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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1010 OF 2002**

The State of Maharashtra	]	.. Appellant (Org.Complainant)
vs.		
1. Shahaji Hindurao Patil	]	
2. Hindurao vishnu Patil	]	
3. Pandurang Ramdas Desai	]	
4. Vikas Maruti Patil	]	.. Respondents
5. Anand Shripati Patil	]	(Org.Accdused Nos.1 to 5)

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

Mr.Shekhar Ingawale, for Respondent Nos.1 to 5.

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

**RESERVED ON : 27th JANUARY, 2021.
PRONOUNCED ON : 5th APRIL, 2021.**

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

1] This appeal at the instance of State takes an exception to the Judgment and order dated 30th April, 2002 passed by the learned Ad-hoc Additional Sessions Judge, Kolhapur, in Sessions Case No.146 of 1997.

2] By the impugned Judgment and order, the Respondents/ original accused before the trial Court have been acquitted of the

offences punishable under Sections 147, 148, 149, 302, 323 r/w 34 of the Indian Penal Code and Sections 27 and 30 of the Arms Act.

3] It is the case of the prosecution that there was dispute between accused No.2 Hindurao and Narayan Patil i.e. father of the deceased Baburao on account of partition of agricultural land bearing Gat No.76 and 77. The court case was filed and the deceased Baburao was looking after the said court case on behalf of his father i.e. Narayan Patil.

4] Accused No.1 is son of accused No.2, accused No.3 and 5 are brothers-in-law of accused No.2 and accused No.4 is cousin of accused No.2.

5] It is alleged that on 15th January, 1994 at about 11.30 p.m. accused Nos.1 to 5 formed an unlawful assembly and assaulted the deceased by sticks. It is alleged that, at that time, accused No.1 was armed with a gun. In the incident the deceased was injured and was taken to CPR Hospital, Kolhapur, however, he was declared brought dead.

6] On the basis of report lodged by PW 7 Pandurang Naik, with Karveer Taluka Police Station, crime vide CR No. 13/94 for the offences punishable under Sections 302, 147, 148, 149, 323, 504 of the Indian Penal Code and Section 25 of the Arms Act and Section 135 of the Bombay Police Act, was registered. On completion of investigation charge-sheet was filed against the accused.

7] The accused were charged and tried for the above-said offences. As stated earlier, the trial Court acquitted all the accused of the charges levelled against them.

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

9] Prosecution case is mainly based upon the evidence of following three eye witnesses :

- i] PW 4 Raghunath Patil
- ii] PW 5 Ananda Barad and
- iii] PW 7 Pandurang Naik.

10] According to the prosecution, on the day of incident i.e. on 15th January, 1994, the deceased Baburao had gone to Kolhapur to attend the court case. There was no direct conveyance from Kolhapur to the village of deceased i.e. Pal Budruk. The bus service was available from Kolhapur to Arale, and from Arale, one was required to go to Pal Budruk on foot.

11] According to PW 7 Pandurang Naik, who is cousin of the deceased and is resident of village Arale, on the day of incident the deceased came to his house at about 10.00 p.m. During chitchatting he told him that he had been to Kolhapur to attend the court case. They both had dinner. After dinner the deceased left his house to go to his village. PW 7 has stated that as he was required to go to his Jaggery manufacturing unit, he accompanied the deceased. He stated that at that time they both were carrying torch. PW 7 has stated that after reaching near his Jaggery manufacturing unit, the deceased alone

proceeded towards his village on the foot. He has stated that after few minutes he heard cries of the deceased. He thus went in that direction and saw that two persons were running away and accused were assaulting the deceased. He has stated that the accused No.1 had a gun and other accused had sticks. He has stated that, he got frightened and returned back to his Jaggery unit, and waited there. After half an hour he went towards the place of incident, however, no one was present there. He again returned back to his Jaggery unit and waited there. At about 5.30 a.m. he went home and told his brother about the incident. The search of the deceased was taken and he was found lying by the side of stream. He saw that there were injuries on ankle, knee, wrist, left eye and on head of the deceased and his clothes were torn. The deceased was then taken to CPR Hospital, Kolhapur. PW 7 has stated that the deceased, however, died on the way to the hospital.

12] In the cross-examination conducted on behalf of the accused, PW 7 has admitted that in his complaint at Exhibit 26 he has not stated that he saw two persons running away from place of incident. He has further admitted that on seeing the assault on the deceased he did not feel that he should go and intervene. He has further admitted that he did not raise any cries, nor he asked the assailants to stop beating the deceased. He has further admitted that he did not feel that he should go to village and get medical help for deceased. He has admitted that he went home at about 5.30 a.m. He has further admitted that the villagers were enquiring as to how Baburao was injured and he did not tell those persons what he had seen.

13] The conduct of PW 7 Pandurang Naik is not at all natural. PW 7 in his report at Exhibit 26 has stated that after the incident, he came back to his Jaggery unit and slept there. It is, thus, doubtful whether PW 7 had really seen the incident or he is just got up witness as the incident had taken place at some distance from his Jaggery unit. It further appears that PW 7 has improved his version just to introduce PW 4 Raghunath Patil and PW 5 Ananda Barad, as eye witness to the incident.

14] PW 4 Raghunath Patil and PW 5 Ananda Barad who are brothers-in-law of the deceased (husbands of sisters of the deceased) have stated in their evidence that on 15th January, 1994, at 6.00 p.m. they had gone to the house of their father-in-law at Village Pal Budruk. The deceased was not at home. They, therefore, asked their father-in-law as to where the deceased had gone. Their father-in-law told them that the deceased had gone to Kolhapur in connection with court case. They waited till 9.00 p.m. for deceased to come back. As the deceased did not come by that time, their father-in-law asked them to go to Arale and to verify whether the deceased had come or not. Accordingly, they both went to Arale. Near Arale they met the deceased. They asked deceased as to why he got late, on which he disclosed to them that he had gone to the house of PW 7 and because of that he got late. PW 4 and PW 5 have further stated that while they were coming back to Pal Budruk, they saw the accused coming from opposite side towards them. They have stated that, accused No.1 took out the gun and he placed it on the chest of the deceased. Accused Nos.2 to 5 then assaulted the deceased with sticks. They tried to intervene, however, they were also assaulted by sticks. They, therefore, ran away from the place of incident.

15] PW 4 Raghunath Patil has admitted in his cross-examination that they did not go back to see the deceased. He has further admitted that PW 7 Pandurang Naik is in their relation. He did not feel that he should get the the assistance from persons working in Jaggery unit of PW 7. He has further admitted that till he had reached his father-in-law's house, he did not meet anybody else. He has further admitted that in the morning, neighbours had gathered at the house of his father-in-law, but he did not tell them that the accused had assaulted the deceased. He has further admitted that at about 8.00 p.m. police alongwith the dead body of deceased Baburao came to Pal Budruk and on that night, he did not tell to the police of having seen the incident.

16] PW 5 Ananda Barad has admitted in his cross-examination that he did not feel, after the assailants had left the place of incident, to go and see the deceased. He has admitted that Jaggery manufacturing unit was at the distance of 5 to 10 minutes. He has admitted that he did not feel that they should go to the Jaggery unit and disclose about the incident.

17] PW 5 has also admitted that he did not disclose to the persons who had gathered at his father-in-law's house that the accused Nos.1 to 5 had assaulted the deceased.

18] The overall conduct of PW 4 Raghunath Patil and PW 5 Ananda Barad is also not natural. It was possible for them to seek help from the villagers of Village Arale. Instead they went back to village Pal Budruk. Apart from it, they had not disclosed about the incident to the police immediately. All these circumstances do cast doubt whether they

had really seen the incident or they are also got up witnesses.

19] Considering over all facts and circumstances of the case, no fault can be found with the Judgment and order of acquittal passed by the learned trial Court. In the result, following order is passed :

ORDER

Criminal Appeal No. 1010 of 2002 is dismissed.

[N.R.BORKAR, J]

[SMT.SADHANA S. JADHAV, J]