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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.347 OF 2012

Kalya @ Vijay Devidas Ingole]
(At present undergoing sentence at Nashik Jail)]
of Nashik, Indian Inhabitant and residing at]
Munjoba Chowk, Ganesh Wadi, Panchavati,] .. Appellant
Nashik.] (Org.Accused No.3)

vs.

The State of Maharashtra]
(At the instance of Panchavati Police Station,]
Nashik)].. Respondent

ALONGWITH
CRIMINAL APPEAL NO.346 OF 2012

Bhavdya @ Nanya @ Yogesh Devidas Ingole]
(At present undergoing sentence at Nashik Jail)]
of Nashik, Indian Inhabitant and residing at]
Munjoba Chowk, Ganesh Wadi, Panchavati,] .. Appellant
Nashik.] (Org.Accused No.4)

vs.

The State of Maharashtra]
(At the instance of Panchavati Police Station,]
Nashik)].. Respondent

Mr.Niteen Pradhan a/w Ms.Ameeta Kuttikrishnan, Ms.Shubhada D.
Khot, for Appellants.

Ms.P.P. Shinde, APP for State.

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

**RESERVED ON : 13th JANUARY,2021.
PRONOUNCED ON : 9th FEBRUARY,2021.**

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

1] Both these Appeals are filed against one and the same Judgment and order dated 29th February, 2012 passed by the learned Additional Sessions Judge, Nashik in Sessions Case No.66 of 2011. Both these appeals were, therefore, heard together and are being disposed of by this common Judgment.

2] In the above-mentioned sessions case thirteen accused were tried for the offences punishable under Section 120-B, 143, 147, 148, 149, 302, 307, 504 and 506 of the Indian Penal Code and Section 135 of the Bombay Police Act. By the impugned Judgment the trial court out of the said thirteen accused, convicted the accused No.3 (Appellant in Criminal Appeal No.347 of 2012) for the offence punishable under Section 302 of the Indian Penal Code and sentenced him to suffer R.I. for life and the accused No.4 (appellant in Criminal Appeal No.346 of 2012) for the offence punishable under Section 307 of the Indian Penal Code and sentenced him to suffer R.I. for 5 years. The trial Court acquitted rest of the accused.

3] The deceased Balu Gite was cousin of PW 10 Ravindra Gite. The deceased Balu Gite and PW 10 Ravindra Gite were on cross terms with accused No.1 Devidas Ingole (acquitted accused) on account of managing the affairs of the temple situated in their locality. Present accused Nos.3 and 4 are the sons of accused No.1.

4] The incident occurred on 28th October, 2010. On that day, in the morning hours at about 5.00 to 5.30 a.m. dispute took place between PW 10 Ravindra Gite and accused No.1 on account of demolition of the compound wall of the temple by accused No.1 and his family members, which was constructed by PW 10 Ravindra Gite and his friends prior to one day of the incident. It is alleged that in the said incident, accused No.1 threatened PW 10 Ravindra Gite and his friends of dire consequences.

5] According to the prosecution, at the time of incident, which took place at about 9.00 to 9.30 p.m. the deceased Balu Gite, PW 10 Ravindra Gite, PW 3 Mehul Mandlik and their friends were sitting in front of the temple. At that time, the accused Nos.3 and 4 alongwith other co-accused came there on 4 to 5 motorcycles. It is alleged that, the accused, then assaulted the deceased Balu Gite, PW 3 Mehul Mandlik and PW 10 Ravindra Gite by chopper, knife and sticks. The

deceased Balu Gite, PW 3 Mehul Mandlik and PW 10 Ravindra Gite were taken to the Hospital. The deceased Balu Gite was declared brought dead.

6] On the basis of the statement of PW 10 Ravindra Gite to the police, crime was registered against present accused Nos.3 and 4 and other co-accused for the offences punishable under Section 120B, 143, 147, 148, 149, 302, 307, 504, 506 of the Indian Penal Code and Section 135 of the Bombay Police Act. On completion of investigation the charge-sheet was filed against them.

7] The accused were charged and tried for the above stated offences. The trial Court, however, by the impugned Judgment and order, as stated earlier, convicted the accused No.3 for the offence punishable under Section 302 of the Indian Penal Code and accused No.4 for the offence punishable under Section 307 of the Indian Penal Code.

8] We have heard the learned counsel for appellants/accused Nos.3 and 4 and the learned APP for the State.

9] The case of the prosecution is mainly based on direct

evidence of three eye witnesses viz : PW 3 Mehul Mandlik, PW 9 Yogesh Ghode and PW 10 Ravindra Gite. We have perused the evidence of these eye witnesses.

10] According to PW 10 Ravindra Gite, who is the first informant in the present case, on 27th October, 2010, he and his friends constructed the compound wall of the temple. On 28th October, 2010 (the day of incident) at about 4.00 a.m. the accused No.1 alongwith the present accused Nos.3 and 4 came at the temple and demolished the said compound wall. He deposed that when he and his friends questioned the accused No.1 as to why did he demolish the compound wall, he threatened him and his friends of dire consequences. He, therefore, alongwith his friends lodged the complaint with Panchwati Police Station about the said incident. He deposed that on the very same day they again started the construction of the compound wall. However, it was repeatedly obstructed by the present accused Nos.3 and 4.

11] PW 10 has further deposed that at about 9.00 p.m., he, the deceased Balu Gite, PW 3 Mehul Mandlik, Vishal Tajne and others were sitting in front of the temple. At that time, the present accused Nos.3 and 4 alongwith other co -accused came there on 4-5

motorcycles and started assaulting them. He deposed that accused No.3 assaulted deceased Balu Gite by chopper on his stomach, chest and neck. The other co-accused assaulted PW 3 Mehul Mandlik by sticks. When he went to intervene, the accused No.4 ran behind him and assaulted him by knife on left side of his back. He, therefore, ran away from the place of incident.

12] PW 10 has admitted in his cross-examination that the police registered the case against him, the deceased Balu Gite and PW 3 Mehul Mandlik for allegedly assaulting accused No.1 by iron rod on 28th October, 2010 at about 5.00 to 5.30 a.m. He has further admitted that accused No.1 was not present at the time of incident. He admits that they had a dispute with the accused No.1 as it was their wish that the possession of the temple should be with their community and not with accused No.1. It would thus appear from the evidence of PW 10 that he and accused No.1 were on cross terms over possession of the temple.

13] According to PW 3 Mehul Mandlik, at the time of incident, 12-13 persons came at the place of incident on motorcycles. Accused No.3 took out chopper and assaulted the deceased Balu Gite by the said chopper on his stomach. He deposed that Accused No.4 ran

behind PW 10 Ravindra Gite and assaulted him by knife on his back. He further deposed that the other co-accused assaulted him by sticks, because of which he became unconscious.

14] PW 3 in his cross-examination stated that police came to Sanjivani Hospital at about 1.00 a.m.. Police did not make enquiry with him nor he disclosed to the police about the incident and name of the assailants. He has further admitted that accused No.1 was the trustee of the temple and the temple was in his possession.

15] The evidence of PW 3 would show that no enquiry was made with him by the police, while, he was in the Sanjivani Hospital nor he on his own disclosed about the incident to the police.

16] According to PW 9 Yogesh Ghode on the day of incident they were sitting in front of the temple. At about 9.00 to 9.15 p.m. accused Nos.3 and 4 came there alongwith 7-8 persons on motorcycles. A stampede took place there. Accused No.4 assaulted PW 10 Ravindra Gite by knife on his back. Thereafter, he ran away from there and rushed to his house. He has further deposed that PW 10 Ravindra Gite followed him to his house.

17] PW 9 has stated that after 5 to 7 minutes they came back at the place of incident and saw that the deceased Balu Gite was lying in pool of blood and PW 3 Mehul Mandlik was lying on the concrete platform in front of the temple. He has stated that they brought PW 10 Ravindra Gite, the deceased Balu Gite and PW 3 Mehul Mandlik to Civil Hospital. Balu Gite was declared brought dead. PW 9 has stated that after primary treatment PW 10 Ravindra Gite and PW 3 Mehul Mandlik were taken to Sanjivani Hospital.

18] In cross-examination PW 9 has admitted that he had filed the case of defamation against accused No.1. He has further admitted that he personally did not see who assaulted the deceased Balu Gite and PW 3 Mehul Mandlik and how they were assaulted on the day of incident. The evidence of PW 9 with regard to assault on the deceased Balu Gite and PW 3 Mehul Mandlik, is, therefore, of no consequence.

19] The learned counsel for accused Nos.3 and 4 has submitted that admittedly after the alleged incident, PW 10 Ravindra Gite and PW 3 Mehul Mandlik were initially taken to Civil Hospital where they were examined by PW 11 Dr.Sharad Patil and then in Sanjivani Hospital where they were examined by PW 12 Dr.Abhishek Dadhich. It is submitted that the evidence of PW 11 Dr.Sharad Patil

and PW 12 Dr.Abhishek Dadhich will show that both, PW 10 Ravindra Gite and PW 3 Mehul Mandlik, were conscious and they did disclose the history of alleged assault on them. It is submitted that both of them have however not named the present accused Nos.3 and 4 or other co-accused as assailants in the said history. It is submitted PW 10 Ravindra Gite has for the first time disclosed the names of the present accused Nos.2 and 3 and other co-accused as assailants in his statement at Exhibit -196 allegedly recorded at about 11.45 p.m. It is submitted that possibility of false implication cannot be ruled out, considering the enmity between the parties coupled with the delay in disclosing the names of the present accused Nos.3 and 4 as assailants.

20] It is submitted that the medical evidence on record is not in consonance with the evidence of the alleged eye witnesses. It is submitted that according to the injured Ravindra Gite, accused No.3 assaulted the deceased by chopper. It is submitted that however, no evidence is brought on record to show that the injuries sustained by the deceased are possible in case of assault by the chopper. It is submitted that this fact also fortifies the possibility of false implication.

21] Admittedly, after the incident, injured PW 10 Ravindra Gite,

PW 3 Mehul Mandlik and the deceased Balu Gite were taken to the Civil Hospital Nashik. The deceased Balu Gite was declared brought dead. PW 10 Ravindra Gite and PW 3 Mehul Mandlik were examined by PW 11 Dr.Sharad Patil. PW 11 Dr.Sharad Patil has stated in his evidence that while narrating the history of assault, neither PW 10 nor PW 3 stated to him as to who assaulted them.

22] It further appears that after discharge from the Civil Hospital, PW 10 Ravindra Gite and PW 3 Mehul Mandlik were admitted in Sanjivani Hospital, Nashik, where they were examined by PW 12 Dr.Abhishek Dadhich. PW 12 has stated in his evidence that the injured PW 10 Ravindra stated to him manner of assault, however, he did not disclose to him name of assailants. PW 12 has further stated that PW 3 Mehul did not disclose to him either about the incident or about the assailants.

23] It appears that after admission of PW 10 Ravindra Gite and PW 3 Mehul Mandlik in Sanjivani Hospital, an intimation to the Police Station was given by the said hospital. The entry in the station diary to that effect is at Exhibit 230. The entry at Exhibit 230 shows that intimation was received at 22.40 hours and it was given by Dr. Padmakar from Sanjivani Hospital. It further shows that history of

assault was disclosed to the said doctor as the date, timing and place of incident is mentioned in the said entry. Though it is not clear from the said entry as to who had narrated the history to the said doctor, however, it is specifically recorded in the said entry that the assault was made by unknown person.

24] The above facts would indicate that neither PW 10 Ravindra Gite nor PW 3 Mehul Mandlik disclosed the names of assailants either to the doctors who examined them in Civil Hospital or to the doctor of the Sanjivani Hospital.

25] At this stage, it will be appropriate to refer to the evidence of the Investigating Officer PW 13 Shri Subhash Daule. PW 13 in his evidence has stated that he had sent a copy of FIR to the Court on 30th October, 2010. On being asked to explain as to why the copy of F.I.R. was sent to the Court on 30/10/2010 instead of sending it on 29/10/2010, PW 13 has changed his version and stated that the copy of FIR was sent on 29/10/2010 itself. We have perused the printed copy of FIR which is at Exhibit 224. The date of receipt thereon is 30/10/2010. It would thus appear that the copy of FIR which is required to be forwarded forthwith to the Court of Magistrate was forwarded belatedly after one day.

26] PW 13 has further admitted that it did reveal during his investigation that accused No.1 was assaulted by PW 10 Ravindra Gite, PW 3 Mehul Mandlik and the deceased Balu Gite on the day of incident in the morning by iron rod and was thus hospitalized. He has further admitted that Accused No.1 was taken into custody from the hospital at about 11.45 p.m. It would thus appear that though the accused No.1 was in the Hospital at the time of incident, still he came to be implicated in the crime in question.

27] PW 10 Ravindra Gite in his examination in chief itself has stated that the persons who were accompanying the accused Nos.3 and 4 at the time of incident were not known to him and he does not know their names. However, surprisingly in his statement at Exhibit 198 on the basis of which crime was registered, names of all the co-accused are specifically mentioned therein.

28] The circumstances mentioned above do cast doubt on the prosecution case and in the facts and circumstances of the case, it would not be safe to hold that prosecution has proved its case against the present appellants/accused Nos.3 and 4 beyond reasonable doubt.

29] We are fortified in our above conclusion in view of one more circumstance i.e. absence of evidence in relation to the fact that the injuries sustained by the deceased were caused by chopper allegedly recovered at the instance of accused No.3. According to PW 10 Ravindra Gite, accused No.3 assaulted the deceased Balu Gite on his stomach, chest and neck by chopper.

30] PW 11 Dr. Sharad Patil who conducted postmortem on the dead body of the deceased has stated in his evidence that on external examination he found following injuries :

i] Incised wound, neck, right side, it was a spindle shaped wound with clean-cut edges. The dimensions of the injury were 4 x 1 x 1 c.m.

ii] Incise wound, right hypochondriac region of the size of 1 x 1 x 0.5 c.m.

iii] Incise wound on chest, left side (Stab wound). It was situated 3 c.m. away from the nipple. Its edges were clean-cut. There was evidence of bleeding with clotted blood. The dimensions of injury were 3 x 1 c.m. x finger can be inserted in the thoracic cavity. Furthermore, 6th rib edge was cut.

31] PW 13 has deposed the cause of death as hemorrhagic shock due to stab injury with hard sharp object and lung injury. In the cross-examination, PW 11 has admitted that the police did not obtain his opinion as to whether the injuries sustained by the deceased can be caused by weapon Article 4 (chopper), by sending written requisition alongwith the said weapon to him.

32] We have perused the description of chopper mentioned in recovery panchanama at Exhibit 176. According to description blade of chopper is sharp on one side and it has teeth on other side. Length of blade is 7½ inch. However, it appears that deliberately it's width is not mentioned. We are constrained to say so because in very same Panchanama length and width of blade of knife is mentioned. According to PW 11 the length of stab injury due to which the deceased had died was 3 cm. In absence of complete dimensions of chopper, it would not be safe to conclude that stab injury to the deceased was caused by Article no.4 chopper.

33] Considering over all facts and circumstances, we are constrained to hold that the prosecution has failed to prove it's case beyond reasonable doubt against the present appellants/accused Nos.3 and 4 also. In the result, following order is passed :

ORDER

i] Appeals are allowed.

ii] The impugned Judgment and order dated 29th February, 2012 passed by Additional Sessions Judge, Nashik, in Sessions Case No.66 of 2011 to the extent of convicting the present appellants/accused Nos.3 for the offence punishable under Section 302 and appellant/accused No.4 for the offence punishable under Section 307 of the Indian Penal Code, is set aside.

iii] Consequently, the appellants/accused Nos.3 and 4 are acquitted of the said offences.

iv] Appellant/accused Nos.3 is in Jail. He be released forthwith, if not required in any other case.

v] Bail bonds of Appellant/accused No.4 stand cancelled.

Vi] Fine amount, if any, paid by appellant/accused Nos.3 and 4 be refunded to them.

[N.R.BORKAR, J]

[SMT.SADHANA S. JADHAV, J]