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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 509 OF 2014

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|--|---|---|
| <p>1. Devidas Bhimrao Borse,
Age : 41 years, Occ. Agri,
R/o. Vjirkhede, Tq. Malegaon,
Dist. Nashik.</p> <p>2. Ambadas Bhimrao Borse,
Age : 41 years, Occ. Agri,
R/o. Vjirkhede, Tq. Malegaon,
Dist. Nashik.</p> <p>(At present both lodged in
the Nashik Central Jail)</p> | } | <p>...Appellants
(Orig. Accused
Nos. 1 and 4)</p> |
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Versus

State of Maharashtra, Through Police Inspector, Vander – Khakurdi Police Station, Tq. Malegaon, Dist. Nashik.	}	...Respondent
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WITH
CRIMINAL APPEAL NO. 519 OF 2014

Dadaji @ Yogesj Karbhari Ingle, Age : 23 years, Occ. Agri, R/o. Vjirkhede, Tq. Malegaon, Dist. Nashik. (At present lodged in the Nashik Central Jail)	}	...Appellant (Orig. Accused No. 3)
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Versus

State of Maharashtra, Through Police Inspector, Vander – Khakurdi Police Station, Tq. Malegaon, Dist. Nashik.	}	...Respondent
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- Mr. Niteen Pradhan a/w Ms. Shubhada D. Khot for Appellants in Criminal Appeal No. 509 of 2014.
- Mr. Manoj S. Mohite, Senior Counsel a/w Mr. Shantanu Phanse for Appellant in Criminal Appeal No. 519 of 2014.
- Mr. H. J. Dedhia, APP for Respondent – State.

CORAM : PRASANNA B. VARALE &
SHRIKANT D. KULKARNI, JJ.

RESERVED ON : JULY 01, 2022
PRONOUNCED ON : SEPTEMBER 29, 2022

JUDGMENT (PER PRASANNA B. VARALE, J)

1. These Criminal Appeals take an exception to the judgment and order passed by the learned Additional Sessions Judge, At: Malegaon, District Nashik, in Sessions Case no. 22 of 2009, dated 20th May, 2014, whereby the Appellants – Original Accused who were charged for commission of offences punishable under Sections 302 & 307 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') convicted and awarded sentence for life imprisonment along with fine.

2. As the above Appeals arises out of common judgment and order, matters are tagged together.

3. The case of prosecution as disclosed through the version of Jibhau Totaram Bhadane (PW 1) the complainant and injured victim is as follows:

As per the prosecution case, there was a Gramsabha on 23rd October, 2008 at about 09.00 am near Vaijrkhede Mahadeo Mandir, therefore, Sarpanch, Deputy Sarpanch, the members of Grampanchayat, the people of village gathered there. As per the case of prosecution, due to death of one villager, i.e., mother of Madhukar Thakur occurred that day, hence, Deputy Sarpanch requested to defer the said Gramsabha. However, the accused persons refused to postpone the meeting. On that count, the altercations started. The accused Devidas Borse then assaulted Vasant by means of knife. He assaulted with knife on his back, but, he did not receive any injury. It is the case of prosecution that Gokul (hereinafter referred to as '**deceased**') son of Jibhau (PW 1) came forward. Deceased caught by accused Dadaji Ingle, Sanjay Borse and Ambadas Borse and deceased was fallen on the ground. Then deceased was subjected to an assault by means of sharp weapon on his chest and stomach at the hands of Devidas Borse and other accused persons assaulted him by fists and kick blows. Then villagers came to rescue deceased. Then by arranging an auto rickshaw deceased was shifted to Wadia Hospital, Malegaon. On reaching to hospital,

doctor examined deceased and declared him dead. On the same day, Jibhau Totaram Bhadane (PW 1) lodged report with the police.

4. On lodgment of report, the investigating agency set in motion. The other formalities of investigation such as, recording the statement of witnesses, drawing necessary panchnamas, seizure of clothes and weapons, forwarding articles for chemical analysis, obtaining CA reports and postmortem report, etc. were done. By completing necessary formalities, charge-sheet came to be filed in the Court of Judicial Magistrate First Class. As the offences being exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions.

5. Learned Trial Court, on appreciation of evidence, hold that the accused persons guilty for commission of offences under Section 302 read with Section 34 of IPC and awarded sentence. Being aggrieved by the said judgment and order of conviction, the present Criminal Appeals were filed.

6. Mr. Niteen Pradhan, learned Counsel appearing

for Appellants in Criminal Appeal No. 509 of 2014 vehemently submitted that the Trial Court grossly erred in appreciating the evidence and arrived at an erroneous conclusion. Mr. Pradhan further submitted that admittedly the alleged incident of assault is subsequent to Gramsabha and as per the evidence of the prosecution itself there were more than 200 to 300 people attended the said Gramsabha. As per the prosecution evidence, there was demand of deferment of Gramsabha and all the accused persons resisted the said demand and there was a quarrel followed by the free fight. Thus, it was the submission of Mr. Pradhan that in such a melee of more than 200 people, it was difficult for any witness to give a clear account of the incident, the number of assailants, the weapons being used by the said assailants, assault being laid on the victims and as such, the version of so called eye witnesses is nothing but a guess work. It is further submitted that the prosecution case rests on two alleged eye witnesses and other two eye witnesses turned hostile and they do not support the case of prosecution and learned Trial Court erred in relying on version of two witnesses for a reason that said two

witnesses are interested witnesses. It is further submitted that in so far as Jibhau (PW 1) is concerned, there are many contradictions and omission in his version. Jibhau (PW 1) admits that there was no enmity between him or his family members and accused persons. Mr. Pradhan also submitted that the Jibhau (PW 1) is unable to specify the alleged weapon used by the Appellants particularly, Devidas. There is also discrepancy about the weapon between Jibhau Bhadane (PW 1) and Madhukar Bhadane (PW 6). It is further submitted that one of the witness referred to the weapon as 'Suri' and another witness refers the same weapon as 'Gupti'. It is further submitted that though the other so called eye witnesses have turned hostile, perusal of their evidence would show that they are not supporting the case of prosecution firstly, and secondly, there are many discrepancies.

7. Mr. Pradhan further submitted that though prosecution examined Dr. Laxman Chavan (PW 8) and Dr. Mahesh Telrandhe (PW 9), the medical evidence falls too short to support the prosecution case. By inviting our attention to the cross-examination of Dr. Chavan (PW

8), Mr. Pradhan submitted that admittedly the weapon allegedly used in the assault were not shown to the medical officer as such, the prosecution failed to establish that the injuries suffered by the deceased and other injured were caused by these weapons. It was also submitted that Dr. Mahesh Telrandhe (PW 9) who had examined Madhukar Bhadane (PW 6) had not noticed any injury on stomach of Madhukar Bhadane (PW 6), on the contrary, the medical officer only makes reference of abrasion over stomach as such, for abrasion it is not necessary to suffer an injury by weapon. It is also submitted that on similar set of material evidence, learned Trial Judge acquitted some of the accused whereas on the very set of evidence, the Appellants are convicted.

8. Mr. Pradhan further submitted that even though the prosecution submitted that the weapons and clothes seized were forwarded for chemical analysis and the CA report throws no light on any material aspect as such, the prosecution failed to establish its case beyond reasonable doubt. Mr. Pradhan further submitted that assuming and not admitting that the Appellants played

same role in the incident, the act of the Appellants was not pre-meditated, but, sudden act on provocation of large gathering as such, the offence committed by the Appellants would not fall under Section 302 of IPC but it would be an offence under Section 304 II of IPC.

9. Mr. Pradhan further submitted that as per the version of witnesses, four to five weapons were used in commission of crime by two accused. It is stated by the witnesses that weapons like knives and gupti were used. It is also the case of the prosecution that the weapons recovered were being used having blood stains. Mr. Pradhan further submitted that as per the medical evidence the deceased suffered two injuries. Mr. Pradhan further submitted that firstly the weapons were shown to Dr. Laxman (PW 8), who had examined witness Dnyaneshwar, Madhukar and Vasant and conducted autopsy of Gokul, only in the Court and as such, while issuing the medical certificate these weapons were not shown to the doctor. It is then submitted by Mr. Pradhan that though the prosecution tried to submit before this Court that Dnyaneshwar and Vasant suffered injuries and the medical evidence to that effect were relied on but

the witnesses, namely, Dnyaneshwar and Vasant themselves denied that they had suffered any injury.

10. Mr. Pradhan further submitted that Dr. Laxman (PW 8) admitted in his cross-examination that he had not brought any notes with him. It is also submitted that it was incumbent on the doctor who had conducted the postmortem to prepare the notes and in absence of such notes there is no assurance to the case of prosecution. In support of this submissions, Mr. Pradhan made reference to an book by Dr. Parekh. It was also submitted that the alleged recovery of weapons is not believable for the reason that one of the panch to the recovery panchnama turned hostile and second panch was not examined by the prosecution.

11. Mr. Pradhan, in support of his submissions, placed reliance on following judgments: Mahavir Singh Vs. State of Madhya Pradesh¹, Taki Ahmed Khalil Amhed Khan and others Vs. State of Maharashtra², Kartarey and Others Vs. The State of Uttar Pradesh³, Ishwar Singh Vs. The State of Uttar Pradesh⁴ & Amar Singh Vs. The State

1 (2016) 10 SCC 220

2 2005 CRI.L.J. 4801

3 (1976) 1 SCC 172

4 (1976) 4 SCC 355

of (NCT of Delhi)⁵. Thus, Mr. Pradhan prayed that Appeal may be allowed.

12. Mr. Mohite, learned Senior Counsel appearing for Appellant in Criminal Appeal No. 519 of 2014 submitted that as per the case of prosecution the sequence of events relates to three incident; firstly, on account of meeting the members have gathered and there were two groups, secondly, the deferment of the meeting was opposed and dispute arose and thirdly, there was chaotic situation. It is then submitted that in so far as the first incident is concerned, there was only a gathering of people on account of Gramsabha, but in the second part a reference is made to quarrel and that quarrel was between Accused No. 1 and some of the members. There is no material brought on record to submit that at that time the Accused No. 3 was present and participated in any assault. Mr. Mohite further submitted that in so far as the third party / incident is concerned, deceased reached on the spot and then there is a general allegation that accused nos. 1, 2 and 3 fell him down. As per the case of prosecution accused no. 1 who was armed with knife gave a blow to

⁵ (2020) 19 SCC 165

deceased. It is further submitted that there is no material brought on record by the prosecution to show that the accused nos. 2, 3 and 4 were carrying any common intention so as to laid an attack on deceased. It is also submitted that there is variance in so far as the version of complainant before the Court and disclosure in first information report. In support of his submissions, Mr. Mohite, relied on following judgments: Balu alias Bala Subramaniam and Another Vs. State (UT of Pondicherry)⁶ & Gadadhar Chandra Vs. State of West Bengal⁷. Thus, Mr. Mohite, learned Senior Counsel appearing for Appellant, prayed that Appeal may be allowed.

13. *Per contra*, learned APP submitted that even though there was a mob of 100 to 200 person, it was not necessary for the investigating agency to record the statement of each and every member of the mob nor it was practicable. Learned APP further submitted that the eye witnesses gave a truthful account of incident, sequence of events, presence of the accused and their participation, and version of these eye witnesses

6 (2016) 15 SCC 471

7 2022 DGLS (SC) 312

particularly Jibhau (PW 1) – complainant and Madhukar (PW 6) inspires confidence of the Court. Learned APP further submitted that it is observed in various judgments of this Court as well as judgments of the Hon'ble the Apex Court that it is the quality of the witnesses and not the quantity of the witnesses which matters and in the present case particularly the eye witnesses is of a sterling nature. Learned APP by inviting our attention to the testimony of Jibhau (PW 1) submitted that Jibhau specifically refers in detail the presence of the accused and particularly the accused before this Court and their participation. Though an attempt was made before this Court that the Appellant – Yogesh was not present at the spot nor he participated in the commission of crime, but it is clearly brought on record that accused Dadaji is known as Yogesh and in the charge-sheet also reference to Dadaji is Dadaji @ Yogesh. Learned APP further submitted that testimony of Madhukar (PW 6) who is also an injured eye witness establishes the presence of accused and the participation of accused Dadaji @ Yogesh.

14. Learned APP further submitted that Madhukar (PW 6) in his testimony specifically stated that accused Dadaji @ Yogesh assaulted by weapon suri on his stomach. Learned APP further submitted that Jibhau (PW 1) in his testimony clearly stated about the presence of Madhukar (PW 6).

15. With the assistance of learned Counsel, we have gone through the vernacular testimony of these witnesses and we find merit in the statement of learned APP that the testimony of witness Madhukar (PW 6) clearly refers the presence of the accused Appellant and their active participation in the crime.

16. Learned APP further submitted that even though there was a mob of many person, but as they were the residents of the village, they were knowing each other and having a close acquaintance to each other being the fellow villagers. Thus, the submission of learned APP was in counter to the submission of Mr. Pradhan and Mr. Mohite in respect of identification of the accused persons by the witnesses.

In our opinion, there is merit in the submission of learned APP.

17. Learned APP further submitted that the medical evidence in the form of witness Dr. Laxman Chavan (PW 8) and Dr. Mahesh Telrandhe (PW 9) is a supporting evidence.

18. The prosecution also established that the injury caused to Madhukar (PW 6) was grievous in nature. The medical certificate shows that Madhukar (PW 6) was admitted in the hospital for 7 days. Thus, it is the submission of learned APP that the use of weapon and the injury caused to Madhukar (PW 6) clearly shows the intention of Appellant Dadaji @ Yogesh. Thus, learned APP submitted that conviction of the Appellants under Sections 302, 307 read with Section 34 of IPC recorded by the Trial Court is justified.

19. Learned APP submitted that the evidence clearly shows that the Appellant persons were armed with deadly weapon like chopper and knife and these weapons were used for an assault on deceased and Madhukar (PW 6) suffered grievous hurt due to the assault as such, it cannot be said that there was no intention of the Appellants and it was an act of sudden

provocation. Learned APP relied on following judgments: Anter Singh Vs. State of Rajasthan⁸, State of M.P. Vs. Ramji Lal Sharma and Another⁹ & Balraje alias Trimbak Vs. State of Maharashtra¹⁰. Thus, learned APP prayed that Appeals may be dismissed.

20. With the assistance of learned Counsel appearing for respective parties, we have gone through the entire material placed on record.

21. It is not in dispute that in support of its case the prosecution examined 13 witnesses and out of these 13 witnesses, two witnesses are eye witnesses, two witnesses are on the aspect of the medical evidence, seven witnesses are hostile, and other witnesses are police officials including investigating officers.

22. Dnyaneshwar Balkrishna Bhadane (PW 2), Vasant Bhadane (PW 3), Baban Rajaram Nikam (PW 4), Dilip Pundlik Yalij (PW 5), Natthu Tikku Choudhary (PW 7), Ashok Bhagwan Hyalij (PW 10) & Sopan Hari Sonawane (PW 11), are hostile witnesses. It may not be necessary for

8 (2004) 10 SCC 657

9 Criminal Appeal No. 293 of 2022, decided on March 9, 2022.

10 (2010) 6 SCC 673

us to refer to version of these witnesses.

23. Firstly, we may discuss the version of medical witnesses, i.e., Dr. Laxman Chavan (PW 8) and Dr. Mahesh Telrandhe (PW 9), so as to ascertain whether the deceased had died homicidal death?

24. Dr. Laxman Chavan (PW 8) deposed before this Court that on 23-10-2008 he was attached to Wadia Hospital, Malegaon. On that day he had examined Dnyaneshwar (PW 2), hostile witness, Madhukar Daulat (PW 6), Vasant (PW 3), hostile witness, and deceased Gokul. This witness found following injuries on the person of deceased:

1. Incised wound over abdomen in left hypochondric region, 6x2 cm prob going in abdomen.
2. Incised wound over chest, left side, medial to nipple. 4X2 cm deep – Prob going into chest easily. Bleeding from injury was there. Object – Sharp perforating object. Age within 6 hours. Nature – Dangerous injury.
3. Fracture of left side 4th and 7th rib. Haemothorax left side chest. There is collection of blood. Heamopericardial. Small size congested. There is anteriorly

perforating injury at the base of heart.
Heart was empty.

4. There was heampoeiritonium. There was semi digested food with water in stomach. There was rupture of left lobe of liver. Medially.

Then this witness opined that death due to shock due to rupture of heart with rupture of liver with heampoeiritonium with heampoericardium due to perforating injuries. This witness stated that the injuries, mentioned in the P.M. notes are possible by weapons. Chest and abdomen injuries were stab injuries.

This witness also examined Madhukar (PW 6) who is an eye witness. On examination of Madhukar, he found the following injuries:

- 1) Incised wound over right side of ear, 2 cm deep, Incised wound over back side of head, 4 x 1 cm. Bone deep.
- 2) Blunt trauma on back, paid and tenderness was there.

Then Dr. Laxman Chavan (PW 8) sought opinion of Dr. Telrandhe (PW 9). After obtaining opinion, he found that there was fracture of spine scapula left side. The injury nos. 1 and 2 were caused by sharp and cutting object and injury no. 3 caused by hard and

cutting object. The age of injury was within 3 hours. The nature of injury was grievous.

In the cross-examination, this witness admitted that while issuing the medical certificates the weapons were not before him. He further admitted that if there was a stab injury by this weapon the front portion will be a pointing one and it will go back increasingly.

25. Dr. Mahesh Telrandhe (PW 9) is the medical officer working with M.G. Hospital, Malegaon at the relevant time. This witness deposed that on 23-10-2008 he had visited M.G. Hospital. On that day, he examined Madhukar (PW 6), Dnyaneshwar Bhadane and Vasant Bhadane. On examination of Madhuakr, he found following injuries:

- a) C.L.W. at right ear, 2 cm x cartilage deep.
- b) C.L.W. at post auricular region 3 cm x half cm into bone deep.
- c) Contusion to fronto-parietal region with haemotoma right side, 8 cm x 6 cm x 1 cm.
- d) Contusion at left side of shoulder.
- e) Abrasion on abdomen 10x12 cm single

line.

f) Fracture spine of scapula left side.

This witness further stated that the age of the injury were fresh, caused by hard and blunt object. The nature of the injuries were grievous.

Considering the evidence of these two witnesses, it can safely be said that the death of deceased was not natural. There are many injuries on the person of deceased, which can only be caused by using weapon. Therefore, it is proved that the death of deceased was homicidal one.

26. Now, we may refer to evidence of eye witnesses, i.e., Jibhau (PW 1) and Madhukar (PW 6).

27. As we have already referred the necessary details of the prosecution case reflected through the version of Jibhau Bhadane (PW 1), it may not be necessary for us to reiterate his version, suffice it to say that Jibhau (PW 1) stated in detail about the incident which took on 23.10.2008.

In the cross-examination of this witness admitted that there was no previous enmity or quarrel between his family and family of accused. Then this

witness admitted that as there was exchange of hot words, people started running here and there. Then a suggestion was given to this witness that he personally did not see as to who assaulted deceased, this suggestion was denied. Then this witness admitted that when his son fell down Vasant, Madhukar and Dnyandeshwar and others rushed there. Then a suggestion was given to this witness that he is deposing false that the accused persons beat deceased by fists and kick blows, he denied this suggestion.

28. Now, we may refer the evidence of Madhukar Bhadane (PW 6). This witness also reiterate the story as stated by Jibhau (PW 1).

In the cross-examination this witness admitted that there was dispute between both the families on account of common border. This witness denied the suggestion that the persons present in the Gramsabha stood up and started running from there. Then certain suggestions were given to this witness, he denied those suggestions.

29. Considering the submissions of learned Counsel appearing for the Appellants as well as learned APP and

the evidence brought before the Court, in our opinion, the Trial Court committed no error in appreciating the evidence. There is considerable merit in the submissions of learned APP. Learned APP was justified in submitting before this Court that the evidence of the eye witnesses i.e., Jibhau (PW 1) and Madhukar (PW 6) is trustworthy, unshattered, clinching and inspiring the confidence of the Court.

30. Though, it was submitted by the learned Counsel for the Appellants that it is not the case of pre-meditation or an intention being carried by the Appellants and the case would not fall under Section 302 of IPC, we are unable to accept the submission of learned Counsel for the Appellants.

31. The evidence on record clearly show that there was a Gramsabha in the village and this meeting was attended by villagers. When there was a general meeting in the village, the Appellants were present with deadly weapons. When scuffle broke out, the Appellants laid an attack on complainant and deceased.

32. It is submitted that mere failure of Dr.

Laxman Chavan (PW 8) for not bringing the notes cannot laid to discard the entire evidence of the medical officer. Not bringing the notes may be at the most is irregularity but cannot be termed as an illegality so as to discard the medical evidence. The prosecution established its case against the Appellants through the unshattered and clinching evidence of the eye witnesses i.e., Jibhau (PW 1) and Madhukar (PW 6) as such, merely certain technical flaws in medical evidence cannot washout the truthful and inspiring evidence of the eye witnesses. Even though one of the panch witness turned hostile, and one panch is not examined by the prosecution, the recovery of weapon is duly proved through investigating officer.

33. The postmortem report also shows that the cause of death is shock due to rupture of heart with rupture of liver with heampoeritonium with heampoericardium due to perforating injuries. As such, the evidence of Jibhau (PW 1) and Madhukar (PW 6) coupled with medical evidence clearly establishes the case of prosecution that deceased died homicidal death.

34. The evidence brought on record shows that

there were two groups in the village and it is stated by Jibhau (PW 1) in his testimony before the Court that one group was in opposition to the group of the Appellants and on the death of a villager, there was a demand for deferment of the Gramsabha. The deferment of the Gramsabha was opposed by the group of Appellants and they were insisting to conduct of Gramsabha on the very day. Thus, it was the case of the prosecution that accused persons were carrying a common intention and when there was an opposition for holding a Gramsabha, at that time, some enraged the group of Appellants and Appellants raised dispute and the same resulted in unrest, quarrel and chaotic situation.

35. The prosecution has also brought on record that Appellants reached on the spot together and were carrying deadly weapons and when there was an opposition the accused resorted to an assault and deceased and Jibhau (PW 1) were subjected to the said assault. Therefore, it can be said that the Appellants in furtherance of their common intention committed crime.

36. Considering the sequence of events, it can be

stated that the Appellants who were armed with deadly weapons, by giving knife blows on the vital parts of the body of the deceased, had knowledge of their act. In the present matter, apart from medical evidence, the prosecution has successfully brought the evidence in the form of version of the eye witnesses namely, the Jibhau (PW 1) the complainant and Madhukar (PW 6).

37. Considering the evidence brought on record, we are unable to accept the submissions of learned Counsel for the Appellants. Thus, in our opinion, Appeals are devoid of merit, deserves to be dismissed. Accordingly, Criminal Appeals are dismissed.

(SHRIKANT D. KULKARNI, J.)

(PRASANNA B. VARALE, J.)