

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 181 OF 2000

The State of Maharashtra

... Appellant

V/s

1. Balu Bhagu Vashivle,
Age : 41 yrs.
2. Bhagu Santu Vashivle,
Age 67 yrs.
3. Bhika Pandurang Vashivle,
Age 22 yrs.
4. Ashok Pandurang Vashivle,
Age 20 yrs.
5. Tarabai Bhagu Vashivle,
Age 62 yrs.
6. Tanabai Balu Vashivle,
Age adult.
7. Chababai Rai Walanj,
Age 37 yrs.
8. Khandu Kondiba Vashivle,
Age 57 yrs.
9. Ganpat Khandu Vashivle,
Age 24 yrs.
10. Manisha Ganpat Vashivle,
Age 24 yrs.

All residing at Tiskari, Tal. Mulshi
District : Pune.

... Respondents
(Original accused 1 to 10)

Mr. H.J. Dedhia, APP for the State-Appellant.

Mr. Rohit Shevate i/b Mr. Satyavrat Joshi, for Respondent No.1.

Mr. Sanjeev Kadam i/b Mr. Namdev Gore, for the Intervener.

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

**Reserved on : 24th November, 2020.
Pronounced on : 7th January, 2021.**

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

This Appeal is filed by the State challenging the judgment and order of acquittal dated 25th November, 1999 passed in Sessions Case No. 451 of 1997 by learned Additional District and Sessions Judge, Pune for the offences punishable under Sections 120B, 302, 324, 147, 148 of the Indian Penal Code (for short “IPC”).

2 At the outset it may be noted that in said Sessions Case No. 451 of 1997 there were ten accused. All of them came to be acquitted vide impugned judgment and order which is subject matter of the present Appeal. However, this Court (Coram: J.A. PATIL & P. V. KAKADE, JJ.) was pleased to admit the Appeal as against original accused (Balu Rekha Patil

Bhagu Vashivle-(A-1)-respondent No.1 and rejected as against rest of the respondents-accused.

3 Narrated in nutshell, the prosecution case is that;

(a) The informant's father, namely, Mahipat Ramchandra Vashivle ("deceased" for short) at the relevant time was *sarpanch* of village Barpe, Tiskari and also a worker of Congress Party. An agricultural land bearing Gat No. 172 of village mouje Barpe is being cultivated by informant's uncle, namely, Bhagu Santu Vashivale (A-2) and his cousin, namely, Balu Bhagu Vashivale (A-1). The deceased was the tenant of the said land of which the original owner is Ashok Dayaram Gujar. Because of this, a tenancy proceeding started between the informant's family and said A-1 and A-2. A-1 and A-2 always used to quarrel with informant and the deceased and had expressed their intention of not relinquishing their rights over the said agricultural land. In the election of *Panchayat Samiti* A-1 and A-2 quarreled and fought with informant and deceased on the ground of informant giving support to a Congress candidate.

(b) On 10/06/1997 while informant and deceased were travelling in a ST Bus, informant's cousin, namely, accused Ganpat Khandu Vashivle quarreled and while alighting from the bus at village Barpe again abused and rushed on informant's person with a knife. At that time, the deceased intervened and separated the quarrel.

(c) According to prosecution on 11/06/1997 at about 6-00 a.m. informant's cousin, namely, Vishnu Appa Vashivale (PW-3) visited the informant's house and informed that accused Ganpat Khandu Vashivle and Khandu Kondiba Vashivle had gone to Poud police station in order to lodge the complaint in respect of incident of previous night and while proceeding to the police station they asked accused Balu Bhagu Vashivle (A-1), Bhika Pandu Vashivle, Bhagu Santu Vashivle, Ashok Pandurang Vashivle to kill you.

(d) Prosecution then alleges that at about 7-00 a.m. of 11/06/1997 accused Manisha Ganpat Vashivle, wife of Ganpat Khandu Vashivale, came in front of the house of informant and started abusing informant and the deceased. The deceased tried to persuade her and asked her to go to her

house. Even the deceased held Manisha Ganpat Vashivale by her hand and dragged her to a certain distance. While the deceased was returning, all of a sudden, prosecution alleges, accused Bhagu Santu Vashivale (A-2), Balu Bhagu Vashivale (A-1), Bhika Pandurang Vashivle, Ashok Pandurang Vashivle, Tarabai Balu Vashivle, Tanabai Bhagu Vashivle and Chhaba Rai Walanj came running armed with stones and sticks towards the deceased and started beating him. As the informant and his brother Bharat Mahipati Vashivle (PW-1) intervened in order to save the deceased, both of them were beaten by means of stones and sticks, as a result of which Bharat Mahipati Vashivle sustained injuries on his head. The deceased sustained serious injuries on his head and abdomen and was, therefore, rushed to hospital where doctor declared him dead.

4 The informant, therefore, approached Lonavla Police Station and narrated the incident. Accordingly, PW 10-PSI Devanand Gulabrao Yadav attached to Lonavla Police Station reduced into writing vide Exh. 62. However, as the offence had taken place in the village Tiskari within the jurisdiction of Paud Police Station, said PSI registered the offences under

Sections 147, 148, 149, 324, 302 and 120 B of the Indian Penal Code under C.R. No. 0/97 vide Exh. 63. Later on, the offences came to be registered with Paud Police Station under C.R. No. 101/1997.

5 It appears from the record that PW-9 Investigating Officer after having received the inquest panchanama (Exh. 16) started investigation. PW-9 visited the place of offence and drew spot panchanama and also seized four sticks lying on the spot apart from the other articles. During the course of investigation he collected 7/12 extracts of the disputed land, blood samples of accused, clothes on the persons of deceased, informant and accused. He then forwarded all the seized articles to Forensic Science Laboratory. He also collected Postmortem report and CA reports and after completion of investigation forwarded the charge-sheet against the accused.

6 To substantiate the charges against the respondent-accused, the prosecution has examined as many as 10 witnesses and exhibited number of documents. The respondent-accused was questioned under Section 313 of the Code of Criminal Procedure, 1973 ("Cr.PC." for short) about the incriminating evidence and circumstances and he denied all the circumstances as false. As per the additional written statement

(Exh.66) given before the trial Court in support of the defence by the present respondent-accused, it is seen that on 11/06/1997 the deceased-informant and informant's brother Bharat after learning that accused Khandu and Ganpat had gone to police station, came with sticks in front of his house and not only started abusing but also started beating with sticks because of which he sustained injuries on his head. Because of scuffle between the informant and PW-1 Bharat on one hand and he on the other, there was hue and cry and hearing this deceased came running and fell near dilapidated house on the stones and sustained injuries. In fact, he had not assaulted the deceased. Further, at the relevant time no other accused was present.

7 Mr. Dedhia, learned APP, who is assisted by Mr. Sanjeev Kadam, learned Advocate for intervener, vehemently submitted that despite their being clinching evidence of eye witnesses, namely, PW-1, PW-2, PW-3 and PW-5, the learned trial Court wrongly disbelieved their testimonies and wrongly held that all the testimonies are interested testimonies. According to learned APP, the version of all the above-said witnesses are consistent on the point of assault. Further, the oral evidence gets support from the medical evidence. Despite this overwhelming evidence the learned trial Court committed an error in acquitting the respondent-

accused. Learned APP, therefore, prays reversal of judgment and order of acquittal.

8 Mr. Shevate, learned counsel for respondent-accused, on the other hand, has supported the impugned judgment and order of acquittal. According to learned counsel, learned trial Court has taken into consideration all the relevant circumstances and has properly appreciated the evidence of prosecution witnesses. Since there is no perversity and illegality and the fact that there is no merit in the Appeal, same is liable to be rejected, argued learned counsel.

9 Before we undertake an exercise of appreciation and marshalling the evidence of prosecution witnesses, we would like to make it clear that the informant, namely, Laxman Mahipat Vashivle, in the present case died during the course of the trial. It appears from the record that the FIR (Exh. 62), therefore, came to be proved by prosecution through PW-10 PSI Devanand Gulabrao Yadav, who had recorded the same at the instance of deceased-informant.

10 First, we shall refer to inquest panchanama (Exh. 16) which is

duly admitted in evidence by the defence and then the Postmortem conducted by PW-8 Dr. Jai Vinayak Saswade. The inquest panchanama clearly shows that there were two injuries, one on forehead and other on back side of the head of the deceased. On front side of the forehead at the center vertical injury of 1" in length, with soaked blood was found. The bones on both sides of this injury were found depressed inside. Similarly, one more incised injury of 1" length was seen on back side of head of the deceased. Let us see the findings of the postmortem.

11 PW-8 states in his evidence (Exh. 49) that on 11/06/1997 he was acting as Medical Officer at Khandala Hospital. At about 2-00 p.m. a dead body of deceased was brought. Dr. Jain was also called for doing postmortem. Both of them started postmortem. They noted following injuries on the dead body.

- 1) Contusion CLW size $\frac{3}{4}$ x $\frac{1}{2}$ - bone deep on forehead near the hairline with haematoma present.
- 2) CLW $\frac{1}{2}$ x $\frac{1}{2}$ bone deep on occipital protuberance.
- 3) Depressed fracture left Frontal bone 2" x $1\frac{1}{2}$ 4" from bridge of nose $\frac{1}{4}$ from midline.

All the injuries were antemortem.

On the postmortem, they noticed the following internal

injuries on the dead body on the head:

1) Contusion with haematoma under the skull at left frontal region.

On the skull- 1) Depressed fracture left frontal bone of size of 2" x 1½".

On the Brain – 1) Left frontal lobe congested with collection of blood, laceration of meninges.

2) Laceration of left lobe of brain at frontal region with haematoma.

12 According to this witness, the cause of death of deceased was shock due to Haemorrhage, due to depressed fracture of frontal bone with laceration of left lobe of the brain with haematoma.

13 It is his further evidence that injury no. (3) mentioned in column No. 17 of postmortem report corresponds to the internal injury mentioned to the skull in column No. 19 (2) and also to the internal injury mentioned in column No.19(1). Similarly, injury No.2 in column No. 17 corresponds to the internal injury mentioned in column No. 19(3). According to him, the external injuries (1) (2) and (3) in column No. 17 were on vital part of the body and in the ordinary course of nature these injuries were sufficient to cause instant death. Further,

injury No. (3) in column No. 17 was possible by a stone. This witness then proved postmortem report at Exh.50.

14 Thus, having regard to the observations made in the inquest panchanama which is also reflected in the findings of the postmortem report and as also the opinion given by PW-8, Medical Officer, which is not disputed, we are of the clear opinion that the deceased died a homicidal death.

15 Coming to the prosecution case, what we gather from the contents of FIR is that the parties to the dispute were not on cordial terms on two counts. Firstly, a landed property dispute was going on between the parties at the relevant time. Secondly, the accused party were nurturing grudge against the informant and his family members as in a *panchayat samiti* election which were held three months prior to the main incident, the informant and his family members had supported a candidate belonging to Congress Party.

16 Apart from above, we also note from the FIR that there were two incidents. The first incident took place on 10/06/1997 immediately

followed by the second and main incident dated 11/06/1997. Keeping all these material factual aspects in mind, we are here to examine the prosecution case.

17 PW-1 Bharat Mahipati Vashivle, an injured, states in his evidence (Exh.19) that deceased was his father and deceased-informant was his brother. His father had dispute with A-1 and A-2 on account of landed property.

18 It is his further evidence that about two months prior to the actual incident a quarrel took place at Lonavala when the deceased-informant had gone to make a phone call. He had quarreled with accused Ganpat Khandu Vashivle. While the informant was returning by ST Bus, accused Ganpat was also in said ST Bus and had consumed liquor and abused deceased-informant. His deceased-father was also in the said bus. After they returned home his father disclosed him about the quarrel.

19 It is his further evidence that on the next day i.e. on 11/06/1997 in the morning, they were in their house. At about 7-00 a.m. accused Manisha came in front of their house giving abuses. His father,

therefore, came out and tried to convince her and told not to abuse and that he would see in the matter. At that time, accused Bhika Pandurang Vashivle came with sticks and started asking as to what was told to Manisha. He abused and inflicted blow of stick on him. When he was trying to catch his stick, meanwhile, accused Bhagu Santu Vashivle came and inflicted stick blows on him. According to him, he told accused Bhagu not to beat him but meanwhile A-1 came and pelted a stone on his head and therefore, he sustained bleeding injury on his head.

20 It is his further evidence that Baban Ovhal (PW-2), Hari Khedekar (PW-5) and Vishnu (PW -3), who were standing there came forward to rescue him. They all separated the quarrel. A- 1 then pelted a stone on the head of his father and he fell down. All the accused then ran away.

21 The evidence of this material witness can be divided into three equal parts. The first part of his evidence is all about the incident which had taken place two months prior to the main incident and we presume it to be the incident dated 10/06/1997 as narrated in the FIR. According to PW-1, at the relevant time the deceased-father and informant were travelling in a ST Bus in which accused Ganpat was also travelling. Not only accused Ganpat had consumed liquor but was also

abusing them. Interestingly, his version does not get support from the contents of FIR as it nowhere alleges that the accused Ganpat was abusing the deceased and the informant and was under the influence of liquor. Even otherwise, the evidence of this witness is in the nature of hearsay evidence, admittedly, because he was not present and according to his own evidence the incident dated 10/06/1997 was told to him by his deceased father.

22 Second part of his evidence is about the main incident which allegedly took place on 11/06/1997. His version again is not in consonance with the contents of the FIR. It is nowhere alleged, as is deposed by this witness, that at the relevant time accused Bhika Pandurang Vashivle came first with stick and started asking deceased as to what had he told to Manisha. It is also nowhere alleged in the FIR that the said accused Bhagu Vashivle had inflicted stick blows on the person of this witness. Even it is nowhere alleged in the FIR that A-1 pelted a stone on the head of this witness and as also on the head of the deceased. What the FIR alleges is that all the accused armed with sticks and stones started beating the deceased and the informant by means of the said respective weapons. It is absolutely not a case of pelting of stones, if we may say so.

23 The third part of his evidence shows that at the time of incident PW-2, PW-3 and PW-5 were very much present, who rescued the informant and the deceased from the clutches of accused but surprisingly again their presence is nowhere attributed in the FIR.

24 In order to substantiate alleged injuries on the person of this witness, the prosecution has also examined PW-4 Dr. Sardarmal Chapaji Parmar. PW 4 states in his evidence (Exh.25) that on 11/06/1997, he examined Bharat i.e. present witness and found CLW over left frontal region, 4cm x 1cm x 1cm bleeding, and injury was fresh. He then proved medical certificate issued by him at Exh. 27.

25 The evidence of PW 4, Medical Officer clearly shows that he found only one injury i.e. contused lacerated wound over left frontal region 4cm x 1cm x 1cm, whereas the evidence of PW 1 demonstrate unequivocally that there were two assaults on his person. First assault by means of sticks by accused Bhagu and Bhika and second assault by means of pelting a stone on his head by A-1. As far as the assaults by means of sticks allegedly by the said accused is concerned, there is absolutely no finding or observation by the said Medical Officers. Therefore, at the moment, we are not satisfied with the testimony of this

witness.

26 PW 2- Baban Gopal Ovhal (Exh. 22) is also on the point of two incidents viz. dated 10/06/1997 and 11/06/1997. Interestingly, he has altogether different version to offer. Regarding the incident dated 10/06/1997, his evidence is that he was also travelling in the ST Bus in which the deceased-informant and the deceased were travelling. There was a quarrel between accused Ganpat and deceased-informant. According to this witness, when ST Bus reached their village accused Ganpat first got down followed by the deceased. Ganpat again went to near the door of ST Bus but deceased-informant pushed him and then there was hue and cry. The deceased then beat informant son and from there they went to their house. Whatever this witness has deposed in his evidence regarding the incident dated 10/06/1997 the same is altogether different than what is alleged in the FIR and deposed by PW-1 injured.

27 Coming to the incident dated 11/06/1997. The evidence of this witness shows that he had seen A-1, accused Bhika and accused Ashok beating *sarpanch* i.e. the deceased which is again not the specific case of prosecution. According to this witness, he separated A-1 and then made Rekha Patil

sarpanch i.e. deceased standing near him but then A-1 again pelted a stone on head of the deceased and thereby caused bleeding injury. We have already pointed out that it is not the case of the pelting of stone. Similarly, it is not a case of PW-1 injured and as also the case of prosecution that this witness saved deceased from the clutches of A-1 and made him stand near him.

28 Lastly, the evidence of this witness shows that he was also assaulted by accused Ashok by means of stick blows but then PW-1 does not say so. Needless to say the testimony of this witness falls short of acceptance.

29 PW-3 Vishnu Appa Vahivile (Exh. 24) is also on the point of said incidents. Rather, the evidence of this witness shows that he alongwith PW-2 and accused Ganpat were present in the ST Bus. It would be quite apt to point it here that the evidence of PW-2 nowhere shows the presence of this witness in the ST Bus at the relevant time as is claimed by this witness.

30 Coming to the main incident dated 11/06/1997, PW-3 states that

he had seen the accused Manisha abusing the deceased and the deceased-informant. He further saw accused Bhika Vashivle came running with a stick and started abusing the deceased and the informant. When Bharat Vashivle (PW-1) asked him why he was abusing, accused Bhika Vashivle inflicted blows on the leg of Bharat. He, Hari Khedekar (PW-5) and Baban Ovhal (PW-2) rescued the scuffle. It is his further evidence that A-1 had also pelted a stone on the head of deceased. The evidence of this witness on the point of incident dated 11/06/1997 is also not satisfactory inasmuch as according to his evidence, accused Bhika had given stick blows on the leg of Bharat (PW-1) which is nowhere deposed to by Bharat himself. Although, this witness claimed that he and others rescued the deceased and informant but their names are not revealed in the FIR.

31 The evidence of this witness also shows that in the morning of 11/06/1997 when he went to the house of Bhika Pandurang Vashivle to solicit his plough, he found some persons sitting on the ota of house of Bhika. Accused Bhagu, accused Balu, accused Ashok, accused Khandu, accused Ganpat, accused Tanabai, accused Chhababai and accused Tarabai were present. He also heard accused Khandu and accused Ganpat telling the others that on account of the incident of that day and

the landed dispute, they should finish the informant and the deceased. According to him, when those persons saw him they all dispersed.

32 Having regard to the unsatisfactory testimony of this witness on the point of incidents dated 10/06/1997 and 11/06/1997 and the fact that this witness is on very good terms with the complainant party, we are not inclined to accept this piece of evidence showing whatever he overheard from the mouth of other accused persons. Therefore, we distance ourselves from the testimony of this witness.

33 PW-5 Hari Laxman Khedekar is the last eye witness on the point of the incidents. It appears from his evidence (Exh. 28), like other two witnesses, namely, PW-2 and PW-3, he was also travelling in a ST Bus on 10/06/1997 wherein a minor scuffle took place between PW-1 Bharat Mahipati Vashivle and accused-Ganpat. However, the theory introduced by him in his evidence is neither in consonance with the contents of FIR nor the FIR anywhere shows the presence of this witness in the ST Bus on 10/06/1997.

34 As far as incident dated 11/06/1997 is concerned, his evidence

shows when accused Manisha came abusing, the deceased and the informant, both tried to persuade her, however, again this is not the case as per FIR. His evidence then shows that when accused Bhika came armed with a stick PW-1 tried to prevail over him by saying that they would settle the matter but Bhika inflicted the blows on the thigh of PW-1. This is again neither the case of prosecution nor PW-1 Bharat himself has deposed so in his substantive evidence.

35 His evidence then shows that accused Bhagu, Ashok and A-1 started beating informant and Bharat (PW-1) with sticks which is again not in line with the case of prosecution as narrated in the FIR. Lastly, the evidence of this witness shows that A-1 took one stone and pelted it on the head of deceased. At the cost of repetition, we again point it out here that the case of prosecution is not of stone pelting but of beating the informant party by means of stones and sticks.

36 From the above discussion, it is more than clear that all these so called material witnesses, namely, PW-1, PW-2, PW-3 and PW-5 materially differ from each other and their respective versions are inconsistent with each other. Even the medical evidence does not support the evidence of PW-1 injured as is pointed out by us in the

earlier part of our discussion.

37 It is also significant to note from the cross-examination of PW-1 injured which is an admitted position that at the time of incident dated 11/06/1997 around 50 persons had gathered near the place of incident. Not a single independent witness is examined by the prosecution for the reasons best known to it. Having regard to the serious inconsistencies and infirmities noted amongst versions of above-said witnesses and the fact that no independent witness is forthcoming, a shadow of doubt is cast over the theory of prosecution.

38 This brings us to the remaining evidence on record. The prosecution has also placed reliance the reports issued by Chemical Analyzer. However, in view of several inconsistencies as noted herein-above, the Chemical Analyzers Reports lose their worth and force.

39 The above being the nature of evidence and obtaining circumstances the learned trial Court held that prosecution has failed to prove its case beyond reasonable doubt and extended benefit of doubt in favour of the respondents –accused. This finding of the trial Court could

not be said to be perverse. It was based on a proper appreciation of evidence.

40 For the aforesaid reasons, we find no merit in the Appeal and, therefore, Appeal is accordingly dismissed.

(V.G. BISHT, J.)

(PRASANNA B. VARALE, J.)