

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 525 OF 2000**

The State of Maharashtra	]	
(Through Assistant Police Inspector,	]	
Panhala Police Station, Dist.: Kolhapur)	]	... Appellant
V/s.		
1. Rajaram Hindurao Sulekar-Patil,	]	
2. Bajirao Hindurao Sulekar-Patil,	]	
3. Shahaji Hindurao Sulekar-Patil,	]	
4. Sardar Hindurao Sulekar-Patil,	]	...Respondents
5. Hindurao Krishna Sulekar-Patil.	]	(Org.Accused)

Ms.M.H. Mhatre, APP for State/Appellant.

Mr.C.G. Patil i/b Mr.Mandar Bagkar, for Respondent Nos.1 to 5.

CORAM : **SMT. SADHANA S. JADHAV &
N.R. BORKAR, JJ.**

RESERVED ON : **9TH MARCH, 2021.**
PRONOUNCED ON : **16TH JULY, 2021.**

JUDGMENT (*PER N.R. BORKAR, J.*)

1] This appeal at the instance of State takes an exception to the Judgment and order dated 20.04.2000 passed by learned Additional Sessions Judge, Kolhapur in Sessions Case No. 60 of 1999. By the impugned Judgment and order, the respondent Nos.1 to 5 who were accused Nos.1 to 5 respectively before the trial Court, have been acquitted of the offences punishable under Sections 147, 148, 302, 323, 504 read with 149 of the Indian Penal Code.

2] One Pandurang and his wife Malubai were residing at Village Gothe, Taluka – Panhala, District Kolhapur. The accused were residing at some distance from the house of Pandurang. Accused Nos.1 to 4 are the sons of Accused No.5. The deceased Dagadu was cousin of Pandurang and he was also resident of the same village.

3] According to the prosecution, Malubai frequently used to go to the house of accused. Pandurang was thus suspecting her to be in illicit relations with accused No.1 Rajaram.

4] The incident took place on 16.05.1998. On the day of incident, Pandurang came home at about 8.00 p.m. At that time, Malubai was not at home. He came to know from his cousin PW 6 Sarjerao Patil that Malubai had gone to the house of accused. He, therefore, came in front of the house of accused and started calling his wife Malubai. It is alleged that, at that time, accused Nos.1 to 5 came out of their house. According to the prosecution, accused No.1 was armed with an axe and others were armed with sticks.

5] A quarrel took place between Pandurang and accused, and in the said quarrel accused No.1 assaulted Pandurang on his head by butt end of Axe and other accused assaulted him by sticks. It is alleged that at that time, deceased Dagadu and his wife PW 5- Raibai came there.

6] Dagadu tried to save Pandurang from assault of the accused. However, it is alleged that accused No.1 assaulted Dagadu also on his head by butt end of axe. PW-5 Raibai who was present

there tried to prevent the accused from assaulting her husband Dagadu. It is alleged that she too was assaulted by sticks. Pandurang and Dagadu were taken to the hospital. However, Dagadu died, while he was being treated in the hospital.

7] A report in relation to the incident was lodged by PW 6 Sarjerao Patil. On the basis of said report initially crime was registered against accused Nos.1 to 4. During the course of investigation, the involvement of accused No.5 was also revealed and thus on completion of investigation, a charge-sheet was filed against accused Nos.1 to 5 for the offences punishable under Sections 147, 148, 302, 323, 505 read with 149 of the Indian Penal Code. The accused were charged and tried for the said offences. As stated earlier, the Trial Court acquitted the accused of all the charges by the impugned judgment and order.

8] We have heard learned APP for the Appellant/State and learned counsel for the respondents - accused.

9] The prosecution in order to prove it's case has examined following eye witnesses :

- (i) PW 3 Shamrao Powar;
- (ii) PW 4 Suresh Pandurang Patil;
- (iii) PW 5 Raibai Patil;
- (iv) PW 6 Sarjerao Patil and
- (v) PW 7 Prakash Patil.

10] According to PW 3-Shamrao Powar, accused No.1 assaulted deceased Dagadu by butt end of axe and accused Nos.2 to 4 assaulted him by sticks. According to PW 3, when he reached at

the place of incident, Pandurang was lying there in injured condition.

11] The trial Court discarded the evidence of PW 3 on the premise that according to PW 3, accused Nos.2 to 4 assaulted Dagadu by sticks. However, injury certificate at Exhibit 48 reveals only one injury to Dagadu on his head.

12] According to PW 4, on the day of incident, a quarrel took place between accused and his father Pandurang. In the said quarrel, accused No.1 assaulted his father by axe. His uncle Dagadu and his wife came there and they tried to save his father from the assault of the accused. However, accused no.5 assaulted Dagadu by butt end of axe.

13] As regards PW 4 Suresh Patil, the trial Court has held that he is child witness and appears to be tutored by his aunt.

14] According to PW 5-Raibai Patil, accused Nos.1 to 3 and 5 assaulted Pandurang. According to her, when her husband Dagadu tried to save Pandurang from the assault, the accused No.1 assaulted him by axe on his head. Her husband fell down. When she tried to save her husband, she too was assaulted by handle of axe and sticks.

15] The trial Court disbelieved PW 5 on the premise that according to PW 5 she was assaulted by handle of axe and sticks. However, her injury certificate at Exhibit 46 belies her version as it shows only one injury to her. It is further held that PW 5 has admitted in her cross-examination that Pandurang was lying at the place of

incident when they reached there and therefore her evidence that she had seen the accused assaulting Pandurang, is not free from doubt.

16] According to PW 6-Sarjerao Patil who is also first informant in the present case, accused No. 1 assaulted Pandurang by butt end of axe on his head and accused nos.2 to 4 assaulted him by sticks. When Dagadu tried to save Pandurang, accused No.1 assaulted Dagadu also on his head by butt end of axe. According to him, accused Nos.2 to 4 assaulted PW 5-Raibai by sticks on her back when she tried to save her husband Dagadu.

17] The trial Court discarded the evidence of PW 6 on the ground that according to PW 6 accused Nos.1 to 4 assaulted Pandurang by axe and sticks, however, his injury certificate at Exhibit 49 reveals only two injuries to him. Similarly, according to PW 6, accused Nos.2 to 4 assaulted PW 5 Raibai by sticks on her back, however, injury certificate at Exhibit 46 reveals only one injury to her.

18] According to PW 7 Prakash Patil when he reached to the place of incident, Dagadu Patil was lying on the ground and Raibai was lying on the person of Dagadu. According to him, accused Nos.1 to 5 were assaulting Pandurang by sticks and axe. He separated the accused and Pandurang. Other villagers who were at the place of incident also helped him in separating them.

19] According to the trial Court, the evidence of PW 7 is contrary to the prosecution case. Hence, he cannot be believed.

20] Learned APP for the appellant- State has submitted that the trial Court discarded the evidence of eye witnesses for no valid reasons.

21] On the other hand, the learned counsel for respondents has submitted that the trial court has rightly discarded the evidence of eye witnesses. It is submitted that in the first information report lodged by PW 6-Sarjerao Patil, there is no reference of accused No.5. It is submitted that the witnesses have admitted that many villagers had gathered at the place of incident, however, no independent witness has been examined. It is, further, submitted that according to the witnesses, mental condition of Pandurang is not stable. However, no evidence is produced to that effect on record. It is submitted that non-examination of Pandurang creates doubt about the entire prosecution case. It is submitted that the trial Court was, therefore, justified in acquitting the accused.

22] The trial Court has discarded the evidence of the eye witnesses mainly on the ground that their evidence is not in consonance with medical evidence. It is well settled that medical evidence is only corroborative evidence. The evidence of eye witnesses should be tested independently and should not be adversely prejudged on the basis of any other evidence including medical evidence.

23] In the present matter, PW 5 has lost her husband in the incident in question. The trial Court has not doubted her presence at the place of incident. In such circumstances and in absence of any

enmity between the parties trial Court was not justified in discarding the evidence of PW 5 only on the ground that her injury certificate does not corroborates her version. The position would have been different if the evidence of PW 5 would have been totally in conflict with the medical evidence of the doctor who conducted the post-mortem on the dead body of the deceased Dagadu.

24] The trial court was also not justified in discarding the evidence of PW 3 as his evidence cannot be said to be totally inconsistent with the medical evidence. The trial court lost sight of the injuries mentioned in the postmortem report, while discarding the evidence of PW 3.

25] According to the post mortem which is admitted by the defence, the following injuries were found on the dead body of the deceased :

- a] Contusion on left temporo parietal region with Bluish colouration 4x3 cm.
- b] Contusion on left frontal region with bluish colouration size 2 x 2 cm.
- c] Contusion on lateral border of right scapula with bluish colouration 3 x 2 cm.
- d] Abrasion on right ring finger on midle phalynx $\frac{1}{2}$ x $\frac{1}{2}$ cm.

The cause of death is shown as "Death due to cranio cerebral injury."

26] In view of the injuries mentioned in the post-mortem report, the finding of the trial Court, that the evidence of PW 3 is not

in consonance with medical certificate at Exhibit 48 which reveals only one injury to Dagadu, cannot be accepted.

27] The trial Court has observed that the evidence of eye witnesses is mutually contradictory. In the deposition of witnesses, there would be always some variances, however, honest and truthfulness they may be. Due to passage of time there cannot be a graphic description of the incident before the Court. The evidence of eye witnesses, therefore, cannot be discarded just because their evidence is not consistent with each other.

28] As regards submission that no independent witness has been examined and only interested witnesses have been examined, it is well settled that the relatives of the victim cannot be termed as interested witnesses. A witness may be called interested witness only when his interest is in seeing that accused are punished. A witness who is natural one and is the only possible eye witness in the circumstances of the case, cannot be said to be interested witness. It is not shown in the present case that the witnesses had any interest in protecting the real culprits and falsely implicating the respondents/accused. In such circumstances, the prosecution case cannot be doubted for non-examination of independent witnesses.

29] As regards non examination of Pandurang the witnesses have stated that after the incident Pandurang lost his memory and does not remember the incident. This evidence has not been challenged. Therefore, non-examination of Pandurang in no way would be fatal to the case of the prosecution.

30] The evidence of eye witnesses with regard to accused No.1 is consistent. The evidence of eye witnesses with regard to accused Nos.2 to 5 is, however, little bit shaky. The accused Nos.2 to 5 are, therefore, exonerated by granting benefit of doubt. The accused No.1 is held guilty for causing the death of Dagadu and hurt to Panduang.

31] However, considering the facts and circumstances of the case, it cannot be said that the accused No.1 had intended to cause death of the deceased Dagadu. Apart from it, the incident does not appear to be premeditated. Accused No.1 also cannot be said to have acted in a cruel manner. Considering these facts and circumstances, exception 4 to Section 300 would attract in the present case.

32] In our view, accused No.1, therefore, deserves to be convicted for the offence punishable under Section 304(I) of the Indian Penal Code.

33] As regards causing hurt to Pandurang, it appears that the trial Court has not framed the charge to that effect. Therefore, no conviction can be recorded in that respect. Hence, the following order is passed :

ORDER

i] Appeal is partly allowed.

ii] The impugned Judgment and order of the trial Court dated 20.04.2000 in Sessions Case No.60 of 1999 to the extent

of accused No.1 Rajaram Hindurao Sulekar-Patil is set aside and he is convicted for the offence punishable under Section 304(1) of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for 10 years and to pay fine of Rs.5,000/-. In default of payment of fine he shall suffer Rigorous Imprisonment for six months.

iii] The bail bonds of accused No.1 stand cancelled and he shall surrender before the concerned Sessions Court within three weeks from today. The concerned Sessions Court shall commit him to Prison to serve the sentence of imprisonment.

iv] The impugned Judgment and order of acquittal of the trial court in respect of accused Nos.2 to 5 is maintained.

[N.R. BORKAR, J]

[SMT. SADHANA S. JADHAV, J]