

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 611 OF 1999

The State of Maharashtra

...Appellant
(Orig. Complainant)

Versus

1. Shivaji Maruti Gaikwad (Abated)
2. Tanaji Maruti Gaikwad.
Age-28 Years.
3. Namdeo Sattu Gaikwad
Age- 38 Years.
4. Vitthal Popat alias Raghunath Gaikwad
Age- 23 Years.
All residing at Kambre, Taluka-Mawal,
District-Pune.

...Respondent
(Orig. Accused)

...

APPEARANCES-

Mrs. M.M. Deshmukh, APP for Appellant.
None for Respondents.

...

CORAM : S. S. SHINDE &
N. B. SURYAWANSHI, JJ.

DATE- 14th JANUARY, 2020.

ORAL JUDGMENT [PER N.B. SURYAWANSHI, J.]

1. This appeal is directed against judgment and order of acquittal under section 302, 504 read with 34 of Indian Penal Code (for short 'IPC') passed by learned Additional Sessions Judge in Sessions Case No. 522 of 1999.

2. The prosecution case in short is that:

Deceased Suresh Rajaram Gaikwad and all the accused are resident of village Kambre. Before the incident elections of Gram Panchayat had taken place and there was dispute in respect of election of Sarpanch of the village. Four days before the election of Sarpanch one Gabalu Gaikwad had taken away a member Ranjan Lokhande. The deceased Suresh that time told that, that was not fair and on that count there was dispute between two political groups in the village.

3. On 22/08/1995 at about 5.00 P.M. complainant Rajaram Gaikwad and father of deceased and Jaibai mother of deceased had come in the village for taking the stone grinder. The deceased and his parents were residing at farm house. They also owned one house in the village. After taking the stone grinder, the complainant returned to his farm house. At about 7.00 P.M. one Sadashiv Gaikwad came shouting at the farm house of the complainant and told him that, Tukaram, Ganesh and Ganpat are assaulted by the children of Popat Ganpat Gaikwad and therefore he asked the complainant to go to the Kamshet Police chowky and lodge the information. The complainant proceeded to Kamshet police chowky, where he came to know that, the police have already proceeded to village Kambre. The complainant waited there. After some time, Nathu Gaikwad came in Kamshet police chowky and informed that, Suresh is assaulted by deceased

accused Shivaji and Tanaji, Namdeo and Vitthal. He also informed that, Chandrabhagabai gave water to Suresh and at that time accused Shivaji assaulted Chandrabhagabai. Suresh was admitted in Parmar Hospital. The complainant proceeded to Parmar Hospital and saw that Suresh had sustained injuries at his head and treatment was being given to Suresh. It is the case of the prosecution that, Suresh was assaulted by the accused by iron bars in open premises near the house of one Maruti Gaikwad. While Suresh was being assaulted Chandrabhagabai rushed to the spot after hearing cries of Suresh and she intervened in the assault. She was also assaulted by iron rods. At that time, one Nathu was passing on the road and Chandrabhagabai called Nathu and asked him to bring water. Though, Nathu brought water, Suresh was not in a position to drink the water. Nathu lifted Suresh and took him towards S.T. stand and Suresh was taken in bullock cart brought by one Chandrakant to the hospital of Dr. Parmar.

4. Suresh was admitted in the hospital of Dr. Parmar at about 9.00 PM. on 22/08/1995. Suresh had sustained injury on both right and, left side of head. Dr. Parmar provided first medical aid and sutured the wounds. The condition of Suresh became serious on 23/08/1995 and since he became unconscious, he was shifted to Sassoon Hospital for further treatment. On 24/08/1995 Suresh succumbed to the injuries. After conducting inquest and post mortem the dead body of Suresh was handed over to the father

Rajaram (PW 1). On 24/08/1995 at about 10.10 P.M. complainant Rajaram lodged complaint before P.S.I. Vadgaon-Mawal. On the basis of said complaint C.R. No. 90 of 1995 for offences punishable under Section 302, 504 read with 34 of IPC was registered. On completion of investigation charge sheet came to be filed and since the matter was triable by the Court of Sessions, it was committed to the Court of Sessions.

5. Learned Sessions Court framed charge under Section 302, 504 read with 34 of IPC against the accused. The prosecution examined 10 witnesses in support of the charge. The defence of the accused is of denial and the accused claimed that there was scuffle in the village on account of political dispute in which Suresh had suffered injuries and expired. Accused are not author of said injuries. The learned Trial Court after assessing the evidence came to the conclusion that, the prosecution has failed to prove the charge and hence was pleased to acquit the accused. Hence, the present appeal.

6. We have heard the learned APP appearing on behalf of Appellant-State, who has taken us through the record, evidence led by the prosecution and the documents including various panchnamas, post mortem etc. brought on record during the course of trial. None appears for the accused.

7. On going through the evidence of eye witness Chandrabhagabai Gaikwad (PW 2), it is clear that, though she claims to have sustained injury on shoulder during the assault while she intervened to save Suresh, there is nothing on record to show that, she really had sustained injury on her shoulder. She states in her evidence that, Suresh was not talking. She admits in her cross examination that, she does not know as to how many blows by which of the accused were inflicted on Suresh. She has stated that, she fell on the person of Suresh in order to save him. However, absence of any injury suffered by her renders her evidence doubtful. She in her police statement has not stated that, alleged incident had taken place at the back side of her house. The said omission is brought on record during her cross examination, thus she has substantially improved her version before Trial Court. She being wife of the complainant is highly interested witness whose version does not inspire confidence.

8. Nathu Gaikwad (PW 3) is nephew of PW 1, he claims to be an eye witness having witnessed the incident of assault to deceased Suresh. This witness also does not say that, Chandrabhagabai (PW 2) received injury on her shoulder during the assault. Chandrabhagabai (PW 2) in her evidence states that, Suresh was shouting 'melo melo'. However, nothing in this behalf is stated by Nathu Gaikwad (PW 3). The evidence of Chandrabhagabai (PW 2) and Nathu Gaikwad (PW 3) shows that, before

the occurrence of the incident of assault there was scuffle between two groups in the village and in the said scuffle several persons had sustained injuries. Nathu Gaikwad (PW 3) has also stated different spot of incident, than mentioned in the spot panchnama Exhibit-22. Nathu Gaikwad (PW 3) has also admitted in his evidence that, he is closely related with Chandrabhagabai (PW 2). Thus, Nathu Gaikwad (PW 3) also is an interested witness who has tried to support the case of the prosecution along with Chandrabhagabai (PW 2). However, his version is doubtful and he is not trustworthy.

9. So far as complainant Rajaram Gaikwad (PW 1) is concerned, he received information from one Sadashiv Gaikwad that, there was big scuffle in the village in which Ganesh Tukaram Gaikwad, Ganpat Sitaram Gaikwad and Tukaram Rambhau Gaikwad were severely assaulted by accused Shivaji, Tanaji, Vitthal and Namdeo and all the injured were lying on the ground and therefore he was asked to go to police station. One fails to understand as to why instead of visiting the spot, he went to the police station. As per his version he was present in the police station when Nathu Gaikwad (PW 3) came in the police station and informed him that Suresh is assaulted and he is admitted in Dr. Parmar Hospital. Accordingly, he proceeded along with Nathu Gaikwad (PW 3) to Dr. Parmar Hospital and on the way Nathu Gaikwad (PW 3) told him that accused Tanaji, Vitthal and

Namdeo had assaulted Suresh with iron rod. It is pertinent to note here that, in his evidence Nathu Gaikwad (PW 3) has nowhere stated that, on the way to hospital of Dr. Parmar he told Rajaram Gaikwad (PW 1) that accused had assaulted deceased Suresh. It is surprising that, in spite of the fact that, Rajaram Gaikwad (PW 1) was informed about assault on Suresh, he did not inform the same to the police. Till the death of Suresh, the incident of assault on Suresh was not disclosed to the police and the complaint was lodged belatedly on 24/08/1995 only after the death of Suresh. Belated lodging of complaint also renders the prosecution case doubtful. Apart from this he has improved his version in trial.

10. The prosecution version is unacceptable and doubtful also on the count that, the assault on Suresh took place on 22/08/1995 at about 7.00 PM and he was immediately taken to Dr. Parmar Hospital. Dr. Parmar has admitted in his cross examination that, deceased Suresh was conscious and well oriented. Thus, on 22/08/1995 as well as on 23/08/1995 dying declaration of Suresh could have been recorded by the investigating agency. The same is not done for the reasons best known to the prosecution which also creates doubt about the prosecution version, in view of the fact that, admittedly there are two political groups in the village and accused belongs to one group and deceased Suresh belongs to other and big scuffle had taken place in the village in which several persons had sustained injuries.

Though available, no independent witness is examined by the prosecution. Admittedly, the incident had taken place in the midst of village wherein there are residential houses of villagers but not a single independent witness is examined. Thus, for non examination of independent witnesses though available, adverse inference needs to be drawn against the prosecution.

11. We have considered the direct evidence of eye witnesses which appears to be unreliable and untrustworthy. There is no evidence on record to corroborate the prosecution version. At the cost of repetition it may be stated that, there is gross delay in lodging the FIR, when the incident had taken place on 22/08/1995 at about 7.00 P.M., the FIR is lodged at about 10.10 P.M. on 24/08/1995 and there is no explanation about the same. The non disclosure of names of assailants and manner of assault by complainant and other eye witnesses at the first possible opportunity, even at the time of admission of deceased at Dr. Parmar Hospital or at the Sassoon Hospital renders entire prosecution case suspicious and unbelievable.

12. Having considered the reasons assigned by the learned Trial Court, we do not find any error in the judgment given by the learned Trial Court thereby acquitting the accused persons. The only view possible in the present case is adopted by the learned Trial Court and there is no reason to interfere in the impugned judgment and order of acquittal. The appeal sans

merit the same is liable to be dismissed. Hence, the following order:-.

ORDER

1. Appeal stands dismissed.
2. Bail bonds, if any, shall stand cancelled.

(N. B. SURYAWANSHI, J.)

(S. S. SHINDE, J.)