesses. PW 3, in particular, is of importance because he was an injured eye witness.

10. PW 1 Kisan has given background of the case. He has deposed that the Respondent No.1 was on good terms with him and his brothers. On one occasion, the Respondent No.1 had accompanied PW 1 to Mumbai to meet PW 4 Maruti. Maruti was residing at Mumbai. PW 1 Kisan's son Somnath was residing with Maruti. PW 1 has deposed that, the Respondent No.1 tried to poison his mind by attributing some vile remarks to Maruti against PW 1. PW 1 got angry and took Somnath back to his village without informing Maruti. PW 4 Maruti came to their village and had a talk with PW 1. Both of them realized that, there was some misunderstanding between them and it was caused by the Respondent No.1. Therefore, PW 1 stopped talking with the Respondent No.1 which caused enmity between the two groups. PW 1 has further deposed that on 08/06/1993, the Respondents assaulted PW 1 Kisan and PW 2 Parshuram with sticks. Parshuram went to Police Station to lodge his report but did not do so

because the Respondents were present in the police station. On the next day i.e. on 09/06/1993, they went to Loni-Kalbhor Police Station to lodge their complaint. The police sent them to the hospital at Loni-Kalbhor for medical treatment. The Medical Officer issued injury certificates. PW 1 made oral complaint in the police station. On that day about noon time, Nandkumar Ghule met them. He suggested them that instead of lodging any complaint, they should settle the matter. On that day at about 9 to 9.30 p.m., Nandkumar came to his house and took PW 1's brother Parshuram (PW 2) to Pawar Vasti to settle the matter. Thereafter in the early morning, PW 1 came to know that the Respondents had committed Nandkumar's murder near Pawar Vasti. He, thereafter, went to the police station and lodged his FIR. The FIR is produced on record at Exh.18. He was confronted with his statement in the FIR that they themselves had gone to the house of Nandkumar to tell him about their quarrel. PW 1 denied having made any such statement in his FIR.

11. PW 2 Parshuram Undare and PW 4 Maruti Undare are the brothers of PW 1 Kisan Undare. Both these witnesses have deposed in a similar fashion during trial. Both are eye witnesses to the incident.

PW 2 Parshuram has deposed about the incident dated 08/06/1993 when all the Respondents had assaulted him and PW 1 Kisan with sticks. PW 2 Parshuram himself had gone to the police station on that day itself but the police did not record his complaint. On the next day i.e. on 09/06/1993, PW 2 Parshuram and PW 1 Kisan went to the house of one Ankush Ghule. From there, they went to the police station. From the police station, they went to the hospital along with the Yadi given by the police officer. PW 2 Parshuram has further deposed that they again went to the police station from the hospital but the police again did not take their complaint and instead, asked them to bring a vehicle for bringing the Respondents. PW 2 has further deposed that Nandu Ghule met them at the bus stop. According to the PW 2, Nandu told them that they should not quarrel, that they should not make any complaint to the police and the matter could be settled. PW 2 has further deposed that around 9.00 p.m. on 09/06/1993, Nandu came to their house. PW 2, Nandu and Nandu's friend started going to Pawar Vasti in a jeep. On the way, they saw PW 4 Maruti who also joined them. They reached Pawar Vasti. PW 2 has further deposed that Nandu knocked the door of the Respondents. There was no light. After some time, the light was switched on. All

the Respondents came near them from backside. They started beating Nandu with sticks. Nandu fell down. Thereafter, the Respondent No.1 assaulted him with a sword on his head and back. The Respondent Nos.2 and 4 assaulted Nandu's friend by sticks. The said friend was trying to escape from the assault and at that time, the Respondent No.1 assaulted him with a sword on his head and therefore, he fell down. PW 2 Parshuram, PW 4 Maruti and the jeep driver then left the spot in their jeep. They went to the house of Pandharinath Pathare and then to Nandu's house to inform his family members. The jeep driver refused to take back the vehicle to Pawar Vasti and therefore, they hired a 3 wheeler. When they reached there, they saw Nandu was lying dead and his friend was lying unconscious. He was taken to Sassoon Hospital in the same vehicle. In the cross-examination, PW 2 has denied any knowledge about Nandu's antecedents, including a TADA case. PW 2 further denied having made any statement before the police that he himself had hired a jeep for going to Pawar Vasti. He further denied having made a statement before the police that they took PW 2's brother Dashrath with them while going to Pawar Vasti. More importantly PW 2 also denied his statement before the police that Nandu himself had assaulted the

Respondent No.4 with sword on the left side of his throat. All these contradictions from his police statement were brought on record through the evidence of the Investigating Officer and those portions from his police statement were marked as Exh.47-1, Exh.47-2 and Exh.47-3. He has admitted that there were no street lights near the house of the accused. He could not tell how many blows by stick were given to Nandu. He denied the suggestion that Nandu himself banged his weapon on the door of the accused and also kicked the door of the house of the accused - Respondents. It was suggested to him that the residents of Pawar Vasti gathered there thinking that some thieves had come to their Vasti but that suggestion was denied.

12. Similar evidence was given by PW 4 Maruti. He was one of the brothers of PW 1 who was staying at Mumbai where the entire episode started when the Respondent No.1 allegedly poisoned his mind against the PW 1. He has deposed about the incident dated 09/06/1993 when he was picked on the road by his brother Parshuram while going towards Pawar Vasti. Thereafter, he described the incident of assault in the same manner as was described by his brother PW 2 Parshuram. In his cross-examination, he was confronted

with his statement before the police regarding assault on Respondent No.4 Manik by Nandu with sword. PW 4 denied having made any such statement before the police but his statement is brought on record during the cross-examination of the Investigating Officer and that portion from his statement is marked as Exh.49/3. He had admitted that in respect of the assault on Respondent No.4 Manik, a criminal case was pending against this witness and his brother.

13. PW 3 Parmeshwar Vaidya is an important witness who had suffered injuries during the incident. He had no concern with the accused. There was no enmity between them. He had accompanied Nandu on his say. He has deposed that on 09/06/1993 at about 7.30 p.m., he had gone to Nandu's house. Nandu told him that they had to go to meet Tukaram Pawar - Respondent No.1, to settle the matter between Tukaram and PW 1 Kisan. He and Nandu sat in a jeep and came to PW 1's house. He, PW 2 Parshuram and PW 1 then went towards Pawar Vasti. On the way, they met PW 4 Maruti who also joined them. He has further deposed that Nandu knocked on the door of the accused. The accused came near them from near side of the house and started beating them with sticks. Due to the assault, Nandu

fell down. Then the Respondent No.1 Tukaram assaulted him by means of sword on his head. PW 3 has further deposed that he started running towards the jeep but in the meantime, the Respondent No.1 gave a blow with his sword on his head from the backside. He fell unconscious and regained consciousness on the next day in Sassoon Hospital. In the cross-examination, he has admitted that Nandu was related to PW 4 Maruti as he was Maruti's wife's cousin. He has denied his statement before the police that PW 2 Parshuram had brought a jeep in which they went to Pawar Vasti. However, this statement was proved during the evidence of I.O. and is marked as Exh.48.

14. He has admitted that when they reached Pawar Vasti, it was a dark night. The weather was cloudy. There was no electricity when they reached in front of house of the accused. There were no electric poles. They knocked on the door for about 1 to 2 minutes. He admitted that none of the accused beat PW 2 or PW 4 though they were very much present there. He has denied any knowledge of assault on Respondent No.4 Manik. He has admitted that he had not seen a sword in the hands of Respondent No.1 Tukaram when

Tukaram was beating Nandu with a stick. He did not explain as to how the sword came in the hands of Respondent No.1 Tukaram. He further admitted that PW 2 and PW 4 did not intervene in the fight and did not try to rescue them. He admitted that he was one of the accused in a case in respect of assault on Respondent No.4 Manik.

15. PW 6 was a panch witness in whose presence the Respondent No.1 allegedly produced 4 sticks after showing his willingness to produce those sticks.

16. The injury certificate of PW 3 Parmeshwar is produced on record at Exh.28. As per the injury certificate, he had suffered multiple incised wounds on his scalp. The injury certificate of the Respondent No.4 is produced on record at Exh.27 which shows incised wound near clavicle.

17. PW 7 was the Investigating Officer who has deposed about the investigation carried out by him including the spot panchanama and recovery of sticks panchanama. He had sent the articles for chemical analysis. The CA report is produced on record at Exh.32.

Two of the weapons - stick and sword - showed presence of 'A' as well as 'B' blood-group. The blood-group of Respondent No.4 Manik was of 'B' group. The blood-group of the deceased was not conclusively established. Therefore, the CA report did not exactly throw light on the prosecution case.

18. Mrs. M. M. Deshmukh, learned APP for State, contended that there are 3 eye witnesses examined by the prosecution and there is no reason to disbelieve them. She submitted that the learned trial Judge erred in ignoring their evidence and giving benefit of doubt to the present Respondents. She further submitted that the criminal antecedents of Nandkumar were not clearly established and in any case, that did not absolve the Respondents from their act of committing his murder.

19. As against this submission, Mr. Sanjeev Kadam, learned Counsel for the Respondents, submitted that the learned trial Judge has rightly given benefit of doubt to the Respondents. The prosecution has not established its case beyond reasonable doubt. He submitted that from the evidence, it is quite clear that Nandkumar

himself was the aggressor. PW 2, PW 3, PW 4 and the deceased had no business to go to the house of the accused at such an odd hour in the night. Their evidence were not clear. The prosecution witnesses are not telling the true story and therefore, their evidence could not form the basis of conviction of the Respondents.

20. We have carefully considered the rival submissions and we have perused the evidence. It is quite apparent that the deceased Nandkumar had no direct part to play in the quarrel between the PW 1 and his brothers on one hand and the Respondent Nos.1 to 4 on the other. There is nothing on record to show that Nandkumar wielded friendly influence over the Respondents so that he could take initiative to settle the matter. It is hard to understand as to why Nandkumar would choose a dark cloudy night to go to the house of the Respondents to settle the dispute between the Respondents and the PW 1's brothers. PW 3 Parmeshwar had accompanied Nandkumar on his insistence.

21. There is a clear attempt made on the part of the PW 2 to distance himself from the theory that he himself had hired a jeep to go

to Pawar Vasti and had taken Nandkumar on the way. The contradictions brought on record show that the prosecution witnesses were trying to deny the case that they themselves had gone to Nandkumar's house to seek his help. Instead, these witnesses have deposed that Nandkumar met them on the road near the bus stop when they were going back from the police station, and that he himself suggested that he would take initiative in settling the matter. From this evidence, it is clear that the prosecution witnesses are not coming out with the true story. The evidence of the prosecution witnesses does not inspire confidence in respect of the genesis of the incident. The evidence further shows that the deceased Nandkumar had assaulted Respondent No.4 Manik with a sword. Though all these prosecution witnesses had denied having made any such statement before the police, the evidence of the I.O. shows that PW 2 and PW 4 both had stated before the police that Nandkumar had assaulted Respondent No.4 Manik with a sword near his throat. The prosecution witnesses have not explained as to how the sword came in the hands of Respondent No.1 Tukaram. According to these witnesses, when the assault started, the Respondent No.1 Tukaram assaulted the deceased with stick and then at what point of time the

sword came in his hand, nobody has explained. PW 3's evidence in respect of his own injuries on his head, is not very reliable because he was assaulted from the backside and he would not be in a position to see the assailants. PW 3 himself has admitted that it was a dark night and the weather was cloudy. There was no street lights. The prosecution witnesses have admitted that when the door of the accused was knocked, initially there was no light and after somebody from inside switched on the light. It is quite difficult to believe that the prosecution witnesses could see clearly as to who were the assailants and who assaulted the deceased and PW 3. According to the prosecution witnesses, when there was no response, initially for some time, the accused came from the rear door of the house. The spot panchanama does not show that there was a rear entry or door to the house of the accused. The spot panchanama does however show that there were footprints and marks of weapons on front door of the house of the accused. It clearly shows that Nandkumar was the aggressor and he had banged the door with his feet and sword. All this shows that the PW 2, PW 3, PW 4 and the deceased had gone to Pawar Vasti with weapons like swords, not to settle the matter but to commit assault on the Respondents or to threaten them. The same

sword was used in assaulting the Respondent No.4 Manik. The sword was found near the dead body of the deceased. Considering all these circumstances, we are of the considered view that the prosecution witnesses have suppressed the genesis of the incident. It is very difficult to believe that the prosecution witnesses could have seen the actual assault with any clarity. It is also important to note that the pW 2 and PW 4 who had inimical relations with the accused, were not even touched, though they were very much present on the spot itself. It is very difficult to belief that the accused would leave the persons with whom they had enmity but instead would assault others who had no concern with their quarrel. The recovery of 4 sticks at the instance of the Respondent No.1 Tukaram is of no consequence. The pancha for the recovery had turned hostile. There was no blood on 2 of the sticks and the other 2 sticks did not conclusively show presence of the blood of the deceased alone. According to the prosecution witnesses, initially Nandkumar was assaulted by sticks. However, except for the injuries on head, there are no weal marks on the other parts of the body of the deceased. This is one more doubtful circumstance against the prosecution case.

22. The learned trial Judge has considered all these facets in his impugned Judgment. In our view, the approach of the learned trial Judge was proper. The view taken by him is a possible view and therefore, in an Appeal against acquittal, we are not inclined to interfere with his reasoning and findings.

23. With the result, the Appeal fails and is accordingly dismissed.

(SARANG V. KOTWAL, J.)

(INDRAJIT MAHANTY, J.)