



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 481 OF 2022

1. Balasaheb @ Bandu Uttam Dake
Age: 42 years, Occu.: Agri.,

2. Shivaji Uttam Dake
Age: 40 years, Occu.: Agri.,

Both R/o Village Nitrud, Tq. Majalgaon,
Dist. Beed

..APPELLANTS

VERSUS

1. State of Maharashtra

2. Vidhya Bhagwat Gayke
Age: 40 years, Occu.: Household,
R/o Village Nitrud, Tq. Majalgaon,
Dist. Beed

3. Kaushalyabai Baburao Gayke
Age: 60 years, Occu.: Household,
R/o Village Nitrud, Tq. Majalgaon,
Dist. Beed

..RESPONDENTS

....
Mr. S.J. Salunke, Advocate for appellants
Mr. N.S. Tekale, A.P.P. for respondent no.1 – State
Mr. V.P. Latange, Advocate for respondent nos. 2 and 3
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**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**
RESERVED ON : 10th MARCH, 2025
PRONOUNCED ON : 16th APRIL, 2025

JUDGMENT (PER : R.G. AVACHAT, J.) :

1. The challenge in this appeal is to a judgment and order of conviction and consequential sentence dated 31st May, 2022 passed by the Court of Additional Session Judge, Majalgaon ('trial Court') in Sessions

Case, No. 12 of 2018. Vide the impugned order, the appellants herein have been convicted for the offence punishable under Section 302 of the Indian Penal Code, and therefore, sentenced to suffer imprisonment for life and pay fine of Rs.20,000/- each with default stipulation.

2. The facts, giving rise to the present appeal, are as follows :-

The appellants are the brothers. They own and possess agricultural land at village Nitrud, Tq. Majalgaon, Dist. Beed. Bhagwat (deceased) too owned and possessed agricultural land close to the land of the appellants. There was a bore-well common for the appellants and the deceased. There was a dispute between the appellants on one hand and the deceased on the other over sharing of water of the said bore-well.

3. The incident took place by 08:00 in the morning on 20th November, 2017. On the previous day, Bhagwat had allegedly taken water of the bore-well. While he was on his way to his field, appellant – Bandu had intercepted him and questioned as to why did he take the water of the bore-well without his permission. A quarrel was said to have ensued between the two. Fifteen days before the incident, the appellant had allegedly threatened Bhagwat of dire consequences. Even a year before the incident, the appellant and others too had quarreled with Bhagwat.

4. As the quarrel ensued between Bhagwat and Bandu over water, both the appellants intercepted Bhagwat on Nitrud-Majalgaon road. They

assaulted him mercilessly and then fled. PW 7 - Kausalyabai, mother of deceased - Bhagwat, claimed to have witnessed the incident. She, therefore, lodged the First Information Report ('F.I.R.') (Exh.86) alleging the appellants and the acquitted accused to have committed murder of her son.

5. Based on the F.I.R., crime vide C.R. No. 253 of 2017 was registered with Dindrud Police Station. Before registration of the crime, police paid visit to the crime scene and prepared crime scene panchanama (Exh.70). Inquest panchanama (Exh.81) was also drawn. Mortal remains of Bhagwat was subjected to autopsy. The appellants were arrested. Clothes on their person were seized. Pursuant to the disclosure statement made by appellant - Shivaji, a stick came to be recovered. Clothes on the person of deceased were also taken charge of. Seized articles were forwarded to R.F.S.L., Aurangabad for analysis and report. C.A. reports were received. Statements of the persons acquainted with the facts and circumstances of the case were recorded. Upon completion on investigation, the appellants and two others were proceeded against by filing the charge-sheet.

6. The trial Court framed the charge (Exh.30). The appellants and co-accused pleaded not guilty. Their defence was of false implication. To bring home the charge, prosecution examined twenty-two witnesses and produced in evidence certain documents. The trial Court, on appreciation of the evidence in the case, passed the judgment and order impugned herein.

7. Learned counsel for the appellants would submit that based on same evidence, two of the four accused have been acquitted. Neither the State nor the victim (Respondent No.2) filed appeal against acquittal. The appellants, therefore, entitled for acquittal on the ground of parity. He would further submit that evidence of the witnesses is grossly inconsistent with each other. It is doubtful as to whether PW 7 – Kausalyabai, mother of the deceased, was really a witness of the unfortunate incident. Her alleged presence at the crime scene was by chance. The police had already arrived at the crime scene. Her statement was said to have been recorded. The same was in fact the F.I.R. The same has, however been suppressed. The F.I.R. (Exh.86) was lodged about seven hours after the incident. He would further submit that the medical evidence is inconsistent with the so called eye witness account. The witnesses are the relations of the deceased. Learned counsel, ultimately urged for allowing the appeal.

8. Learned A.P.P. and learned counsel for Respondent Nos.2 and 3 would, on the other hand, submit that admittedly, there was dispute between the appellants on one hand and the deceased on the other over sharing of water of bore-well. The presence of the mother of the deceased at the crime scene was natural. She being mother of the deceased, was in grief. The appellants themselves admit during cross-examination that no statement of anybody was recorded by police at the crime scene. They took us to the evidence of PW 9 – Meera, who testified to have witnessed a quarrel between the appellant – Bandu and the deceased a few minutes before the

incident. Our attention was drawn to the disclosure statement made by appellant - Shivaji and recovery of a stick pursuant thereto. They then referred to the C.A. report (Exh.103) indicating the stick recovered to have borne human blood stains. Although some of the witnesses did not stand by the prosecution, from their cross-examination the incident has been made out. They would further submit that the trial Court gave reasons for acquittal of two of the accused persons. Both the learned counsel took us through paragraph no.112 of the judgment impugned herein. According to them, since there was no corroborative evidence against those two, they have been acquitted. Both the learned counsel ultimately urged for dismissal of the appeal.

9. Considered the submissions advanced. Perused the judgment impugned herein. Let us advert to the evidence on record and appreciate the same.

10. The fact that Bhagwat met with homicidal death is not in dispute before us. PW 12 - Dr. Ramesh conducted autopsy on the mortal remains of deceased – Bhagwat. The postmortem examination report under his signature is at Exhibit 98. It records cause of death as, “due to head injury, fracture skull”. About thirteen incised and contused lacerated wounds besides abrasion and swelling were noticed on the body of the deceased. There were fractures of temporal and parietal bone. The injuries on the person of the deceased indicate that he was brutally and mercilessly

assaulted. It is very unfortunate. The same also indicates that it was not an exercise of one person. The question is whether appellants are the authors of the homicidal death of Bhagwat.

11. PW 1 – Dadasaheb was a witness to the crime scene panchanama (Exh.70). It was a spot on Nitrud-Majalgaon road. One side of the road was excavated for developing new road. By the side of crime scene, there were hotels viz. Ranvir and Anjali besides agricultural fields.

12. PW 2 – Sh. Atik and PW 4 – Jamil, panch witnesses to the recovery of clothes of the deceased did not stand by the prosecution. PW 5 – Ashok is a witness to the inquest panchanama (Exh.81) that was drawn between 10:00 a.m. to 10:40 a.m. on the fateful day. By that time no crime was registered.

13. PW 7 – Kausalyabai, mother of the deceased, testified that Bhagwat (deceased) and Ramesh were her sons. She has fifteen acres of agricultural land. Bhagwat (deceased) would cultivate the same. Ramesh would stay at Kalamb. She further testified that there was a dispute over water of bore-well. Fifteen days before the incident, the appellants had extended life threats to Bhagwat.

She further testified that in the morning on 20th November, 2017, Bhagwat had gone to the field for watering crops. It was about 08:00 a.m. Bhagwat did not return home. According to her, as it was late for him to return, she went to the field. On the way, she noticed Bhagwat fallen on the

road near the field of one Pillu Dake. She testified to have seen both the appellants and Dinkar and Datta (since acquitted) to have been assaulting Bhagwat with stick, stones and other weapons. On hearing her cries, her nephew, PW - Vitthal arrived. Thereupon all the four ran away. She further testified that then she went to Dindrud Police Station and lodged report of the incident (Exh.86). She referred to her report. She also identified some articles shown to her before the Court including the clothes of her deceased son.

14. She was subjected to a searching cross-examination. In response to the questions she testified that when she lodged the report with police at police station, it was the first time for her to disclose about the incident. Ashok and Vitthal are her nephews. They have their pan-stall by the side of Nitrud-Majalgaon road. She met both, Ashok and Vitthal at the place of the incident. She, however denied that she was taken to the crime scene by Vitthal on the motorbike. One Avinash was employed by her for agricultural operations. Her daughter alongwith her husband and their child reside at Kalamb. She further testified that Avinash witnessed the incident and then made phone call to her son – Ramesh and Santosh and Suraj as well. They arrived. She further testified that police had paid visit to the crime scene. They drew crime scene panchanama (Exh.70). She further testified that police recorded her complaint at the crime scene. They, however did not obtain her signature or thumb impression thereon. She went to the police station by 03:00 p.m. She was there for an hour. There she reported all the

incident. The police officer typed it. She went on to state that statements of her son - Ramesh and Vidya were recorded by police at the crime scene. She further testified that no report was lodged with the police about the appellants to have threatened to kill Bhagwat fifteen days before the incident and even a year before. She denied that it was her first time to proceed towards the field as Bhagwat was late to return home.

15. PW 8 – Vitthal deposed that he was returning from his field. He heard cries (~~आवा~~ ~~आवा~~). He, therefore, proceeded towards that side. He saw Bhagwat was lying on the road. He was dead. Two stones stained with blood were lying by the side of the deceased. There was pool of blood. He saw his aunt, PW 7 – Kausalyabai by the side of the deceased. She was weeping. He then proceeded towards the village. He then learnt Bhagwat to have been murdered.

His evidence-in-chief is silent to state the names of the assailants. He admitted to have not known who committed murder of Bhagwat.

16. PW 9 – Meera was the wife of uncle of the deceased. She deposed that she was on her way to the field. Near the hotel of Amol there was a quarrel between appellant – Bandu and deceased – Bhagwat. Appellant – Bandu was questioning Bhagwat as to why did he fetch bore-well water. When she moved towards them, appellant – Bandu asked her to proceed ahead. She, therefore, went away. Later on she learnt Bhagwat to have been murdered.

17. Learned A.P.P. would submit that this witness had seen both, appellant – Bandu and deceased together, proximate to the time of the incident.

18. During her cross-examination, she testified that the police were visiting the village continuously for the next 3-4 days. Police had made enquiry with her each time. Her statement was, however recorded on the fourth day of the incident. She had been to the house of her co-sister, PW 7 – Kausalyabai for offering condolence. She admitted that when she gave statement to the police on the fourth day of the incident, that was her first time to disclose about the said quarrel. Learned A.P.P. would submit that the incident of quarrel had not been taken exception to in the cross-examination. Close reading of her evidence would indicate that everything deposed to has been traversed.

19. PW 9 - Meera is not an eye witness. According to her, sometime before the incident there was quarrel between appellant – Bandu and the deceased. Within minutes thereafter Bhagwat was murdered and she being aunt (wife of the uncle of the deceased) ought to have disclosed the same immediately to the family members of the deceased and to the police as well. When the police had been to the village same day and thereafter as well, she however for the first time disclosed the same on the fourth day of the incident. Her evidence, therefore, does not inspire confidence.

20. PW 10 – Vidya, widow of the deceased, testified that her husband went to the field on the fateful day (early in the morning) for watering the crops. Her mother-in-law (PW 7) went towards the field since her (PW 10) husband did not return home by 08:00 a.m. She further testified that she too followed her to the field. On the way to the field, she saw a crowd near the field of Pilu Dake. She heard cries of her mother-in-law. When she went closer, she noticed her husband lying in a pool of blood. Her mother-in-law was yelling and narrating names of the assailants viz. The appellants, Datta and Dinkar (since acquitted).

During her cross-examination it has been brought on record that police had paid visit to the crime scene. A panchnama to the effect was drawn. She was around. Still she did not disclose names of the assailants.

21. Learned A.P.P. relied on Section 6 of the Evidence Act to submit that whatever has been deposed by this witness is admissibly as *res gestae*. He may be correct. The fact is however PW 7 – Kausalyabai did not state in her evidence to have ever related names of the assailants while she was weeping and present at the side of her deceased son at the crime scene. Had PW 10 - Vidya really learnt names of the culprits, she would have disclosed the same to the police in no time, as admittedly police had been there pursuant to the receipt of telephonic information of murder. The evidence of PW 10 - Vidya, therefore, does not inspire confidence.

22. The evidence of PW 11 – Ashok is on the lines of PW 10 – Vidya. He too claimed to have learnt the names of the appellants and other accused while those were related by PW 7 – Kausalyabau while she was weeping.

23. He is the cousin of the deceased. He was present at the crime scene while police had arrived. Still for the first time he disclosed the name of the culprits/assailants on 23rd November i.e. on the fourth day after the incident. For the very reason his evidence does not inspire confidence, more so, when the trial Court has acquitted two of the four named by PW 7, PW 8 and PW 10.

24. PW 13 – Amol, PW 14 – Pratap and PW 15 – Dattatraya did not stand by the prosecution, while PW 16 - Payal claimed to have seen quarrel between deceased – Bhagwat and one unknown person by 08:30 a.m. on the fateful day while she was on her way to the school.

25. Perusal of the impugned judgment would indicate that the trial Court has relied on the evidence elicited during the cross-examination by learned A.P.P. It has specifically relied on the evidence of PW 14 – Pratap, who had testified that when Bhagwat ran away towards village Nitrud, appellant – Bandu followed him. He also seen cell phone of deceased – Bhagwat lying on the spot. He gave it to Bhagwat's brother-in-law. Whatever has further been brought on record are the contents stated by this witness to

the police in his statement under Section 161 and statement recorded under Section 164 of the Cr.P.C. The trial Court appears to have relied on those statements as well, which are not admissible in evidence.

During cross-examination, this witness again gave in to all the questions put to him on behalf of the defence. He testified that the police had pressurised him to make a statement. His statement was recorded on 04th December, i.e. on 14th day of the incident. Delay in recording of statement of this witness and he to have not stood by the prosecution renders his evidence unreliable.

26. True, PW 13 – Amol testified that he had seen quarrel between appellant – Bandu and deceased – Bhagwat. He, however did not disclose anything further. According to him, the police had already recorded his statement behind his back. He admitted to have good relations with the family of the deceased. He went on to admit to have no knowledge about the incident between the appellants and deceased – Bhagwat. When he was confronted with part 'A' appearing in his police statement, he testified the same to have already been referred by police without he narrating the same. In view of this, it is difficult to rely on the evidence of PW 13- Amol even to infer that there was quarrel between appellant – Bandu and the deceased a few minutes before the incident. More so, for the reason this witness testified the presence of appellant – Bandu alone while the so called eye witnesses claimed that the assailants were four in number.

27. PW 17 - Balasaheb also gave evidence on the lines of PW 13 and 14. He testified to have had seen one person assaulting Bhagwat. He however did not name the assailant. He claimed to have not known any of the accused present before the Court.

28. PW 18 – Santosh is the brother-in-law of the deceased. According to him, he had been to village – Nitrud on 04th November, 2017 i.e. fifteen days before the incident. He further testified that when he and Bhagwat (deceased) were proceeding, four persons intercepted them and questioned Bhagwat as to why did he took water of the bore-well. The said persons gave threats to his life. Bhagwat told him that the person, who given him threats was appellant - Bandu and others three were appellant - Shiva, Dinkar and Datta (since acquitted).

29. From the evidence of this witness, the incident of 04th November was sought to be proved. This witness is none other than the real brother-in-law of the deceased. No report to the police was given in relation to the said incident. He did not disclose the same to the police immediately after Bhagwat was done to death. His statement was recorded by police on 17th December i.e. about twenty-seven days after the incident. His evidence too, therefore, inspires no confidence.

30. PW 19 - Anant was the Assistant Police Inspector with Dindrud Police Station. His evidence makes out a case of him to have seized the

clothes of the deceased delivered to him by the medical officer before autopsy. He referred to the seizure panchanama (Exh.119) and identified the clothes of the deceased.

31. PW 20 - Ravindrakumar was the police constable. He carried the seized muddemal and handed it over to R.F.S.L., Aurangabad on 30th November, 2017. He placed on record office copy of the forwarding letter (Exh.122).

32. PW 21 – Syed was the Police Station Officer. He made station diary entry (Exh.130) relating to the information about the murder of Bhagwat. He then went to the crime scene alongwith other police staff and officer as well. He referred to the crime scene panchanama (Exh.70). He then referred to arrest panchanama of three of the culprits (Exh.136 to 138) We need not refer to his evidence in extenso since what he did was part of the investigation. He was referred to police statement of the witnesses viz. Meera, Ashok, Dattatraya and Payal. PW 22 was another police official, who did some part of investigation.

33. It is true that pursuant to the disclosure statement made by appellant – Shivaji, a stick came to be recovered in the presence of PW 6 - Sambhaji. The stick was seized from a field accessible to one and all. Even if we accept the said evidence as it is and the C.A. report pertaining to the stick, it only reveals that there were blood stains on the stick. The same, therefore, does not further the prosecution case.

34. When the prosecution came with a case of four assailants to have done away with Bhagwat and two of them have been acquitted by the trial Court, while appreciating the evidence on record the witnesses only make out presence of appellant – Bandu alone. Evidence of those witnesses have already been referred to above and concluded to have not been inspiring confidence for the reasons narrated hereinabove. The evidence of mother of the deceased, PW 7 – Kausalyabai, is also found to be not convincing. Admittedly, she was said to have been present at the crime scene and witnessed the incident, she lodged the F.I.R. (Exh.86) eight hours after the incident. Admittedly, police had reached the crime scene within minutes. She was very much present there. Some of the witnesses testified that she related the names of the appellants and two others. She, however did not state accordingly. If at all her statement, according to her, was recorded by police at crime scene, the same is not forthcoming. Delay of eight hours in lodging of the F.I.R. and the evidence on record indicate the names of two or three of the four assailants named afterthought. In this view of the matter, even we accept there was quarrel between appellant – Bandu and deceased – Bhagwat sometime before the incident, the injuries on the person of the deceased indicate it was not an exercise of one person. The evidence of prosecution witnesses simply indicate quarrel between appellant – Bandu and the deceased. We cannot jump to the conclusion that it was appellant – Bandu and none else, who caused not less than eighteen injuries on the person of the deceased and done away with him. So far as C.A. reports relating to clothes on the person of the appellants and acquitted accused are

concerned, the same indicate that the blood group of the deceased and three of the accused was one and the same i.e. 'B'. There was nothing to indicate those were very clothes on the person of the appellants. When the eye witness account to have not been found convincing, circumstantial evidence does not lead us to conclusively infer the appellants and none else to have committed murder of Bhagwat.

35. For all the aforesaid reasons, we are not at one with the findings recorded by the trial Court and consequential order of conviction and resultant sentence. The appeal, therefore, deserves to be allowed in terms of following order :-

ORDER

- (I) Criminal appeal is allowed.
- (II) Impugned judgment and order dated 31st May, 2022 passed by the Court of Additional Session, Majalgaon in Sessions Case, No. 12 of 2018 thereby convicting and the appellants for the offence punishable under Section 302 of the Indian Penal Code is hereby set aside.
- (III) The appellants stand acquitted of the said offence.
- (IV) The appellants be released forthwith, if not required in any other case.
- (V) Fine amount paid, if any, be refunded to them.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

SSD