

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 194 OF 2000**

The State of Maharashtra	)	Appellant/ (Orig. Complainant)
Versus		
1. Namdeo Soma Bhamble	)	
60 yrs. Occ. Agriculture.	)	
2. Pilaji Namdeo Bhamble	)	
21 yrs. Occ.Education/Agriculture.	)	
3. Chimaji Namdeo Bhamble	)	
21 yrs. Occ. Education	)	
All residing at Borghar,	)	Respondents
Tal. Ambegaon, Dist. Pune.	)	(Orig. Accused 1 to 3)

Mr. A. R. Patil, APP for the advocate for the appellant.
None for the respondents.

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

DATE : 22nd SEPTEMBER, 2020.

JUDGMENT (Per Prasanna B. Varale, J.)

1. Heard Mr. Patil, learned APP for the appellant-State of Maharashtra. None appears on behalf of the respondents.

2. Being aggrieved by the judgment and order dated 20th December, 1999, passed by the learned Additional District and Sessions Judge, Pune, in Sessions Case No. 142 of 1997, whereby the respondents/original accused were acquitted, the present appeal is preferred in this Court. The respondents/original accused were charged for the offences punishable under Sections 302, 307 and 504 read with Section 34 of the Indian Penal Code, 1860.

3. The prosecution case unfolds through the report lodged at Ghodegaon Police Station on 14th December, 1996 at the instance of PW 1 - Jaibai. As per the version of the informant, on 13th December, 1996 at about 11.00 a.m., the Sarpanch of the village - Smt. Bhagabai Bhamble and brothers-in-law of Jaibai – Kisan, Umaji Soma Bhamble and Namdeo Bhamble had been to visit temple at village- Malin and returned back in the afternoon in village Borghar, Taluka Ambegaon, District Pune. At about 6.00 p.m. in the evening, Jaibai, her brother-in-law – Kisan, son – Sharad and father-in-law – Maruti were chatting in front of their house in the courtyard. The accused persons armed with weapons viz. stick, axe and scythe reached the spot, picked up quarrel with brother-in-law - Kisan on account of visit to temple at Malin and started abusing initially, and thereafter, gave blows of stick on the vital parts of the body of Kisan. The attack resulted in instantaneous death of Kisan. It was further stated in the report that Jaibai, her son – Sharad and father-in-law - Maruti made

an attempt to pacify the assailants but they were also subjected to attack by the accused persons.

4. On lodgment of the report to the police station, the investigating agency was set in motion. On completing the process of investigation, charge-sheet was filed on 15th March, 1997, and on 6th June 1997, charge was framed against the accused persons. Considering the nature of offences and the charge against the accused and as the case was being triable by Sessions Court, the learned Additional District and Sessions Judge, Pune, conducted the sessions case. On appreciation of the evidence, the learned Court below could not find material sufficient enough to hold the accused persons guilty, and as such, acquitted the accused persons vide the judgment and order dated 20th December, 1999.

5. Mr. Patil, learned APP for the State, vehemently submitted before this Court that the learned Court below seriously erred in appreciating the evidence in its proper perspective. It is also submitted by learned APP that the learned Court below gave undue weightage to the omissions and contradictions which were minor in nature. It is also submitted by learned APP that the evidence of the injured witnesses is not properly appreciated by the learned trial Court. Thus, learned APP prayed for allowing the appeal by setting-aside the judgment and order of acquittal passed by the trial Court.

6. With the assistance of learned APP, we have gone through the record and the material placed before the trial Court as well as this Court. The prosecution, in support of its case, examined as many as 8 witnesses.

PW 1 – Jaibai is an important witness of the prosecution for the reason that, at her instance, the investigating agency was set in motion. Jaibai, though in her examination-in-chief, states in detail about the backdrop of the actual incident and the role allegedly played by the accused persons viz. Namdeo Soma Bhamble, Pilaji Namdeo Bhamble and Chimaji Namdeo Bhamble, it is stated by Jaibai that she along with the other family members were subjected to an assault by the accused persons. The perusal of the material, more particularly, the version of witnesses show that the witnesses and accused persons are distant relatives and they reside nearby each other in the same locality. Jaibai deposed in her examination-in-chief that the accused Namdeo started abusing Kisan while Jaibai and other family members were sitting in front of the door and then started beating Kisan with stick. Jaibai stated that the accused No.1 – Namdeo gave a blow on Kisan's head. Kisan fell on the ground as a result of the blow. Then, accused No.1-Namdeo gave call to his sons viz. accused Nos. 2 and 3. The accused No.2 – Pilaji reached on the spot armed with axe. Whereas, the accused No.3 – Chimaji was carrying scythe in his hand. She further stated that her son –

Sharad and father-in-law – Maruti intervened so as to rescue Kisan. It is further stated that the accused No.2 – Pilaji gave an axe blow on the head of Sharad. Jaibai rushed to save Sharad and fell on the person of Sharad and that as per the version of Jaibai, the accused No.2 – Pilaji hit Jaibai on her right hand with the club of axe. Jaibai further stated that the accused No.3 – Chimaji assaulted her father-in-law with scythe. Jaibai then deposed that her son – Sharad and father-in-law became unconscious due to the blows, whereas Kisan was already dead. When the police reached on the spot on an information through Sarpanch – Bhagabai, Jaibai then stated that due to non-availability of any conveyance, she was unable to approach Ghodegaon Police Station and as such, on the next date, she went to Ghodegaon Police Station and narrated the incident to the police. The police staff attached to the police station carried Jaibai to Sassoon Hospital for medical treatment. She was in the hospital for 4-5 days. On perusal of the cross-examination, it is revealed that there are serious omissions. These omissions are on the material aspects about the alleged role played by the accused persons. Jaibai though states in her examination-in-chief that on receiving the blows her son – Sharad and father-in-law – Maruti became unconscious and in her cross-examination she takes a somersault and deny that due to beating her son – Sharad, father-in-law – Maruti and she herself became unconscious. The omission is also brought on record in support of her version that on hearing shouts of Kisan, she came out of the house

to see what happened. It can be said that there are material omissions not only in respect of sequence of events but also on the role played by each of the accused.

PW 2 – Bhagabai was Sarpanch of the village at the time of the incident. She is the sister-in-law of accused No.1-Namdeo and this witness is declared hostile and though learned APP cross-examined this hostile witness, the fact remains that she is not supporting the case of the prosecution.

PW 3 – Alka is the wife of the deceased Kisan. Perusal of the testimony of this witness shows that she reached on the spot on hearing the shouts and at that time, her husband was lying on the ground. In the cross-examination she admits that she came out of the house on hearing the voice of her husband, she saw that her husband was lying near the stone-wall in the courtyard. Then there are omissions brought on record on the material aspects i.e. the role played by each of the accused person.

PW 4 – Sharad, son of deceased Namdeo and PW 1 – Jaibai is cited as an injured witness. In the cross-examination of this witness, the material omissions are brought on record in respect of the role played by the accused persons. On perusal of the cross-examination it reveals

that the behaviour of this witness is not natural, and as such creates doubt on the truthfulness of the version of the witness. In the cross-examination, this witness admits that he did not raise cries to call people even though he himself and his uncle were subjected to assault, nor he made any attempt to resist the assailants. The material witnesses who are the injured witnesses as per the prosecution case in chorus state about the single blow on the vital part of the deceased.

PW 5 – Dr. Dattatraya Ghone had issued medical certificates to Maruti, Jaibai and Sharad. In his cross-examination, Dr. Dattatraya Ghone stated that the history of the patient Maruti was provided to him by one Baban Hunaji Wamble and he also admits in the cross-examination that the Injury Nos.1 and 2 viz. 2 incised wound over left parietal region of scalp 5 cms x 5cms bone deep and another 6 cms x .5 cms bone deep and oblique in nature and Injury No.2 viz. incise wound over right frontal region of scalp 8 cm x .2 cm bone deep and vertical are possible by fall on sharp object. Dr. Dattatraya Ghone also admits in the cross-examination that other Injuries 3 to 5 are also possible by fall on sharp object. Then, in so far as injuries to PW 1 – Jaibai are concerned, Dr. Dattatraya Ghone stated in the cross-examination that these injuries are also possible by forcible fall and further stated in his cross-examination that these injuries were not sufficient for the patient to become unconscious. In the cross-examination, Dr. Dattatraya Ghone further stated that if a blow with the

weapon stick, which was before the Court, is given on the stomach, it will cause weal mark.

PW 6 – Maruti is another witness. This witness deposed before the Court that he was sitting in the courtyard along with his grandson – Sharad and daughter-in-law – Jaibai. The accused persons reached on the spot and started abusing and then assaulted his son – Kisan, himself, his grandson – Sharad and daughter-in-law – Jaibai. Maruti, in his examination-in-chief before the Court, stated that the accused No.3 – Chimaji assaulted him on his head with scythe. He stated that the blow caused bleeding injuries and he had fallen down and became unconscious. In the cross-examination, the material omissions are brought on record in respect of the role played by accused persons.

PW 7 – Mr. Sanjay Jadhav is the Investigating Officer who stated about the steps taken by him in the process of investigation such as recording of statements of the witnesses, collecting material, preparing panchanamas, forwarding articles for chemical analysis and filing charge-sheet on 15th March, 1997. The defense on cross-examination of this witness brought omissions of material aspects on record.

PW 8 – Venkatesh Ingale was attached to Rural Hospital, Ghodegaon, at the relevant time as Medical Superintendent. Dead body

of Kisan Maruti Bhamble was referred to him for postmortem. Dr. Venkatesh Ingale noticed the following injuries on the person of Kisan Maruti Bhamble :-

“1. Diffused swelling over forehead from glabella to frontal part of head and inter parietal area.

2. Swelling on right eye-lid colour reddish.

Injuries were ante mortem.”

He further stated that the cause of death was shock due to head injury, fractured skull and intracranial hemorrhage. In the cross-examination, Dr. Venkatesh Ingale admits that if a blow is given with stick on the abdomen, it will cause weal marks and he did not find such weal marks on the dead body. Then, it is further important to know that in the cross-examination Dr. Venkatesh Ingale admits that the injury on the head of the deceased is also possible by forcible fall on the ground i.e. stone.

7. On appreciation of the evidence, the learned trial Court arrived at the conclusion that the death of Kisan though was an unnatural death, it was possible by forcible fall on the ground and the opinion of the trial Court is particularly formed on the basis of the evidence of PW 8 – Dr. Venkatesh Ingale. The learned trial Court then on scanning of the evidence of material witnesses i.e. injured eye witnesses as cited by the prosecution found that their evidence is full of material improvements,

discrepancies and omissions. It is also observed by the learned trial Court that there is no consistency even on the aspect of sequence of events as well as the role played by the accused persons. On perusal of the evidence, we are of the opinion that the learned trial Court committed no error in arriving at the conclusion that the version of the witnesses suffered from material discrepancies and omissions. On scanning the evidence of the witnesses, the learned trial Court was justified in making the following observations which are quoted hereinbelow :

“15....If we turn to her cross examination, however at the outset must be stated that P.W.1 Jaibai, has made material improvement while deposing in the Court. She improved that there was quarrel between the accused no. 1 and his brother Uma and therefore Sarpanch Bhagabai had called meeting. She further improved that on hearing abuses of accused no. 1 Kisan came out of his house and immediately thereafter the accused no. 1 hit him on his head with stick. She had further improved that after accused no.1 hit deceased Kisan on his head he gave call to his sons and accordingly accused 2 & 3 came there with axe and scythe. She further improved that when her son went to rescue, the accused Pilaji gave blow of axe on his head. She further improved that accused Pilaji beat her on her right hand with club of the axe. Then P.W.1 Jaibai improved her case by stating that accused Chimaji assaulted her father-in-law with scythe. Lastly she improved

her version by stating that after the incident all the accused stayed in their house after closing the doors. It is to be noted that the complainant Jaibai was unable to tell as to why these statements which she deposed in Court, have been omitted in her complaint, which she proved at Exh.44.I.O.P.W.7, P.S.I. Sanjay Jadhav also admitted in his evidence that the complainant Jaibai did not state like that in her complaint exh.44 before him. It is significant to note that these improvement made by complainant are material in nature and therefore, they create serious doubt about the actual assault and the happening which she witnesses.”

In so far as PW 4 – Sharad and PW 6 – Maruti are concerned, the learned trial Court observed as under :

“16.....If we consider their evidence, in one hotch not it will show that so far as the actual assault by the accused is concerned, the same is inconsistent. Each of them gives a different version in respect of the assault. P.W.4 Sharad in his evidence stated that on the earlier day of the incident at about 4 to 5 p.m. he had seen uncle Kisan (Deceased) going to village Malni with the Sarpanch Bhagabai and her husband. He deposed that on that day at 5.30 p.m. he was sitting with his grandfather, his mother and his uncle Kisan to their door. It is pertinent to note that this is not the version of complainant Jaibai. Nowwhere she stated that she was sitting in her door

with Sharad or Maruti and Kisan was also with them. In his further evidence Sharad deposed that at that time accused no. 2 Pilaji came there and asked Kisan why he had been to Malni with Sarpanch Bhagabai to which Kisan replied that as he was called by the Sarpanch he accompanied her. His further evidence shows that thereafter Pilaji asked Kisan whether he had become leader of the village or was the -P.A. of Sarpanch Bhagabai.His further evidence shows that accused Pilaji and Chimaji came with axe and scythe in their hands and accused no. 1 Namdeo came with stick in hand and they all rushed on Kisan in the assault accused no. 1 Namdeo first hit on Kisan's head with the stick and thereafter gave 2nd blow on stomach of Kisan. Then all the accused started beating Kisan. It is significant to note that this is not the version either of complainant Jaibai or other eye-witnesses father-in-law Maruti. At this juncture if we consider evidence of eye-witness Sharad P.W.4, it is totally inconsistent with the evidence of complainant Jaibai. Nowwhere she has deposed that there was any conversation between accused Pilaji and Chimaji on one hand and deceased Kisan on the other hand. This would show the inconsistency in their evidence, which therefore create doubt about the actual incident that happened at the time. It is to be noted that it is not the case of the complainant Jaibai that all the accused started assaulting Kisan together as is deposed by P.W.4 Sharad. P.W. 4

Sharad deposed that all the accused started beating his uncle Kisan and he went to rescue him and at that time accused Pilaji pushed him down from the ota and gave him blow of the axe on his hand. He deposed that accused Chimaji came and hit him on his head with scythe. Therefore his mother Jaibai came to save him and accused Pilaji gave blow of axe on her hand. Because of the said assault, P.W.4 Sharad deposed that he fell unconscious. It is pertinent to note that no-where P.W.4 Sharad has deposed that at the time of said assault, his grandfather P.W.6 Maruti also came to rescue this son Kisan. This also creates serious doubt about the actual happening. Not only that, if we consider the admission of P.W.4 Sharad in his cross examination, we find that he has also improved his version. In cross examination he was unable to state why it was omitted in his statement before police that there was such conversation between accused Pilaji and Chimaji on one hand deceased Kisan on the other hand. In the same way he was unable to tell as to why police have omitted in his statement that all the 3 accused started beating Kisan.....It means P.W. 4 Sharad has contradicted his own version and told before Court, that it was not accused Pilaji but accused Namdeo to whom the deceased Kisan abused. This also creates doubt about the version of P.W.4 Sharad and ultimately about the incident of assault. It is also significant to note that as per the evidence of P.W. 4 Sharad he was assaulted by the accused

Pilaji by axe and by accused Chimaji by scythe on his hand and head respectively. However, if we peruse his injuries to which I will come later on, then those injuries caused on his person also create a doubt about the assault by accused Pilaji and Chimaji as deposed by P.W. 4 Sharad in Court. But at this moment it is sufficient to find out that evidence of P.W. 4 Sharad as regards the actual assault that took place on that day is inconsistent with the evidence of his mother Jaibai P.W. 1.

17.....If we consider this evidence of P.W. 6 Maruti regarding the actual incident of assault in his examination-in-chief as discussed, it is inconsistent with the evidence of the other two eye witnesses viz. complainant Jiabai and grandson Sharad. Not only that, if we consider his admission in cross examination we find that P.W. 6 Maruti has improved his version as regards chase of his grandson Sharad by accused no. 2 and 3 When he was confronted with his statement before the police P.W.6 Maruti was unable to tell as to why police have omitted in his statement that accused nos. 2 and 3 chased Sharad in order to beat him. In the same way he has improved his version by telling that the accused no. 2 Pilaji assaulted deceased Kisan on his head P.W. 6 Maruti was unable to tell as to why police have omitted the same in his statement before them. On the other hand, P.W. 6 when he was confronted with his statement before police, denied that he told portion marked 'A' before the

police. However, the I.O. P.W.7 P.S.I. Sanjay Jadhav admitted that P.W. 6 Maruti has stated the same, vide exh. 66. This statement exh.66 which Maruti made before police shows that as the time of incident, his son deceased Kisan started abusing accused no.1 to the effect as 'Maderchot-behenchot'. This would show that even P.W.6 Maruti is not stating the truth before the Court. This if we find that the evidence of P.W. 6 Maruti the father of the deceased Kisan, his evidence as regards the actual incident suffers from material improvements as well as contradictions."

The learned trial Court was also justified in making the following observations:

"18. Thus if we consider the evidence of these three material eye-witnesses who are also the injured, as regards actual assault of deceased Kisan, as discussed above, we find that their evidence is inconsistent with each other. Not only that they have made material improvements while, deposing in Court. It therefore, creates serious doubt, about actual incident that took place on that day. No doubt, the medical evidence adduced in this case in respect of injuries of these eye-witnesses shows that they had sustained some injuries but because of inconsistencies in their evidence, it is difficult to believe that the accused had caused those injuries...."

The learned trial Court below also critically examined the version of other 2 witnesses viz. PW 2 – Bhagabai and PW 3 – Alka. The learned trial Court was also justified in observing that the version of these witnesses run contrary to the injured witnesses. As such, it is difficult to place implicit reliance on the testimony of these witnesses. The learned trial Court was also justified in raising serious doubt on the other evidence viz. Chemical Analyzer's report and the observations read thus :

"It shows that some blood was found on the stick, but no blood was found on axe or scythe. However it is to be noted that the I.O.P.W.7 P.S.I. Jadhav in his cross-examination admitted that no blood was found on the attached stick. This therefore, creates doubt about the C.A. report, exh.64. However, the absence of the blood on the weapons i.e. axe and scythe also creates doubt about their use in alleged incident."

8. Considering all the above referred aspects, we are of the opinion that the learned District and Sessions Judge, Pune, committed no error in appreciating the evidence before the Court. We could not find any illegality or perversity either in appreciation of the evidence or in the conclusion drawn by the learned Court below. We hold that the appeal is thoroughly meritless and deserves to be dismissed. Accordingly, the same is dismissed.

9. This judgment will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(V. G. BISHT, J.)

(PRASANNA B. VARALE, J.)