

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.216 OF 2015
WITH APPLN/2182/2021 IN APEAL/216/2015

Ravindra Rakhmaji Aaware
Age: 21 years, Occu.: Education,
R/o, Dhondalgaon,
Tq. Vaijapur, Dist. Aurangabad

.. Appellant

Versus

The State of Maharashtra
(At the instance of Vaijapur
Police Station, Aurangabad).

.. Respondent

...

WITH
CRIMINAL APPEAL NO.11 OF 2015

1. Dattu @ Dattatraya s/o Janardhan Aware
Age: 25 years, Occu.: Agri.,
**(Appellant No.1 has filed Separate Appeal
i.e. Cri. Appeal No.719 of 2018 as per
order dated 04.10.2018)**

2. Ganesh Karbhari Sathe
AGE: 28 years, Occu.: Agri.,
Both r/o. Dhondalgaon,
Tq. Vaijapur, Dist. Aurangabad

.. Appellants

Versus

The State of Maharashtra
(At the instance of Vaijapur
Police Station, Aurangabad).

.. Respondent

...

WITH
CRIMINAL APPEAL NO.12 OF 2015

1. Balu s/o Vishwanath Damale
Age: 26 years, Occu.: Agri.,
R/o. Dhondalgaon,
Tq. Vaijapur, Dist. Aurangabad

2. Sachin s/o Daulat Choudhari
Age: 21 years, Occu.: Agri.,
R/o. Dhondalgaon,
Tq. Vaijapur, Dist. Aurangabad
**(Appellant No.2 has filed Separate
appeal i.e. Cri. Appeal No.718 of 2018
as per order dated 04.10.2018)** .. Appellants

Versus

The State of Maharashtra
(At the instance of Vaijapur
Police Station, Aurangabad). .. Respondent

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WITH

CRIMINAL APPEAL NO.718 OF 2018

Sachin Daulat Choudhari
Age: 28 years, Occu.: Agri.,
R/o. Dhondalgaon, Tq. Vaijapur
Dist. Aurangabad. .. Appellant

Versus

The State of Maharashtra .. Respondent

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WITH

CRIMINAL APPEAL NO.719 OF 2018

Dattu @ Dattatraya Janardhan Aware
Age: 33 years, Occu.: Agri.,
R/o. Dhondalgaon, Tq. Vaijapur
Dist. Aurangabad. .. Appellant

Versus

The State of Maharashtra .. Respondent

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Mr. R. N. Dhorde, Senior Counsel i/b Mr. V. R. Dhorde, Advocate for
appellant in Criminal Appeal No.216 of 2015.
Mr. A. K. Bhosle, Advocate for appellants in Criminal Appeal Nos.11
of 2015 and 12 of 2015.
Mr. Joydeep Chatterji, Advocate for appellants in Criminal Appeal
Nos.718 of 2018 and 719 of 2018.
Mrs. V. S. Choudhary, APP for the respondents - State in all appeals.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : January 10, 2023.

JUDGMENT :- (Per Smt. Vibha Kankanwadi, J.)

. Present appeals have been filed by original accused Nos.1 to 4 and 6, to challenge their conviction in Sessions Case No.48 of 2012 (Old Sessions Case No.133 of 2012) by learned Additional Sessions Judge, Vaijapur on 03.01.2015 after holding guilty of committing offence punishable under Sections 143, 147, 148, 302 read with Section 149 of Indian Penal Code.

2. The prosecution story in short is that P.W.2 - Sandip Anna Solas resident of Dhondalgaon, Tq. Vaijapur, Dist. Aurangabad lodged report on 17.12.2011 with Vaijapur Police Station stating that he along with his friends Anil Solas, Jaybharat Solas, Vikas Bhalerao and Bhagwan Solas had gone to watch cycle circus on 15.12.2011 in their village. The said cycle circus had come to their village about 4 to 5 days prior to 17.12.2011. Deceased Bhagwan Solas had asked one Balu Damale around 9.30 p.m. of 05.12.2011 that he should lend him lime for eating tobacco. At that time, accused No.1 had announced award of Rs.51/- to the boy, who was driving cycle and after seeing towards Bhagwan, accused No.1 uttered that only Patil can do the

work of giving money, but it is costly affair for Mahar - Mang to purchase a lime pouch. Deceased Bhagwan retaliated by saying to accused No.1 that he may distribute lakhs of rupees and at that time he would clap, but he should not consider a Mahar - Mang as beggar. Though he is Patil, he is rich by selling liquor and he earns money by washing the liquor glass consumed by a Mahar - Mang. Thereafter, accused Nos.1 and 3 stated that they would show him what they are and he should go towards him where he would be eliminated. However, said dispute was resolved by the villagers and, therefore, no complaint was lodged in respect of that incident. P.W.2 - Sandip, in his FIR, has further stated that he along with Bhagwan was returned from watching circus around 9.45 to 10.00 p.m. on 16.12.2011. They were proceeding from the road in front of the house of accused No.1. At that time, suddenly, accused No.1 Ravindra, accused No.3 Sachin, Accused No.2 Balu and accused No.6 Ganesh came. There was heat exchange of words and they stated that Bhagwan would be eliminated. Then accused No.2 took iron pipe and gave blow of the same on the head of Bhagwan. Thereafter, accused No.6 assaulted Bhagwan. Then accused Nos.1 and 3 also assaulted Bhagwan with knife. Six to seven stab injuries were given to the chest and ribs of Bhagwan. Those injuries started profuse bleeding and Bhagwan fell down on the ground. Informant and witness Vikas

tried to resolve the dispute, however, they were stopped by accused Sachin. He assaulted informant by pipe, which has hit the left thigh of informant. Witness Vikas was assaulted by accused Dattu by pelting stone at his head. They were stopped from rescuing Bhagwan. When they had raised human cry, many people gathered there including the relatives of Bhagwan and, therefore, assailants went away. Thereafter, the villagers and relatives of Bhagwan engaged the pickup van of one Ankush Choudhary and took him to Government Hospital, Vaijapur, where he was declared dead. Thereafter, the FIR was lodged.

3. After lodging of the FIR, investigation was carried out. In the meantime, the inquest panchanama was prepared and the dead body was sent for postmortem. Panchanama of the spot was executed. Accused came to be arrested. There is discovery of weapons as well as clothes of the accused as well as deceased. Seized muddemal was sent for chemical analysis and after completion of the investigation, charge-sheet came to be filed against in all eight persons.

4. After committal of the case, the learned Additional Sessions Judge, Vaijapur framed charge at Exhibit-39 against all the eight accused persons. They pleaded not guilty and then the evidence has been led by the prosecution. The prosecution has examined in all 13

witnesses to bring home the guilt of the accused. After hearing both sides and perusing evidence on record, the learned Additional Sessions Judge has convicted the accused Nos.1 to 4 and 6. Accused Nos.5, 7 and 8 have been acquitted. Accused Nos.1 to 4 and 6 have been sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.1,000/- each, in default, to undergo further imprisonment for three months for committing offence punishable under Section 302 read with Section 149 of Indian Penal Code. Further, as regards Section 143, 147 and 148 read with Section 149 of Indian Penal Code is concerned, all of them have been sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.500/- each, in default to undergo further imprisonment for two months. Accused No.1 Ravindra has been found guilty for committing offence punishable under Section 3(1)(10) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Atrocities Act") and has been sentenced to suffer imprisonment for three years and to pay fine of Rs.1,000/-, in default to suffer further imprisonment for three months. All the accused persons have been acquitted of the offence punishable under Section 324 read with Section 149 of Indian Penal Code. Accused Nos.2 to 4 and 6 have been acquitted of the offence punishable under Section 3(1)(10) of the Atrocities Act. This judgment and order is under

challenge in these appeals.

5. Heard learned Senior Counsel Mr. R. N. Dhorde instructed by learned Advocate Mr. V. R. Dhorde for the appellant in Criminal Appeal No.216 of 2015, learned Advocate Mr. A. K. Bhosle for the appellants in Criminal Appeal Nos.11 of 2015 and 12 of 2015, learned Advocate Mr. Joydeep Chatterji for the appellants in Criminal Appeal Nos.718 of 2018 and 719 of 2018 and learned APP Mrs. V. S. Choudhary for the respondents - State.

6. It has been vehemently submitted on behalf of the appellants that perusal of the FIR lodged by P.W.2 Sandip would show that there were two incidents. One is of 15.12.2011 and another is of 16.12.2011. As regards incident dated 15.12.2011 is concerned, it is stated to have taken place at a place where the cycle circus was going on, but deceased had not filed any complaint in respect of the same. It appears that the dispute was resolved and, therefore, the complaint was not filed. Under such circumstance, if the said offence or grievance was buried by the deceased as well as the informant and others, there is no question of revival of the same. It cannot be tagged with the alleged incident dated 16.12.2011, when the dispute was already resolved. Further as regards the incident dated 16.12.2011 is concerned, P.W.2 Sandip and P.W.6 Vikas are the only

persons on the said point and both of them can be said to be interested witnesses, as they were the friends of deceased. They have not stated as to why P.W.2 Sandip and Bhagwan had taken the second road, which was stated to be going in front of the house of accused No.1. The said road in front of house of accused No.1 was the longer route. If the shorter route is available to go to home that too at 9.45 to 10.00 p.m., then it would be the natural course for the person to take the shorter route. Another fact to be noted is that it has come on record that there were no lights in the village at that time. Still, these two witnesses say that they had identified each and every person. It is not the case that the faces were visible from some source of light from the adjacent houses. They both are saying that people gathered at the said place and then the assailants left. Why none of the person, who resides around the spot, was examined is a mystery. Neither P.W.2 Sandip, nor P.W.6 Vikas has stated that any of the accused had attended the cycle circus on 16.12.2011. How the accused persons could have come to know that the deceased and the witnesses would be returning from the said longer route at that particular moment. It cannot be coincidence that too in dark. P.W.3 Sunil has also been posed as eye witness, but he has different story to tell. In his cross-examination, he has stated that he was not regularly going to watch the cycle circus. He says that he had gone to watch the circus around

8.00 to 8.30 p.m., but he had not noticed, who had come to see the cycle circus. He was specific in saying that lights were on in the round of a cycle circus, but the lights were not on around that round. He accepted that there are two ways to go to cycle circus from his house and he had gone to that place by another road and not by Bazar Patta road. House of accused No.1 does not fall on the way by which they had gone to the cycle circus. The question, therefore, is as to why he should take another road is not explained by him. Further, in his cross-examination, he has stated that the place, where he was intercepted by the accused persons and was beaten, was on the road and there were 10 to 15 persons present at that time. He says that when he reached near Bhagwan, he was already dead. The possibility that he reached the spot after the incident cannot be ruled out. Further, in the cross by accused Nos.1, 7 and 8, he had stated that he had not received any injury, though he claimed to be so in the beginning. He says that since he was at a distance, he did not see the assault on Bhagwan. He had not stated in the police statement under Section 161 of the Code of Criminal Procedure that all the accused had intercepted him. All these things would question his presence at the spot and, therefore, he cannot be considered as eye witness.

7. It has been further submitted on behalf of the appellants that the other many witnesses have turned hostile including the panch

witnesses to the discovery panchanama. No doubt taking into consideration the postmortem report and supporting testimony of the medical officer, it may point out that death of Bhagwan was homicidal in nature, however, the question is whether accused persons are the author of the crime. The prosecution has examined only interested witnesses. So also, it can be seen that the FIR is the outcome of a concocted version. P.W.2 Sandip, in his examination-in-chief, has stated that one Jaybharat Solas was with them who has been examined as P.W.8, but later on in the cross-examination, he has denied the presence of Jaybharat. We, therefore, cannot rely on the testimony of P.W.8 Jaybharat. He has further stated that the FIR Exhibit-61 is in the handwriting of P.W.6 Vikas. The FIR was written by him and as the police asked him to sign the same, he has signed it. P.W.6 Vikas denies the suggestion that the FIR Exhibit-61 is in his handwriting. P.W.6 is the relative of the deceased and, therefore, interested witness and though his presence was stated by P.W.2 Sandip at the police station, yet his statement under Section 161 of the Code of Criminal Procedure has been recorded after about four days. He has also stated that he had met police daily after the incident till filing of the FIR, yet why police had delayed the recording of statement of P.W.6 Vilas under Section 161 of the Code of Criminal Procedure has not been explained by the Investigating

Officer. P.W.8 Jaybharat has given a different version of incident dated 16.12.2011. P.W.13 Investigating Officer is the person who has done part of the investigation only, however, the other part of the investigation has been done by different Investigating Officer and he has not been examined. There was no question of common intention or common object for the other accused persons. Merely because they are friends of accused No.1, it cannot be stated that they shared common object as against the deceased. The learned Trial Judge failed to appreciate the evidence and, therefore, landed in wrong conclusion. The appeal, therefore, deserves to be allowed.

8. Per contra, the learned APP supported the reasons given by the learned Trial Judge while convicting the appellants. It is submitted that the testimony of P.W.2 Sandip stood corroborated by the testimony of P.W.6 Vikas, P.W.3 Sunil and P.W.8 Jaybharat. The consistency in their testimonies is required to be considered. Though it is stated by all these witnesses that the lights went off prior to the incident, it cannot be said that it was total darkness and it would not have been possible for the deceased and the witnesses to recognize the accused persons. The postmortem report states that there were 10 stab injuries and internal injuries to the deceased and the probable cause of death is "haemorrhagic shock due to multiple stab injuries over chest and abdomen". Therefore, when the homicidal

death of deceased Bhagwan has been proved, the natural consequence would be to impose sentence. The minimum sentence has been imposed, which requires no interference.

9. Before we proceed to scan the evidence, we would like to take note of the fact that P.W.1 Rajendra Solas is the panch to the inquest panchanama Exhibit-38 and P.W.9 Dr. Subhash is the medical officer, who conducted the autopsy and gave postmortem report Exhibit-98. Postmortem report suggests in column No.17 that there were in all 10 surface wounds and out of that only one was the incised wound and other nine injuries were the stab injuries. No other injury has been noted. There were internal injuries which were noted in column No.20 and 21 and taking into consideration his observations about the injuries, P.W.9 Dr. Subhash has opined cause of death of Bhagwan as "haemorrhagic shock due to multiple stab injuries over chest and abdomen". Therefore, definitely, his death was homicidal in nature. It is then required to be seen as to whether the accused persons who have been now convicted were the authors of the crime.

10. P.W.7 - Kailassingh and P.W.12 Abasaheb are the panch witness to the discovery panchanama dated 21.12.2011 and it is alleged that accused No.1 had discovered the murder weapon i.e. the knife. However, both the panchas have turned hostile. Though the learned

APP was allowed to put questions in the nature of cross, nothing favourable to the prosecution have been transpired. The prosecution has not examined the Investigating Officer Ms. Alpana Gite in whose presence it is alleged that the said discovery has been made. Under such circumstance, it will have to be observed at this stage itself that the prosecution had not proved the discovery of the weapon i.e. the knife and thereby connect the accused No.1 to the crime.

11. P.W.4 Kadu Solas is the brother of the deceased, who was admittedly not present at the time of incident. He arrived at the incident after he was informed by one of the friends of deceased. Though he has stated about what was conveyed to him by P.W.2 - Sandip and P.W. 6 Vikas; it being hearsay cannot be admitted, however, in the cross-examination, he has stated that P.W.6 Vikas Bhalerao had written the contents of the FIR in his own handwriting and then P.W.2 Sandip signed the same. According to this witness P.W.6 Vikas had written the contents of the FIR on his own, however, P.W.6 Vikas has denied the said fact. It has been tried to be posed that there was no deliberation or discussion between Sandip, Vikas and Kadu before lodging the FIR. Even P.W.4 Kadu states that he was present in the police station when the FIR was taken. If P.W.6 Vikas was an eye witness, then why he himself had not lodged the report is a question, which has not been answered by P.W.4 Kadu as well as

P.W.2 Sandip. In other words, why the report written by Vikas should be signed by Sandip is not answered.

12. P.W.5 Ashok is the panch to the spot panchanama Exhibit-79, which came to be executed on the next day i.e. 17.12.2011. It appears that the spot is not so disputed, however, the surroundings of the spot as it is appearing shows that it is in the residential area. We will have to observe that when the incident is stated to have taken place in the village and in a residential area, why the real cousin brother of the deceased should be taken as panch to the spot panchanama, is a question. It does not show that the investigation is fair enough.

13. Now, turning towards the main prosecution story is concerned, the testimony of P.W.2 Sandip, P.W.3 Sunil and P.W.6 Vikas broadly corroborate each other. P.W.8 Jaybharat is also an eye witness, but as regards his presence on 16.12.2011 is concerned, P.W.2 Sandip has denied it in cross. All these witnesses have stated about the two incidents i.e. incident dated 15.12.2011 wherein it is alleged that the accused No.1 had abused the deceased in the name of caste. No doubt, the place appears to be public place, but the fact is that independent witness has not been examined to support the contentions. When there was a possibility of an independent witness available at the spot, preference ought to have been given to

examining such an independent witness. P.W.2 Sandip, P.W.3 Sunil, P.W.6 Vikas and P.W.8 Jaybharat are the friends of the deceased. Further, even if for the sake of arguments it is accepted that some altercations and abuses had taken place on 15.12.2011, yet deceased had not taken any action of lodging report and in the cross of these witnesses, it has come that it was treated that the dispute is settled after the intervention by the villagers. Merely because the subsequent incident has taken place, it cannot revive the cause of action. None of these witnesses have stated about the motive for committing the said crime on 16.12.2011 when the incident dated 15.12.2011 was buried. Though now these witnesses have stated that accused Nos.1 and 3 had told that they would see the deceased, yet in another breath they are stating that the said dispute stood resolved for them as well as deceased.

14. Now, turning towards incident dated 16.12.2011 is concerned, if we consider the testimony of P.W.2 Sandip, he said that he had gone along with deceased Bhagwan, P.W.3 Sunil and P.W.8 Jaybharat around 9.00 p.m. and after watching the cycle circus around 10.00 to 10.30 p.m., they started returning. We find substance in the submissions advanced by the learned Senior Counsel that none of these witnesses have stated as to why they had taken a longer route. It is not their case that they usually take longer route to go to their

house. It is but natural on the part of the person to take shorter routes, but it is night time. Another fact which is coming on record that P.W.3 Sunil was not disclosing the name of P.W.2 Sandip before the police and then P.W.8 Jaybharat not disclosing presence of P.W.3 Sunil. Therefore, it is creating doubt about the presence of these witnesses. One more point that is required to be considered is that accused Nos.5, 7 and 8 have been acquitted by the learned Trial Judge. Neither the prosecution, nor the original informant or victim has filed any appeal to challenge their acquittal. Therefore, the facts are then required to be assessed from the point of view that the role attributed to those accused persons in the entire prosecution story thus cannot be segregated and the benefit of the same should be given to the present appellants. P.W.2 Sandip says that when he was about to intervene to save Bhagwan, accused No.5 - Sachin Channe had assaulted him on his legs by means of iron rod and further, he has not stated anything about accused Nos.7 and 8 though some role has been attributed to them by P.W.6 Vikas. Accused Nos.7 and 8 are the parents of accused No.1. Why they would have shared the motive with accused No.1 is a question and, therefore, it appears that the learned Trial Judge acquitted them. It shows that P.W.6 Vikas being the author of the FIR had intention to implicate accused Nos.5, 7 and 8. Therefore, it raises doubt about the entire prosecution story.

15. If we minutely scan the evidence of these four witnesses it shows different stories. We can understand about some discrepancies here or there, but the core should remain the same. In the testimony of P.W.8 Jaybharat, he has specifically stated that the show of the cycle circus was stopped on 16.12.2011 as the lights were off. In his cross-examination, P.W.2 - Sandip says that when they were returning home, at that time, many persons were accompanying them. Then there was possibility of having independent witness, but still they have not been examined. Testimony of P.W.3 Sunil would show that he had reached the incident after Bhagwan expired on the spot. Further, he has admitted that since he was at a distance, he had not seen the assault on Bhagwan. P.W.8 Jaybharat has stated that his house is situated towards the eastern side of the village, whereas house of accused No.1 - Ravindra is towards the western side of the village. The question would be as to why he had then come to the spot in opposite direction. All these aspects would show that the witnesses were either not disclosing the true story or were interested to hide something.

16. Another fact to be noted is from the spot panchanama which came to be proved through P.W.5 Ashok. If we consider the spot panchanama then it is showing that there is a structure made up in

tin shed and behind the said tin shed, there were blood stains. That means the incident had taken place behind the said tin shed and the incident had taken place towards east side of the tin shed. The question is how the witnesses could have seen the incident which is going on behind the shed.

17. It is the cardinal principle for the proof of the offence that prosecution should prove it beyond reasonable doubt, but for the aforesaid reasons, the testimony of P.W.2 Sandip, P.W.3 Sunil, P.W.6 Vikas and P.W.8 Jaybharat are doubtful and benefit of the same should then go to the accused persons. Whatever incident had happened on 15.12.2011 was between deceased and accused No.1. Question would be as to what was the motive for accused Nos.2, 3 4 and 6 to participate. Therefore, on the count of motive also, it is not properly proved and at the cost of repetition it will have to be mentioned that the discovery panchanama of the murder weapon i.e. knife has not been proved and, therefore, we are of the opinion that the learned Trial Judge failed to appreciate the evidence properly. The conviction awarded to accused Nos.1 to 4 and 6 deserves to be set aside by allowing their appeals. It is not the fact that only second view is possible and therefore, the Appellate Court is taking second view, but the said interference is necessary in view of the fact that there is absolutely no connection proved between the murder

weapon and the accused persons. Hence, the following order :-

ORDER

I. All the Criminal Appeals and the Application are hereby allowed.

II. The conviction of the appellants i.e. accused No.1 Ravindra Rakhmaji Aaware (Appellant in Criminal Appeal No.216 of 2015 and Applicant in Criminal Application No.2182 of 2021), accused No.2 Balu s/o Vishwanath Damale (Appellant in Criminal Appeal No.12 of 2015), accused No.3 Sachin Daulat Choudhari (Appellant in Criminal Appeal No.718 of 2018), accused No.4 Dattu @ Dattatraya Janardhan Aware (Appellant in Criminal Appeal No.719 of 2018 and appellant No.1 in Criminal Appeal No.11 of 2015) for the offence punishable under Sections 302 r/w 149 of IPC, 143, 147, 148 r/w 149 of IPC and conviction of accused No.1 Ravindra Rakhmaji Aaware for the offence punishable under Section 3(1)(10) of the Atrocities Act by learned Additional Sessions Judge, Vaijapur on 03.01.2015 **stands set aside.**

III. Accused No.1 Ravindra Rakhmaji Aaware, Accused No.2 Balu s/o Vishwanath Damale and Accused No.3 Sachin Daulat Choudhari be set at liberty if not required in any other case.

IV. The bail bonds of original accused No.4 Dattu @ Dattatraya Janardhan stands cancelled.

V. The case stands abated against original accused No.6 Ganesh Karbhari Sathe (Appellant No.2 in Criminal Appeal No.11 of 2015) as he expired during pendency of the appeal.

VI. Fine amount paid, if any, be refunded to the respective accused persons after the statutory period.

VII. It is clarified that there is no change in the order regarding the disposal of Muddemal passed by the learned Additional Sessions Judge.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm