

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.123 OF 2000

THE STATE OF MAHARASHTRA)...APPELLANT

V/s.

- 1) TAYAPPA SHANKAR JAGDALE)
Age about 21 years, Occupation : Labourer)
R/o. Bothe, Taluka - Man, District – Satara.)
)
- 2) AVINASH SHANKAR JAGDALE)
Age about 22 years, Occupation : Labourer)
R/o. Bothe, Taluka - Man, District – Satara.)
)
- 3) RAMCHANDRA JAYSING JAGDALE)
Age about 30 years, Occupation : Business)
R/o. Bothe, Taluka - Man, District – Satara.)
)
- 4) RUPESH BHUJANGRAO NALAWADE)
Age about 22 years, Occupation : Education)
R/o. Bothe, Taluka - Man, District – Satara.)
)
- 5) KISAN GULAB SAVANT)
Age about 27 years, Occ : Agriculturist,)
R/o. Bothe, Taluka - Man, District – Satara.)...RESPONDENT

Mr.A.R.Patil, APP for the Appellant – State.

None for Respondents.

**CORAM : PRASANNA B. VARALE &
V. G. BISHT, JJ.**

DATE : 29th SEPTEMBER 2020

JUDGMENT : (PER : V. G. BISHT, J.)

1 Being aggrieved and dissatisfied with the impugned judgment and order dated 28th October 1999 passed by the Additional Sessions Judge, Satara, by which the Additional Sessions Judge has acquitted the present respondents-accused herein in Sessions Case No.169 of 1997 under Sections 143, 147, 148, 149 and 302 of the Indian Penal Code (IPC), the State has preferred the present appeal.

2 Briefly stated, the facts are that informant is resident of Village Bothe, Post Kul Kazai, Taluka Man, District – Satara. There are two political parties in the said village viz., Congress and Shivsena, having political rivalry. Accused Ramchandra Jaysing Jagdale (A-3) is the *Up-pramukh* of Shivsena of the said village. In the last Zilla Parishad and Panchayat Samiti election, candidate from Congress came to be elected, as a result of which, A-3 and others started having grudge against the informant and others.

3 According to the prosecution, on 16th May 1997, at about 6.30 p.m., the informant and his son Dashrath (since deceased) were chitchatting. After sometime the deceased went towards the field on the eastern side in order to attend the nature's call. Thereafter, the informant saw accused Ramchandra Jaysingh Jagdale (A-3), Rupesh Bhujangrao Nalawade (A-4), Tayappa Shankar Jagdale (A-1), Kisan Gulab Savant (A-5) and Avinash Shankar Jagdale (A-2) going in the direction of his son. After sometime, the informant heard his son's voice "*vachwa vachwa mala maru naka*". The informant immediately rushed in that direction. The neighbourers had already rushed and chased the accused.

4 The prosecution next contends that when the informant reached near the deceased, he found the deceased having sustained serious bleeding injuries on his head. There were also injuries on chest, abdomen and armpit. The clothes of the deceased were blood stained. The deceased was still crying "*mala vachwa mala vachwa*". When the informant enquired as to

what had happened, the deceased told him that he was caught hold by A-2, A-3, A-4 and A-5 all of a sudden and A-1 assaulted him by means of a sharp weapon like *gupti* and ran away towards north direction.

5 The prosecution further contends that the villagers viz. Mahadev Hanumant Jagdale, Tulshiram Bapu Jagdale (PW8), Vitthal Bapu Jagdale (PW7), Bharat Bhagwan Jagdale and Kisan Sambhaji Deshmukh who had run after the accused came back empty handed. Whatever the deceased had told the informant, the deceased again narrated the facts to those abovenamed persons also. Later on said Bharat Bhagwan Jagdale brought jeep and the deceased was put in the jeep and was taken to Dahiwadi Police Station. From there they collected Police Yaadi and then went to PHC Dahiwadi. Doctor examined the deceased and declared him dead.

6 The informant's father, accordingly, later on, lodged the First Information Report (FIR) vide Crime No.29 of 1997 with

Police Station Dahiwadi for offences punishable under Sections 302, 143, 147, 148, 149 of the IPC. The investigation was taken up by PW11 Assistant Police Inspector Haroon Shaikh who recorded the FIR of the informant and then during the course of investigation prepared Inquest Panchnama, Spot Panchnama and seized various articles from the spot, recorded statement of some of the witnesses, recorded statement of A-1 under Section 27 of the Evidence Act and attached his blood stained clothes pursuant thereto, sent blood stained clothes, *gupti* and other articles to the Forensic Science Laboratory, collected Chemical Analyser's Report and after completion of investigation, submitted the charge-sheet against the accused.

7 To substantiate the charges against the respondents-accused, the prosecution has examined as many as twelve witnesses and exhibited number of documents. Respondents-accused were questioned under Section 313 of the Code of Criminal Procedure (Cr.P.C.) about the incriminating evidence and circumstances and they denied all of them as false. According to

them, a false case has been filed to harass them only on account of political rivalry.

8 The learned trial Court, after hearing the prosecution and also defence counsel, has acquitted the accused of the charges leveled against them. Hence this appeal.

9 Mr.A.R.Patil, learned APP for the appellant-State, has critically opposed the impugned judgment and order by submitting that the learned trial Court has miserably failed to appreciate oral as well as documentary evidence in proper perspective. It was wrong on the part of the learned trial Court to form an opinion that the deceased could not have been in a position to give dying declaration because of the injuries sustained by him. Moreover, the testimony of the informant's father in whose presence and in the presence of other prosecution witnesses, the deceased had made a statement to the cause of his death was wrongly disbelieved by the learned trial Court. Since there is no proper appreciation and marshaling of evidence at the

hands of the trial Court, the same has resulted into an erroneous acquittal which cannot be sustained, having regard to the evidence on record. For all these reasons, the present appeal deserves to be allowed, argued learned APP.

10 When the matter is called out, none appeared for the respondents-accused.

11 In order to ascertain whether the deceased met with homicidal death or otherwise, we have documentary and oral evidence in the form of Inquest Panchnama (Exh.35), which is duly admitted in evidence by the defence and the testimony of PW12 Dagdu Karpe.

12 Bare reading of the Inquest Panchnama would show that the deceased had sustained cut injuries on the temporal region and on the chest with certain dimensions. According to the panchas, those serious injuries might be the cause of death of the deceased.

13 PW12 on his part, states in his evidence (Exh.60) that on 14th September 1996 he was working as Health Assistant at Primary Health Center, Dahiwadi. He knows Dr.S.S.Potdar, who was then the Medical Officer of the Primary Health Center from the period 1995 to 1998. Dr.Potdar died on 2nd May 1998 at Dahiwadi. According to this witness, he worked under him for about 2½ years as Assistant and he is acquainted with his handwriting and signature. He then proved handwriting and signature on the postmortem report (Exh.61).

14 We have carefully gone through the judgment of the learned trial Court. We do not find any objection taken by the defence to the contents of the postmortem report or any serious challenge to its findings. Column Nos.17, 19 and 20 depict following injuries :

- “17 (i) Incised wound at Lt.temporal region of skull 7 cms above ear – oblique in shape, size – 6 cms x 1½ cms. X scalp deep – blood clots and swelling at site.
- ii) Incised wound at Rt.axillary region on Rt. Lateral side of chest – horizontal in shape. Size

– 7 cms. X 2 cms. X 3 cms.

- iii) Incised wound over chest – 9 cms below Lt. Nipple on chest – size – 7 cms x 2 cms x 15 cms – blood clots and bleeding from wound, inter costal muscles torned – between 5th and 6th Lt.ribs – muscles coming out of wound.
- iv) Incised wound at Lt. Thumb – horizontal in shape. Size – 1½ cms x ½ cm x ½ cm – blood clots at site.
- v) Abrasion at Rt.Side of chest – medial to Rt.nipple on chest – oblique. Size – 2 cms x ¼ cm. Reddish in colour.

Age of wounds above may be within about 20 hours. Cause of wounds above – due to sharp object.”

“19 Head - Haematoma present at Lt.temporal region under injury no.1.”

“20 Walls ribs, cartilages

- i) Muscles between 5th and 6th – inter costal space – completely torned (Lt.)
8 cms x 2 cms x muscle deep - approaching from costo chondrial jts – from Lt. Side of sternum laterally in 5th and 6th space of ribs

ii) Fracture of 5th (Lt.) rib, oblique in shape. Size 10 cms x ½ cm x 22 cms with blood – congested.

Pleura - tonned on both lungs and bathed.

Larynx trachea and bronchi congested – bronchi – bathed with blood

Right lung i) Incised wound at Rt. Lung – at lower to be on medial side. Size 7 cms x 2½ cms x 2½ cms – congested – bathed with blood

Left lung – congested – bathed with blood

Pericardium - Torned at Lt. Atrial region at anterior region and on upper side. Congested – bathed with blood.

Heart and weight – Incised wound at Lt. Atrial region – on anterior side at upper part. Oblique in shape. Size – 2½ cms x ½ cm x ½ cms. Bath with blood – congested.

Large Vessels – contain blood

Additional remarks – complete chest cavity contains extrovasation of blood.”

15 It further appears fom the postmortem report that the cause of death was due to shock and haemorrhage, injuring vital organs of heart, lung, liver and stomach caused due to sharp

object. As already pointed out, there is no challenge to the contents of the postmortem report as also the Inquest Panchnama showing serious nature of injuries sustained by the deceased, we have no hesitation in our mind to hold that the deceased died a homicidal death.

16 The case of the prosecution rests on circumstantial evidence. The prosecution relied upon the following circumstances - (i) motive, (ii) last seen, (iii) oral dying declaration, (iv) recovery of weapon and (v) recovery of blood stained clothes of A-1 at his instance.

17 Before adverting to the circumstances enumerated hereinabove, we shall, at the threshold, point out that in the present case there is no direct evidence to connect the respondents – accused with the offences in question and the prosecution rests solely on circumstantial evidence. The Hon'ble Apex Court in **Gambhir vs. State of Maharashtra**¹ has laid down the following tests :

1 (1982) 2 SCC 351 : AIR 1982 SC 1157

- “(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established
- (ii) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
- (iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

18 As far back as in 1952 in Hanumant Govind Nargundkar v. State of M.P.² the Hon'ble Apex Court observed thus:

² AIR 1952 SC 3443

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

19 A reference may be made to a later decision in **Sharad Birdhichand Sarda v. State of Maharashtra**³. Therein, while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false

3 AIR 1984 SC 1622

defence or plea. The conditions precedent in the words of the Hon'ble Apex Court, before conviction could be based on circumstantial evidence, must be fully established. They are (SCC pp. 185, para 153) :

- “(i)the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;
- (ii)the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
- (iii)the circumstances should be of a conclusive nature and tendency;
- (iv)they should exclude every possible hypothesis except the one to be proved; and
- (v)there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

20 We may also make a reference to a decision of the Hon'ble Apex Court this Court in C. Chenga Reddy v. State of A.P. (1996) 10 SCC 193, wherein it has been observed thus (SCC pp.206-207, para 21) :

“In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.”

21 Bearing the above principles of law enunciated by the Hon'ble Apex Court, we shall scrutinize scrupulously and examine carefully the circumstances appearing in this case against the respondents-accused.

22 The present case is admittedly based on oral dying declaration. An oral dying declaration can be accepted if it is

established that at the time of recording of statement the person was in a fit state of mind to make such declaration and such declaration is really trustworthy.

23 In Darshana Devi vs. State of Punjab⁴ the Hon'ble Apex Court has laid down that even though an oral dying declaration can form basis of conviction in a given case, but such a dying declaration has to be trustworthy and free from every blemish and inspire confidence. The reproduction of the exact words of the oral declaration in such cases is very important. The dying declaration of the present case needs to be examined on such principle.

24 The important witnesses in the present case are the prosecution witnesses nos.1, 5, 6, 9 and 10.

25 PW1 Hanmant Khandu Jagdale, informant-father, states in his evidence (Exh.38) that on 16th May 1997, at about 5.30 p.m., he along with his family members including Dashrath

4 1996 Supreme Court Cases (Cri) 38

(deceased) were sitting under a tree in front of his house. After sometime, Dashrath (deceased) went for nature's call towards north side of his house. He then saw Ramchandra Jaysing Jagdale (A-3), Rupesh Bhujang Nalawade (A-4), Tayappa Shankar Jagdale (A-1), Avinash Shankar Jagdale (A-2) (wrong typed as Akash Shankar Jagdale) and Kisan Gulab Sawant (A-5) going towards the side which his son had gone for nature's call.

26 It is his further evidence that at about 6.30 to 6.45 p.m., he heard shouts of his son saying "save him save him". He went to that side. By the time he reached, some other persons had also reached there. According to him, his son was lying there and had sustained injuries on various parts of the body. When he went near his son, he told him that Ramchandra Jaysing Jagdale (A-3), Rupesh Bhujang Nalawade (A-4), Kisan Gulab Sawant (A-5), Tayappa Shankar Jagdale (A-1), Avinash Shankar Jagdale (A-2) (wrongly typed as Akat Shankar Jagdale) held and beat him. That Rupesh Ramchandra (A-4), Avinash Shankar Jagdale (A-2) (wrongly typed as Akat Shankar Jagdale), Tayappa Shankar

Jagdale (A-1) and Kisan Gulab Sawant (A-5) beat him. He, then, again deposed that these persons held him and Tayappa Shankar Jagdale (A-1) beat him. At that time, he had seen all the accused running towards north side of that place. He also tried to chase them but then returned. Vitthal Bapu Jagdale (PW7), Tulshiram Bapu Jagdale (PW8) and Mahadeo Hanmant Jagdale who had gathered there also tried to chase them along with him. As per the version of this witness, these Jagdales had come there before he reached there.

27 Deposing further, he states that the tracks jeep of Bharat Jagdale was there. He carried the injured son in that jeep to Dahiwadi Police Station. His wife (PW9), son Vikas and daughter Shobha and other Jagdale had gathered. There were 15 to 16 persons who went in the jeep. While going to the police station, his son told them as to how and who beat him. At the police station, this witness narrated the facts which were reduced into writing under his thumb impression. He then proved his report at Exh.39.

28 We have here two sets of evidence. The first set of evidence indicates that before he reached near the place of incident, Jagdales, namely, Vitthal Bapu Jagdale (PW7), Tulshiram Bapu Jagdale (PW8) and Mahadeo Hanmant Jagdale were already there. When he enquired with his son, he was told that he was held by A-2, A-3, A-4 and A-5 and A-1 had beaten him.

29 The second set of evidence is regarding taking away the injured son to the Police Station in a tracks jeep belonging to Bharat Jagdale. There were 15 to 16 person in the said jeep. On way to the police station, the injured son again told them as to how and who had beaten him.

30 Both the sets of evidence have its own inherent pitfalls and shortcomings. If the first part of evidence is read minutely, then it would be seen that before informant-father could reach to his injured son, PW7, PW8 and Bapu Jagdale had already made their way to the place of incident. At the very outset, it may be noted immediately here that PW7 and PW8 have been treated

hostile by the prosecution without any gain. The remaining person namely Mahadeo Hanmant Jagdale is not brought before the court by the prosecution. Even if it is a fact that PW7 and PW8 are treated hostile by the prosecution, but then the version of this witness that these witnesses along with that of Mahadeo Hanmant Jagdale had already reached at the place of incident before his arrival, does not find corroboration from the FIR. We say so because the FIR nowhere discloses this material fact that before this witness could reach to the place of incident, the abovenamed witnesses had already reached there.

31 Coming to the evidence of informant-father that he was told by the injured son that he was held up by A-2 to A-5 and was beaten by A-1 is something which is quite vague and in the light of dictum given in the case of **Darshana Devi (supra)**, if we may say so, does not reproduce the exact words, as is given in the FIR by this witness. The FIR clearly points out that the deceased was all of a sudden caught hold of by A-2 to A-5 whereas A-1 assaulted him by means of a sharp weapon like *gupti*. Thus, what

FIR claims is the exact manner and means of assault by accused and as told to this witness by the deceased which is unfortunately not so stated in the substantive evidence. Rather, what is stated is the vague statement of evidence which is unfortunately in variance with the original alleged version given to this witness by the deceased at the relevant time.

32 The first part of evidence also shows that the informant-father also tried to chase the accused but returned empty handed. The FIR nowhere in clear words states that the informant-father also alongwith other named witnesses had chased the accused.

33 The second part of evidence shows that while the deceased was taken to the police station, there were 15 to 16 persons in the jeep. Again, this is quite contrary to the contents of the FIR. If we read the FIR carefully, we find that apart from informant-father and deceased, there were Mahadeo Hanmant Jagdale, Tulshiram Bapu Jagdale (PW8), Vitthal Bapu Jagdale (PW7), Bharat Bhagwan Jagdale – owner of the jeep and Kisan

Sambhaji Deshmukh. Thus, in all there were seven persons. Hence, this part of evidence also does not infuse confidence in our mind.

34 Certain part of cross-examination also needs our comment. In the cross-examination, this witness states that when they reached police station, his son was able to speak. He did not tell the police who beat him. Police also did not record his statement. His son was alive while he was in the police station. He died by the time they reached to the hospital.

35 The informant-father has not assigned any reason as to why the deceased was, at the first instance, not enquired with by the police. On the other hand, PW11 Investigating Officer in his evidence has nowhere stated that the deceased was speaking. Rather, his evidence shows that the deceased was serious and therefore, he gave the informant-father a “*Yaadi*” and sent them to Primary Health Center, Dahiwadi. If the statement of the informant-father is to be believed, then in all probability, the deceased ought to have stated before the police about the accused

who assaulted him and caused injuries. We are pointing out this fact and having regard to the version of PW11 Investigating Officer that he found the deceased serious, the natural question which crops up is whether, infact, the deceased was in a healthy state of mind to make any kind of statement, as is claimed by the informant-father. Presently, having regard to the critical analysis and appraisal of the evidence of the informant-father, we are not prepared to accept his testimony and would like to go further in search of satisfactory corroboration from the other witnesses.

36 PW5 Baban Jyoti Jagdale states in his evidence that on 16th May 1997, at about 6 to 7 p.m., he heard shouts and commotion from Vyayamshala side. He went there and saw that injured Dashrath (deceased) was placed in a jeep and they were about to go. He stopped the jeep and enquired as to what had happened. He himself boarded that jeep. There were injuries on the body of Dashrath (deceased). He asked him how it happened and the deceased told him that while he was going to nature's call, Ramchandra Jaysing Jagdale (A-3) (wrongly typed as Rupesh

Jagdale, Kisan Gulab Sawant (A-5), Avinash Shankar Jagdale (A-2), Rupesh Bhujang Nalawade (A-4) held him while Tayappa Shankar Jagdale (A-1) hit him with *gupti* like instrument. It is his further evidence that he was taken to Dahiwadi Police Station. By the time they reached Dahiwadi, he became unconscious. The jeep was stopped near police station. According to him, his father went to the police station and after sometime they went to Primary Health Center, Dahiwadi. The doctor there examined and told that Dashrath (deceased) is dead.

37 The testimony of this witness is not reliable mainly for two reasons. Firstly, the FIR nowhere shows the presence of this witness at the time or near the place of occurrence. The FIR does not show that this witness along with others had boarded the jeep in which the deceased was taken to the police station. Secondly, even the PW1 informant-father has nowhere stated in his evidence that the jeep was stopped by this witness, he made an enquiry and in response to that enquiry, the deceased narrated as to how and by whom he was assaulted, although in the cross-examination, he

states Hanmantrao i.e. informant had seen him while sitting in the jeep.

38 One more reason. The evidence of this witness clearly goes to show that by the time they reached Dahiwadi Police Station, the deceased had become unconscious, whereas in sharp contradiction, evidence of PW1 informant-father shows that the deceased-son was very much speaking when they had reached the police station. For all these reasons, we discard the evidence of this witness.

39 PW6 Kisan Ramchandra Jagdale states in his evidence (Exh.45) that on the day of incident, at about 6 to 7 p.m., he heard shouts and commotion and saw some persons going to the eastern side. He went there and saw a jeep belonging to Bharat Jagdale standing there. The persons gathered there were putting the injured in the jeep. That person had sustained injuries. It is his further evidence that he along with others went in the same jeep to Dahiwadi. During the journey that person told them that Tayappa Shankar Jagdale (A-1) had beaten him with *gupti* and he

was held by Rupesh Bhujangrao Nalawade (A-4), Kisan Gulab Savant (A-5), Avinash Shankar Jagdale (A-2) and Ramchandra Jaysingh Jagdale (A-3).

40 Thus, the above witness is purely examined from the point of view that this witness was very much accompanying the deceased in a jeep and on way to Dahiwadi, the deceased narrated that while he was held up by A-2 to A-5, A-1 beat him with the help of a *gupti*.

41 Like PW5, neither the FIR attributes the presence of this witness in the jeep nor the evidence of PW1 informant-father. Above all, whatever this witness has deposed about his presence in the jeep, has come by way of omission and when confronted in the cross-examination by the defence, he insisted that he had told the police that he had gone in a jeep and the injured had told him as to who had held him and who had beaten him. But this major omission is duly proved by PW11 Investigating Officer in his cross-examination by stating that he had recorded the statement of Kisan Ramchandra Jagdale i.e. PW6 and that this witness had not

stated before him of his accompanying the injured in a jeep and that the injured had told him as to who had held him and who had beaten him. Therefore, the whole evidence, at once, washes away and need not be looked into.

42 Next witness is mother of the deceased i.e. PW9 Smt.Anusaya Hanmant Jagdale. She states in her evidence (Exh.48) that on the day of the incident, at about 6 p.m., she was in her house while her son (deceased) had gone for nature's call. While she was milking cow, she heard commotion and shouts from the side where her son had gone for nature's call. When she went there, she saw that Dashrath (deceased-son) was lying. There were injuries on his body. She asked him who beat him to which her son (deceased) told that Tayappa Shankar Jagdale (A-1) had hit him while Ramchandra Jaysingh Jagdale (A-3), Rupesh Bhujangrao Nalawade (A-4), Kisan Gulab Savant (A-5) and Avinash Shankar Jagdale (A-2) (wrongly typed as Agya Jagdale) held him. He was then taken to Dahiwadi in a jeep. Her evidence lastly shows that at that time many persons had gathered there.

43 The evidence of PW9 mother is very much categorical and clear in as much as, it sufficiently demonstrates that after hearing the commotion, it was she who all alone went to the place of incident and found her son lying injured. It further shows that when she enquired about the attack, the deceased replied that he was held up by A-2 to A-5 and hit by A-1. Whatever this witness has deposed is absolutely not in consonance and in conformity with the contents of the FIR. So also, does not get corroboration from the mouth of PW1 husband. As a matter of fact, both these witnesses being husband and wife, nowhere attribute each other's presence nor they say in unison that both of them had rushed to the place of incident after hearing the commotion. Needless to say, there is a great inconsistency between versions of these two material witnesses.

44 Apart from above, even assuming for the sake of argument that PW9 mother had also rushed, but then her version as to the manner of attack lacks corroboration from the FIR and as also from the mouth of PW1 husband. The evidence of this

witness shows that while the deceased was held up by A-2 to A-5, it was A-1 who had hit him, but then by what weapon and means A-1 allegedly hit the deceased is nowhere made clear. While this witness uses the word 'hit' the PW1 informant-father says that A-1 had beaten the deceased. Thus, there is material discrepancy. On the other hand, if the FIR is to be taken into consideration and as is already pointed out while discussing the evidence of PW1 informant-father, the evidence of this witness does not reproduce the correct narration in line with the narration given in the FIR. On all these counts, we do not find this witness reliable and dependable.

45 The last witness is PW10 Vitthal Shivaji Phadatare. It is his evidence (Exh.49) that on the day of the incident, he saw Dashrath (deceased) was lying with injuries on his body. The persons who had gathered there placed him in a jeep and took him to Dahiwadi. He was also in the said jeep. According to him, during the journey, Dashrath (deceased) was saying that respondents Rupesh Bhujangrao Nalawade (A-4), Ramchandra

Jaysingh Jagdale (A-3), Kisan Gulab Savant (A-5) and Avinash Shankar Jagdale (A-2) had held him and Tayappa Shankar Jagdale (A-1) assaulted him.

46 Although this witness claims that he was very much present in the jeep wherein the deceased made a statement as to the cause of his injuries and the accused who authored the same, interestingly and surprisingly, the FIR maintains an eerie silence as to his very presence in the jeep and so is the case with the PW1 informant-father. Assuming that he was very much present, but then his evidence is riddled with vagueness when he says that the deceased narrated the incident and told that he was assaulted by A-1 with the help of A-2 to A-5. The manner of assault, again, as is vividly given in the FIR, has not come on record. We, therefore, do not see the utility of evidence of this witness.

47 The entire evidence led by the prosecution and discussed so far by us is necessarily weak and slender and no conviction of the respondents-accused on such evidence can be maintained. The very evidence of the informant-father is found to

be unreliable and does not pave way for us to hold with a sense of satisfaction that it were the respondents-accused and respondents-accused alone, who committed the murder. As far as the witnesses are concerned, they have been also found wanting and they have not supported the case of the prosecution to prove that it were the respondents-accused who had run away from the scene of occurrence after assaulting the deceased.

48 Apart from above, we would like also to comment on the motive aspect. In the FIR it is alleged that at the relevant time there was political rivalry between the informant and accused. In Zilla Parishad and Panchayat Samiti election, candidate from the party of the informant came to be elected, as a result of which, A-3 and others started having grudge against the informant and others and it is because of this village politics and political rivalry, the incident in question occurred. How far the motive is substantiated by evidence, is remains to be seen.

49 PW1 informant in his evidence has deposed all about the political rivalry but has nowhere deposed, let alone FIR, that

because of the defeat of the candidate belonging to the party of the accused, the accused had started nurturing grudge against him. The cross-examination gives an altogether different insight regarding the alleged political rivalry.

50 PW1 informant states in his cross-examination that he never contested any election. He was never a proposer or seconder to any election of any member. He was also never an agent of any member in any election. He even did not canvass or did propaganda of any election of any candidate. His deceased son or other son also never contested any election, canvassing etc. At the time of Zilla Parishad election, the deceased was at Wapi in connection with his employment. It is his further evidence that prior to Zilla Parishad elections, there was no opposition to Sadashivrao Pol in his village. He was never a worker of Sadashiv Pol or of the Congress party.

51 From the cross-examination, we do not get much difficulty in understanding that this witness was nowhere involved, even remotely, in the alleged political rivalry because of

the Zilla Parishad election, nor his son was involved in any manner, in as much as, as per the evidence of this witness, at the relevant time, his son was at Wapi in connection with his employment. We simply fail to understand as to how this witness attributes political rivalry as a motive behind the alleged crime.

52 PW9 mother, on the other hand, states in her evidence that in the year 1997, Suresh Nalawade was Deputy Sarpanch of her village. About fifteen days prior to the incident in question, she had gone to Rama Jagdale to ask him why he beat her son Dashrath. At that time, Rama Jagdale threatened her that he would bring his brother relative and beat her son Dashrath. This is something absolutely new theory introduced by this witness in her evidence which does not find any support either from the FIR or from the mouth of PW1 informant-father. Except above, nothing is forthcoming.

53 Above being the shape of evidence on the point of motive, we hold that the prosecution has not led any positive,

cogent and convincing evidence to prove the motive against the respondents-accused to commit murder of Dashrath.

54 Before we part with the judgment, we would like to express our deep disappointment as to the delay caused in recording the statements of prosecution witnesses under Section 161 of the Cr.PC.

55 It is well settled law that delay in recording the statements of witnesses does not necessarily discredit their testimony. The court may rely on such testimony, if they are cogent and credible and delay is explained to the satisfaction of the court. However, Ganesh Bhavan Patel vs. State of Maharashtra⁵ is an authority for the proposition that delay in recording of statements of the prosecution witnesses under Section 161 of the Cr.PC., although these witnesses were or could be available for examination when the investigating officer visited the scene of occurrence or soon thereafter, would cast a doubt upon the prosecution case.

5 AIR 1979 SC 135

56 In the instant case, the incident in question took place on 16th May 1997. It appears from the cross-examination of PW9 mother that her statement came to be recorded on 11th June 1997. Similarly, the cross-examination of PW10, who allegedly had accompanied the deceased in a jeep, came to be recorded on 11th July 1997. Both statements came to be recorded after a period of one and two months respectively. We do not find any reason from the mouth of PW11 Investigating Officer as to why such a huge delay was caused in recording their statements. Suffice to say, no explanation is given to the satisfaction of the court as to the delay caused in recording the statements of these two witnesses, although it is apparent from their cross-examination that soon after the incident, the police used to visit the house of the informant for inquiry purposes. They maintained stoic silence and did not come forward to apprise the investigating machinery when they were in know of the facts. This is a very serious infirmity which destroys the credibility of the evidence of PW9 and PW10. Even otherwise, on merits, we have rejected their testimonies.

57 Having regard to the above discussion, we are of the considered and concluded view that the learned trial Court has given a reasoned judgment in accordance with law. We see no reason to interfere with the reasoning of the learned trial Court and express our approval of it.

58 There being no merit in the appeal, we pass the following order :

ORDER

Appeal is dismissed.

(V. G. BISHT, J.)

(PRASANNA B. VARALE, J.)

Arti V.
Khatate

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