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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 128 OF 2000**

1. **Jagdish Bhagoji Lahane** (Abated)
 2. Ramu Sitaram Lahane
 3. **Bhagoji Dagadu Lahane** (Abated)
 4. Lahu Dagadu Lahane
- ..Appellants**
(Org.Accused Nos.9,10,12 & 13)

VS.

The State of Maharashtra
(at the instance of Mangaon
Police Station, Dist. Raigad)

..Respondent
(Org. Complainant)

WITH

CRIMINAL APPEAL NO. 129 OF 2000

1. Bal Sitaram Lahane
 2. **Balaram Babu Lahane** (Abated)
 3. **Dhanaji Dagadu Lahane** (Abated)
 4. Babaji Dagadu Lahane
 5. **Bal @ Dinesh Tukaram Lahane** (Abated)
 6. **Pandurang Vetu Khade** (Abated)
 7. Sitaram Dagadu Lahane
 8. Dhondur Dhanaji Lahane
 9. Narayan Babu Lahane
- ..Appellants**
(Org.Accused Nos.1,2,4,5,6,
8,11,14 and 15)

VS.

The State of Maharashtra
(at the instance of Mangaon
Police Station, Dist. Raigad)

]
]
] **..Respondent**
(Org. Complainant)

Mr. Ganesh Gole a/w. Mr. Atit Shirodkar for the Appellants.
Mr. Arfan Sait, APP for the Respondent – State

**CORAM : PRASANNA B. VARALE &
N.R.BORKAR, JJ.**

**RESERVED ON : 28.07.2021.
PRONOUNCED ON : 01.02.2022.**

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

1] Both these appeals are filed against one and the same judgment and order dated 05.02.2000 passed by the IInd Additional Sessions Judge, Raigad in Sessions Case No. 89 of 1994. Both these appeals were therefore, heard together and are being disposed of by this common judgment.

2] Appellant Nos.1 and 3 in Criminal Appeal No.128 of 2000 and appellant Nos.2,3,5 and 6 in Criminal Appeal No. 129 of 2000 have expired during the pendency of present appeal.

3] The appellant Nos.2 and 4 in Criminal Appeal No. 128 of 2000, who were accused Nos.10 & 13 respectively, and the appellant Nos.1, 4, 7, 8 and 9 in Criminal Appeal No.129 of 2000, who were accused Nos.1,5,11,14 and 15 respectively

before the trial Court, were tried for the offences punishable under sections 147, 148, 302, 307 and 323 read with 149 of the Indian Penal Code (for short "IPC"). By the impugned judgment and order, the trial Court convicted :

a] accused Nos.1,5,11,14 and 15 for the offence punishable under section 302 read with 149 of IPC and sentenced them to suffer Life Imprisonment.

b] Accused Nos.1,5,11,14 and 15 are also convicted for the offence punishable under section 326 read with 149 of the IPC and sentenced to suffer R.I. for five years.

c] Accused Nos.1,5,11,14 and 15 are also convicted for the offence punishable under section 323 read with 149 of the IPC and sentenced to suffer S.I. for three months.

d] Accused Nos. 10 and 13 are convicted for the offence punishable under section 323 of the IPC and sentenced to suffer R.I. for one year.

4] It is the case of the prosecution that the deceased Laxman Tukaram Lahane, on the date of incident, which took place on 12.12.1993, was Sarpanch of village Surav, Tal. Mangaon, Dist. Raigad. There was a political rivalry between the deceased and persons from his party on one side and the accused on the other side.

5] According to the prosecution, on the day of incident at about 7.45 p.m., the deceased Laxman Lahane was sitting in the courtyard of the house of Dashrath Lahane and was chit-chatting with him. It is alleged that at that time, the accused came there and started assaulting him by iron bar, knife, stick and sickle. Dashrath Lahane tried to intervene, however, according to the prosecution, he too was assaulted by the accused.

6] According to the prosecution, the son of deceased, i.e. PW-4 Dattaram Lahane was informed about the assault. He came to the spot of incident. On seeing his father in injured /dead condition, he got annoyed and started searching the assailants. According to the prosecution, he too was assaulted

by the accused when he was in front of house of one Sanjay Lahane.

7] The report in relation to incident was lodged. On the basis of said report, crime vide crime No. 72 of 1993 was registered for the offences punishable under sections 147,148, 149, 323, 307 and 302 of the IPC for committing murder of Laxman, attempt to kill Dashrath and causing hurt to PW-4 Dattaram. On completion of investigation, the charge-sheet was filed against the accused.

8] The accused were charged and tried for the aforesaid offences. As stated earlier, the trial Court by the impugned judgement and order, convicted accused Nos.1,5,11,14 and 15 for the offence punishable under sections 302, 326 and 323 read with 149 of IPC and accused Nos.10 and 13 for the offence punishable under section 323 of the IPC.

9] We have heard learned counsel for the appellants/ accused and learned APP for the respondent -State.

10] The trial Court to convict the appellants/accused has relied upon the evidence of following four eye-witnesses:

- (i) PW-1 Smt. Sundar B. Karkare;
- (ii) PW-2 Smt. Suman Kashiram Lahane;
- (iii) PW-3 Smt. Janabai Chandrakant Lahane; &
- (iv) PW-4 Dattaram Lahane.

11] According to PW-1, on the day of incident, there was post marriage ceremony of one Sanjay Lahane and pre-marriage ceremony of one Sakharam Lahane. Thus, as per the tradition to perform certain rituals almost all the male members in the village had gone to the temple which was located at the outskirts of the village. According to her, at the time of incident, the deceased Laxman was sitting in the courtyard of the house of Dashrath and chit-chatting with him. According to her, she was also there.

12] According to PW-1, at about 7.45 p.m., the accused armed with stick, iron bar, knife and sickle came there. The accused assaulted the deceased Laxman by sticks initially on his legs and then on his head. According to PW-1, accused

No.7 repeatedly assaulted the deceased by knife on the backside of his head. According to her, when Dashrath tried to intervene, he too was assaulted. When she tried to intervene, she too was assaulted by stick. According to her, the deceased was assaulted by stones also.

13] In the cross-examination, PW-1 has admitted that there was no special reason for her to be at the house of Dashrath. She has stated that she was not frightened even though the accused were armed with weapons. According to her, she tried to intervene only when Dashrath was being assaulted. She has stated that the incident of assault was going on for one or two minutes. She has further stated that PW-4 Dattaram did ask her as to who assaulted his father, but she did not disclose the names of assailants to him. She has further admitted that there are two political parties in the village Surav, i.e. Congress and PWP and her husband was the member of Congress party and the deceased was also from Congress party.

14] The learned counsel for the appellants submits that the evidence of PW-1 is not consistent with the medical evidence.

It is submitted that the conduct of PW-1 is also not natural. It is submitted that the trial Court was thus not justified in relying upon the evidence of PW-1 to connect the appellants/accused with alleged crime.

15] To examine the contention, we have perused the medical evidence. According to PW-5 Dr. Raut, he conducted the postmortem on the dead body of the deceased and found the following external injuries:

- 1] Incised wound on left temporal region
 - A] 8 x 1 x bone deep;
 - B] 15 x 2 x bone deep with fracture skull under lying
- 2] Incised wound behind left ear 10x 2 x bone deep.
- 3] C.L.W. Pinna and left ear.
- 4] Bruise left lower cut chest and left upper abdomen.
- 5] Abrasion left arm 1 x 1 cm.
- 6] Abrasion right hand 1 x 4½ cm.
- 7] C.L.W. right forehead 3x1x ½ cm.
- 8] C.L.W. right parietal region 3x 1 x ½ cm.
- 9] Bruise left parietal region 8x 8 cm.

16] PW-1 has specifically deposed that the accused initially assaulted the deceased by sticks on his legs. PW-5 Dr. Raut has admitted in his cross-examination that no injury was noticed on the legs of the deceased at the time of postmortem examination. Thus, the medical evidence is not consistent with

the version of PW-1, which casts doubt about her claim being eye witness to the incident. Apart from it, PW-1 has admitted that when PW-4 the son of the deceased reached to the place of incident, he did ask her the names of assailants but she did not disclose the names of assailants to him. The only inference which can be drawn from this conduct of PW-1 is that either she had not seen the incident or that the assailants were not known to her. According to PW-1, she tried to intervene only when Dashrath was being assaulted. This conduct is also not natural. Considering these facts and circumstances, it would not be safe to rely upon the evidence of PW-1 to connect the appellants/accused with alleged crime.

17] Next eye-witness is PW-2 Suman Lahane. According to her, at the time of incident, the deceased Laxman and her father-in-law Dashrath were sitting in the courtyard of their house and were chit-chatting. According to her, the accused armed with stick, iron bar, knife and sickle came there and started assaulting the deceased Laxman. According to her, when her father-in-law Dashrath tried to save Laxman from assault, the accused started assaulting him. According to her,

after assault all the accused went towards the house of Sanjay Kuthan. After some time, PW-4 Dattaram came to the place of incident. She disclosed to him that persons from rival group assaulted to his father. According to her, PW-4 Dattaram then went towards the house of Sanjay Kuthan.

18] In the cross-examination, PW-2 has admitted that she did not disclose the names of assailants to anybody else except police. She has further admitted that she knows one Laxman Mahadev and on the day of incident, he too was assaulted. PW-2 has stated that she did not try to intervene while the accused were assaulting the deceased Laxman and her father-in-law Dashrath as she was holding her one year old baby on her shoulder. PW-2 has however, then admitted that in her statement to the police, she has not stated that at the time of incident, she was holding her one year old baby on her shoulder.

19] The conduct of PW-2 is somewhat similar to conduct of PW-1. She also did not disclose the names of assailants to PW-4 nor she disclosed the names of assailants to anybody

else. Thus, the only inference which can be drawn from this conduct of PW-2 is that the assailants were not known to her. PW-2 has admitted that she did not try to intervene, when the accused were assaulting the deceased Laxman and her father-in-law Dashrath, as according to her, her one year old baby was on her shoulder. Though the version of PW-2 that her one year old baby was on her shoulder is improved version, still it is difficult to accept that one would not try to intervene and would watch the incident like mute spectator. Thus, it would not be safe to rely upon the evidence of PW-2 to connect the accused with alleged crime.

20] Another eye-witness is PW-3 Janabai Lahane. According to her, on the day of incident, the accused armed with various weapons came to the house of Dashrath and then assaulted the deceased Laxman. She got frightened and ran towards the temple to call her sons. When she came back, Laxman was lying at the place of incident, in dead condition.

21] In the cross-examination, PW-3 has admitted that on the day of incident there were two marriages in the village. PW-3

has admitted that at the time of incident she was standing in the courtyard of her house. She has admitted that she did not witness the assault on the deceased Laxman as she immediately ran towards temple. She has admitted that she has not shown her house to the police. She further admitted that she belongs to the rival party of the accused.

22] PW-3 does not appear to be witness to the actual assault. Admittedly, PW-3 was not at the place of incident. She has not shown her house to the police. There are contradictions and omissions in the evidence of PW-3. Considering these facts and circumstances, in our view it would not be safe to rely upon the evidence of PW-3 also to connect the accused with alleged crime.

23] Admittedly, PW-4 Dattaram Lahane is not the eye-witness to the alleged assault on his father (the deceased). PW-4 has admitted that, while going towards the house of Sanjay he was angrily shouting '*who has caused the death of his father and till that time he was not knowing as to who had assaulted his father*'. Therefore, no reliance can be placed on the evidence

of PW-4 to connect the accused with the alleged assault on the deceased.

24] Apart from above, according to the prosecution, Dashrath was assaulted when he tried to save the deceased from the assault of the accused. He, therefore, would have been the best witness in relation to the alleged incident. However, he has not been examined. Admittedly, there was political rivalry between the parties. The possibility of false implication, therefore cannot be ruled out.

25] Considering the overall facts and circumstances of the case, the trial Court was not justified in convicting the accused. In the result, the following order is passed.

ORDER

A] Criminal Appeal No. 128 of 2000 and Criminal Appeal No. 129 of 2000 are allowed.

B] The impugned judgment and order dated 05.02.2000 passed by the IInd Additional Sessions Judge,

Raigad in Sessions Case No. 89 of 1994 convicting **accused No.1** Bal Sitaram Lahane, **accused No.5** Babaji Dagadu Lahane, **accused No.11** Sitaram Dagadu Lahane, **accused No.14** Dhondu Dhanaji Lahane and **accused No.15** Narayan Babu Lahane for the offence punishable under **sections 302, 326 and 323 read with 149** of the IPC and **accused No.10** Ramu Sitaram Lahane and **accused No.13** Lahu Dagadu Lahane for the offence punishable under **section 323** of the IPC is set aside and they are acquitted of the charges framed against them.

C] Their bail bonds shall stand cancelled.

D] The fine, if any, paid by accused Nos.1,5,10, 11,13, 14 and 15, be refunded to them.

[N.R.BORKAR, J.]

[PRASANNA B. VARALE, J.]