

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 904 OF 2015

1. Kishor Baburao Chipat
Age : 31 Years, R/o. Aabachapada,
Devkhop, Dist. Palghar
 2. Sanjay Chintu Soman,
Age : 30 Years, R/o. Aabachapada,
Devkhop, Dist. Palghar
- ...Appellants
- Versus

The State of Maharashtra,
(Palghar Police Station,
C.R. No.I-71 of 2010)

Respondent

**WITH
CRIMINAL APPEAL NO. 985 OF 2015**

Raju Lakdu Lokhande
Age : 41 Years, Occu : Labour,
R/o. Aabacha Pada, Devkhop, Tal.Palghar,
Dist. Thane

...Appellant

Versus

The State of Maharashtra
(At the instance of Sr. P. I. Palghar
Police Station, Thane)

...Respondent

**WITH
CRIMINAL APPEAL NO. 452 OF 2016**

Sanjay Chintu Soman,
Age : 36 Years, R/o. Abachapada,
Devkhop, Tal. and Dist. Palghar

...Appellant

Versus

The State of Maharashtra,
(At the instance of Palghar Police Station
Vide C.R. No.I-71 of 2010)

...Respondent

Digitally signed
by SUNNY
ANKUSHRAO
THOTE
Date: 2023.03.06
10:56:57 +0530

SUNNY
ANKUSHRAO
THOTE

Mr. Vikas K. Singh, Appointed Advocate for Appellants.
Mrs. M.H. Mhatre, APP for the Respondent–State.

**CORAM : A.S. GADKARI AND
PRAKASH D. NAIK, JJ.**

RESERVED ON : 24th NOVEMBER, 2022.

PRONOUNCED ON : 3rd MARCH, 2023.

JUDGMENT – (PER : PRAKASH D. NAIK, J.) :-

1. Appellants, Original Accused Nos.4, 5 and 6 are convicted vide Judgment and Order dated 4th August, 2015 passed by learned Additional Sessions Judge, Palghar in Sessions Case No.73 of 2010 for offence under Sections 302 r/w 149 of Indian Penal Code (for short 'IPC') and sentenced to suffer imprisonment for life. Appellants are also convicted alongwith Accused No.7 for offence punishable under Sections 325 r/w 149 of IPC and sentence to suffer rigorous imprisonment for two years, and for an offence under Sections 147 and 148 of IPC. However, separate punishment is not given as they are punished for major offences. Accused Nos. 2 and 3 were acquitted from the charge under Sections 147, 148, 325, 307, 302 r/w 149 of IPC. Accused No.1 died during pendency of case. Substantive sentences were directed to run concurrently.

2. Appellant No.2 in Criminal Appeal No.904 of 2015 has also preferred separate appeal viz. Criminal Appeal No.452 of 2016 challenging the impugned Judgment of conviction.

3. The case of the prosecution is that the first informant Tukaram Sukrya Baswat is the resident of Tandelpada, Devkhop,

Dist. Palghar. Krishna, Balu, Raju, Vinod and Prabhakar are his brothers. On 25th June, 2010 food grains were to be distributed at village Satiwali. Accused No.1 Baburao Gajya Chipat was the Sarpanch. Accused Nos. 1 to 3 demanded Rs.100/- from each person. Some people in the village gave Rs.100/- each and the persons residing at Gadakpada did not pay the amount. Hence, the villagers from Tandelpada demanded the refund of the amount paid by them. Balu and Vinod took prominent part in the protest. There was quarrel between Accused Nos. 1 to 3 on one side and Balu and Vinod on other side. On 26th June, 2010 informant was returning home after completing his work. Accused No.1 Baburao, Accused No.4 Kishor Chipat, Accused No.6 Sanjay Soman and five to six persons stopped the informant and told him to send his brothers Balu and Vinod threatened that they would be killed. Informant went to his house and told the above fact to Balu and Vinod. Thereafter, Balu and Vinod left the house. They reached Abachapada at about 6:30 p.m. First informant followed them. Accused came there with sticks, chain, axe, stones and pipes. They assaulted Balu and Vinod. The first informant and others went to rescue them. The assailants continued to assault them. Balu and Vinod suffered injuries. Krishna went to Police Station and brought the Police. Balu and Vinod were sent for medical treatment. Balu

was declared dead. Vinod was treated in the hospital. First information Report (for short 'FIR') was lodged by Tukaram Baswat vide Crime No.I-71/2010 for offences punishable under Sections 302, 307, 147, 148 and 149 of IPC against Accused Nos. 1 to 7. On completing investigation charge-sheet was filed.

4. Charge was framed against Accused Nos. 1 to 7 under Sections 147, 148, 149, 302 r/w 149, 307 r/w 149 and 325 r/w 149 of IPC vide Order dated 2nd August, 2011.

5. The prosecution examined fourteen witnesses. PW-1 Tukaram Baswat is the first informant. He is the brother of deceased Balu. PW-2 Vinod Baswat is the injured eye witness. He is also brother of deceased. PW-3 Arjun Bhalekar was the eye witness to the incident, he was declared hostile by the prosecution. PW-4 Rajesh Ghatal, PW-5 Gaman Dalvi, PW-6 Ganesh Ghatal, and PW-7 Tanya Ramesh Parhad were eye witnesses to the incident. They were declared hostile. PW-8 Kamubai Devnath Tandel is the sister of deceased. She is eye witness to the incident. PW-9 Meenabai Chandar Ghodke is another sister of deceased, she is the eye witness to the incident. The trial Court had observed that, the version of this witness does not inspire confidence about her presence. PW-10 Gangaram Parhad was declared hostile by the prosecution. PW-11 Ganesh Mhatre is the Panch witness, he was

declared hostile. PW-12 Ramu Dalvi is the Panch witness. He did not support prosecution. PW-13 Dr. Pankan Bhaskar Thakare is the Medical Officer. He conducted autopsy. PW-14 Arjun Shankar Raut was attached to Palghar Police Station as API. He conducted investigation and filed charge-sheet.

6. Learned Advocate Mr. Vikas Singh appointed to represent Appellants submitted that, the prosecution case is full of discrepancies. The evidence of witnesses does not inspire confidence. There is no evidence of independent witness to support prosecution case. The prosecution has relied upon interested witnesses. Most of the witnesses have not supported prosecution case. The evidence of eye witnesses is doubtful. The complainant is the brother of deceased. PW-2 is the injured witness. He is the brother of deceased. The Panch witnesses have not supported the prosecution case. PW-8 is the sister of deceased. The prosecution case is based on interested witnesses. The oral evidence is not corroborated by any other evidence. The trial Court has disbelieved the evidence of PW-9 who is also sister of the deceased. The evidence of witnesses suffers from omissions and contradictions. The allegations are omnibus. No specific overtact is attributed to Appellants. Accused Nos. 2 and 3 who are attributed role of assault were acquitted by the trial Court. However, the same evidence was

considered for convicting Appellants. The motive for assaulting the deceased is the first incident dated 25th June, 2010. However, no such incident had occurred. There was no motive for Appellants to commit crime. The wife of Accused No.4 had filed criminal case against the deceased. Hence, the Accused were falsely implicated. Section 302 of IPC is not applicable. There was no evidence to substantiate the charge under Section 149 of IPC. At the most conviction could be under Section 304 Part-II of IPC. The deceased had criminal antecedents. PW-1 had exonerated Accused Nos. 2 and 3. However, the said witnesses implicated other Accused. Accused were entitled for benefit of doubt.

7. Learned Advocate for Appellants has relied upon the following decisions :

i. Vadivelu Thevar V/s. The State of Madras, AIR 1957 SC 614.

ii. Dalip Singh and Ors. V/s. State of Punjab, AIR 1953 SC 364.

iii. Ranjendra Shantaram Todankar V/s. State of Maharashtra and Ors., AIR 2003 SC 1110.

iv. Rama Shish Rai V/s. Jagdish Singh, AIR 2005 SC 335.

v. Mahendra and Ors. V/s. The State of M.P., MANU/SC/0199/2022.

vi. Mahendra and Ors. V/s. State of M.P., AIR 2022 SC 2631.

8. Learned APP submitted that, the trial Court has examined the evidence on record and convicted the Appellants. Merely on the ground that, the witnesses are related to the deceased there is no reason to discard their evidence. Minor contradiction will not affect the prosecution case. The ocular evidence of witnesses and the medical evidence proved the charge against the Accused. Role of assault is attributed to the Appellants. The deceased had died on account of the assault by Accused. The motive to commit crime is proved. Weapons used in the crime were recovered and proved during trial. Although some of the eye witnesses have not supported prosecution, the other witnesses have proved that, the Accused were instrumental in assaulting the deceased and causing injuries to the injured witness. The FIR was registered immediately after the incident.

9. We have scrutinized the evidence on record. The incident in question had occurred on 26th June, 2010. Appellants were arraigned as Accused Nos. 4, 5 and 6. Accused Nos. 2 and 3 were given benefit of doubt on account of the evidence of PW-1 exonerating them as assailants. However, on that ground there is

no reason to disbelieve the version of PW-1 who had attributed role of assault to Appellants. PW-3 Dr. Pankaj Thakare is the Medical Officer at Rural Hospital, Palghar. He performed autopsy on dead body of Balu Baswat on 27th June, 2010. He noticed following injuries on the person of Balu :-

- i. Multiple CLW on face and neck approximately 3 x 2 cm.
- ii. CLW on nostril right side admeasuring 3 x 1 cm.
- iii. CLW on chin measuring approximately 6 x 2 cm.
- iv. CLW on forehead measuring approximately 5 x 2 cm.
- v. Hematoma behind right ear measuring about 3 x 3 cm.
- vi. CLW on left ear peena measuring approximately 3 x 2 cm.
- vii. Fracture of frontal bone of skull.
- viii. Fracture of mandible in shaft region.
- ix. Fracture of nasal bone.
- x. Fracture of nasal cartridges.

PW-13 has opined that, the injuries were ante-mortem. The probable cause of death was due to cardio-respiratory failure due to shock and haemorrhage and due to multiple injuries on face and brain. PW-2 is the injured witness. He was examined by PW-3. It was opined that, there were following injuries on the person of Vinod :-

- i. CLW over upper lip measuring 5 x 3 x 2 cm.
- ii. Contusion over right side cheek measuring about 3 x 3 cm.

- iii. Fracture of upper incisors.
- iv. CLW over gums of upper incisors admeasuring 4 x 3 cm.

10. One of the defense of Appellants is that, there is no evidence of independent witnesses to prove the alleged assault. It is pertinent to note that, the prosecution has examined several eye witnesses. Their statements were recorded under Section 164 of Cr.PC. The said witnesses have resiled from their earlier statement. The Supreme Court in the case of *Appabhai Vs. State of Gujrat*, *A.I.R. 1988 SC 696* has observed that, experience reminds us that civilized people are generally insensitive when crime is committed even in their presence. They withdraw both from the victim and vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they must not involve themselves. The kind of apathy of general public is, indeed unfortunate, but it is every where, whether in village life, town or cities. One cannot ignore the handicap with which investigating agency has to discharge its duties. The Court therefore, instead of doubting the prosecution case for want of independent witness, must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability, if any suggested by Accused.

11. As per evidence of PW-14, he arrested Accused No.4 and Accused No.6. Accused No.4 showed his willingness to produce clothes which were on his person at the time of incident. Memorandum Panchanama Exh.108 was drawn. Accused No.4 took Police and Panchas to his house and produced one shirt and half pant. Those clothes are Articles 7 and 8. Seizure memo Exh.108-A was prepared. PW-14 has identified Accused No.4 in the Court. Accused No.6 showed his willingness to produce clothes which were on his person at the time of incident and the stick used at the time of commission of offence. Memorandum Panchanama Exh.109 was prepared. He took out the clothes and stick from his house. The Articles were seized under seizure memo Exh.109-A. Stick is Article-8 and clothes are Articles 9 and 10. The Pancha witnesses had turned hostile as they have not supported the prosecution. Hence, the prosecution has placed reliance on the testimony of PW-14 Investigating Officer. He was cross examined by the defence. However, his evidence could not be demolished. Panchanama Exh.108-A shows that one shirt and half pant seized at the instance of Accused No.4. Those clothes were blood stained. Chemical analyzer's report Exh.125 shows that, most of the seized clothes were stained with human blood. Panchanama Exh.109-A shows that, the clothes seized at the instance of Accused No.6 were

stained with blood. The stick which was seized at the instance of Accused No.6 was stained with human blood. C.A. report shows that, it was human blood. Blood group could not be ascertained. Thus, there was human blood on the clothes of the Accused. The Accused No.1 has died during the trial. Accused Nos.2 and 3 were given benefit of doubt.

12. PW-1 Tukaram Baswat is the eye witness to the incident. He has stated that on 25th June, 2010 grain was to be distributed at village Satiwali. Accused Nos. 1, 2 and 3 collected money from people for distribution of grain. Some of the villagers demanded return of money. There was quarrel. On 26th October, 2010, Accused Nos.1, 4, 5, 6 and 7 met him. They told him to send Balu Sukrya Baswat and Vinod Sukrya Baswat. They also threatened that, Balu and Vinod will be killed. He informed about the said threats to Balu and Vinod. Balu and Vinod left home towards spot of incident. He followed Balu and Vinod. Accused Nos.1, 4, 6, 7 and 5 assaulted Balu and Vinod. They were armed with sticks, stones, axe, knives, cable wire. Complainant suffered injuries. Krishna Baswat rushed to the Police Station and brought the Police at spot of incident. The injured was taken to hospital. Balu was declared dead. Appellants were identified by this witness in Court. He was cross-examined by the defence. He exonerated Accused

Nos. 2 and 3 as assailants. However, role has been assigned to the Appellants i.e. Accused Nos.4, 5 and 6. His version cannot be disbelieved. His presence at the scene of offence cannot be doubted. The defence had submitted that, in the cross-examination PW-1 had stated that, the contents of FIR were not read over to him, when it was recorded and he was not aware about its contents. However, in the light of his version and the evidence on record there is no reason to discard his evidence. Some omissions were brought on record. However, it would not affect the version of this witness that, he has seen the assailants assaulting the deceased and injured. Merely on the ground that, he is the interested witness, there is no reason to disbelieve him although his evidence is required to be scrutinized cautiously. PW-2 Vinod Baswat is the injured witness. He had suffered injuries. His presence at the scene of offence cannot be doubted. He has stated that, Accused Nos.1, 2, 3, 4, 5, 6 and 7 are involved in the offence. They assaulted him and Balu with weapons. In the cross-examination he stated that, he had stated before the Police that, Arvind Baswat, Ajay Lade sent message through Tukaram and Tanya to send Balu and Vinod. However, he cannot assign any reason as to why it is not mentioned in his statement before the Police. The trial Court has considered the submission of the defence

in that regard and in Paragraph No.25 of the Judgment has observed that, there is one omission in the evidence of PW-2 that, Accused Nos.1 and 2 sent the message through PW-1 Tukaram and Tanya Parhad to send Balu and Vinod. However, in the Police Statement it is stated that on 26th June, 2010, when he was at his house he was called by Accused No.1. There is no mention of name of Accused No.3, Tukaram and Tanya Parhad. But the fact remains that, PW-2 was called by Accused No.1. We do not find any reason to disbelieve the version of this injured witness. He has attributed role of assault to the Appellants. Minor contradictions would not affect the veracity of the evidence of this witness. PW-3 Arjun Bhalekar was declared hostile by the prosecution. In the cross-examination by APP however he stated that, he noticed Baburao Chipat (Accused No.1) assaulting Balu. PW-4 Rajesh Khatal has not supported the prosecution case. He was declared hostile. In the cross-examination by learned APP he stated that in his statement it was stated that, on 26th June, 2010 he was going through auto rickshaw to his house at Gadakpada. Kamubai, Arjun and Ganesh were with him. On Palghar-Manohar Road one Meenabai from Tandelpada sat in his rickshaw. At 6:30 p.m. his rickshaw came at Aabachapada. PW-5 Gaman Dalvi was declared hostile by the prosecution. He stated that, the incident took place at about 6:00

p.m. or 6:30 p.m. He was returning home from Palghar in the auto rickshaw. At about 6:00 p.m. or 6:30 p.m. he reached near Abachapada. He noticed Accused Nos.1, 4, 6 and 7 assaulting Balu by means of sticks and stones. PW-6 Ganesh Ghatal has not supported prosecution case. PW-7 Tanya Parhad was declared hostile. During the cross-examination by learned APP his attention was drawn towards portion Mark-A from his statement. He admitted that, he has stated so before the Police. He also stated that, stone hit his back and he sustained injury. He was referred to hospital by Police. When he was asked by the Doctor as to how he sustained injury, he told the Doctor that he was assaulted by Accused No.1. He also admitted that his statement was recorded by the Magistrate. PW-8 Kamubai Tandel is the sister of deceased. She is the eye witness to the incident. She deposed that, on the day of incident she was returning by auto rickshaw Ganesh Tanya and Rajesh were with her in the auto rickshaw. Her sister Meena also boarded auto rickshaw. She noticed Accused Nos.2, 3, 6, 4, 1 and 7 were assaulting Balu and Vinod by sticks and stones. She also stated that, she can identify all the Accused persons. She identified Accused Nos.2, 3 and 5. She identified the sticks and stones by which the Accused had assaulted the injured and the deceased. Some omissions were brought in her cross-examination by defence.

However, her version about assault could not be disturbed. PW-9 Meenbai Ghodke is the sister of deceased. She is the eye witness to the incident. However, the trial Court in the Judgment has observed that, it cannot be said that the evidence of PW-9 is false but it does not inspire confidence about her presence. So, her evidence is discarded. PW-10 Gangaram Parhad has not supported prosecution case. PW-11 Ganesh Mhatre is the Panch witness. He stated that, clothes were seized by Police. His signature was obtained on Panchanama. He identified signature. Police seized one shirt and one pant in his presence. He can identify the clothes. The Panchanama dated 30th June, 2010 bears his signature. However, he is not aware about the contents of the same. He was declared hostile by the prosecution. PW-12 Ramu Dalvi is also the Panch witness. He admitted his signature on the Panchanama. He denied the contents. He was declared hostile. PW-13 is the Medical Officer. He conducted autopsy, he had referred to injuries suffered by the deceased and PW-2. PW-14 is the Investigating Officer.

13. Considering the evidence of eye witnesses who had supported the prosecution case and the other corroborated evidence, we are of the considered opinion that minor infirmities in the nature of omission and contradiction could not affect the prosecution case which has been proved through the evidence of

eye witnesses. We do not find any reason to disbelieve the version of the said witnesses. The prosecution as proved that, Appellants were assailants. There is evidence of recovery and other incriminating evidence to support prosecution case. The prosecution has been able to prove its case beyond doubt. The Appellants were armed with weapons. The assault was pre-determined. The deceased was assaulted mercilessly. He suffered serious injuries considering the evidence of Medical Officer, nature of injuries suffered by Balu (deceased), cause of death, it is difficult to accept the submission of learned Advocate for Appellant that, there was no intention to commit murder and that the offence could be under Section 304-II of IPC. PW-2 has suffered injuries at the instance of assailants and the trial Court has rightly convicted the Accused under Section 325 of IPC. Appellants had assaulted the deceased and injured in furtherance of common object. The trial Court has analyzed the evidence in proper perspective while giving findings of conviction. No case is made out to interfere in the impugned Judgment.

14. Learned Counsel for the Appellants has relied upon several decisions as stated hereinabove. It is not necessary to discuss the ratio laid down in the said decision. The decisions were based on the facts of the respective cases. Analyzing the facts before us, we are

satisfied that the trial Court has rightly convicted the Appellants.

The appeal is therefore required to be dismissed.

ORDER

i. Criminal Appeal No.904 of 2015, Criminal Appeal No.985 of 2015 and Criminal Appeal No.452 of 2016 are dismissed.

ii. The Judgment and Order dated 4th August, 2015 passed by learned Additional Sessions Judge, Palghar in Sessions Case No.73 of 2010, convicting the Appellants stand confirmed.

[PRAKASH D. NAIK, J.]

[A.S. GADKARI, J.]