

CASE NO.:
Appeal (crl.) 9 of 2001

PETITIONER:
Abdul Rashid Abdul Rahiman Patel and Ors

RESPONDENT:
State of Maharashtra

DATE OF JUDGMENT: 10/07/2007

BENCH:
B.N. AGRAWAL P.P.NAOLEKAR & DALVEER BHANDARI

JUDGMENT:
JUDGMENT

WITH
CRIMINAL APPEAL NO. 504 OF 2000
AND
CRIMINAL APPEAL NO. 60 OF 2001

B.N. AGRAWAL, J.

1. Seventeen accused persons were charged and tried for offences under Sections 147, 148, 302/149, 302 read with Section 34, 307/149, 326/149 and 324/149 of the Indian Penal Code ['IPC' for short] and by judgment rendered by the Trial Court they were acquitted of all the charges. Against the order of acquittal an appeal was preferred by the State of Maharashtra before the High Court during the pendency of which Abbas Yunus Sonde [A-8] and Ibrahim alias Abdul Rahman Mohammad Kasim Patel [A-9] died, as such, appeal against them abated. The order of acquittal has been confirmed by the High Court in relation to seven accused persons viz., Qasim Hasanmiya Bedekar [A-7], Iqbal Abbas Sonde [A-12], Sharfuddin Abdul Rahiman Patel [A-13], Usman Hasanmiya Bedekar [A-14], Hasanmiya Dhondumiya Bedekar [A-15], Hajirabai w/o Daud Patel [A-16] and Julekhabai w/o Liyakat Sonde [A-17]. So far as, Abdul Rashid Abdul Rahiman Patel [A-5], Siraj Abbas Sonde [A-6] and Idrus Yunus Patel [A-11] are concerned, their acquittal has been confirmed in relation to the charge under Section 302 IPC but they have been convicted under Section 148 IPC and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 3,000/- each, in default to undergo rigorous imprisonment for a further period of six months. They have been further convicted under Section 324/149 IPC and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 3,000/- each, in default to undergo rigorous imprisonment for a further period of six months. Both the sentences have been ordered to run concurrently. So far as Abdul Latif Hasanmiya Bedekar [A-1], Liyakat Abbas Sonde [A-2], Shaikhali Kasam Karjekar [A-3], Usman Abdul Rahiman Patel [A-4] and Daud Abdul Rahiman Patel [A-10] are concerned, they have been convicted under Section 302 read with Section 34 IPC and sentenced to undergo imprisonment for life. These accused persons have been also convicted under Sections 148 and 324/149 IPC but, no separate sentence has been awarded.

2. Prosecution case, in short, was that one Mariam, daughter of Usman Hasanmiya [PW 19] had love affair with Qasim Hasanmiya Bedekar [A-7]. On 06.08.1982 Mariam disappeared from the village along with A-7. They proceeded to Bombay and got married on 15.08.1982. They returned to village Halbudruk six days before the incident. There was tension between the two groups in the village, i.e., Bedekars (accused persons) and Jalgaonkars (the members of prosecution party) on account of their said love affair but the matter was settled.

3. Further prosecution case was that on 27.8.1982 Salma Usman Dhanse [PW-12] had spread rice on the road in front of her house for drying. She had asked her daughter Parvin to sit and watch the same. Parvin, however, went out for playing which annoyed Salma and she scolded Parvin. Parvin sulked and sat in the sun. Salma told her that like the rice she would also get dried up which would be good for her as her fat would melt in that way. Hajirabai [A-16], who was living in the vicinity, thought that Salma had made those remarks against her, as such she picked up a quarrel with Salma. On 28.8.1982 when Usman Abdul Rahiman Dhanse [PW-3], husband of Salma, was coming to his house, A-16 accosted him and conveyed her grievance against Salma. PW-3 explained to her that those remarks were directed towards Parvin and not her. As A-16 was not satisfied with the explanation, A-4, A-5, A-12 and A-13 came to the house of PW-12 and abused her and her husband [PW-3]. When Nijam Malang Mukadam [PW-4], brother of PW-12, enquired as to why they were quarrelling, the four accused persons also abused and threatened him. PW-3 and PW-4 went to Ismail (since deceased) for advice as he was an elderly person in the village. Some other prosecution witnesses were also sitting in the house of Ismail who advised PW-3 and PW-4 not to quarrel but to lodge a complaint with the police. Upon their request Ismail accompanied them to the police station and all the three went on cycles. On their way to the police station they took Hussain Karjekar, brother-in-law of PW-4, along with them. Hussain advised PW-3 and PW-4 to go to Khalapur Police Station and lodge a complaint. Hussain and Ismail waited on the road. PW-3 and PW-4 reached the police station and lodged a First Information Report ['FIR' for short] against A-4, A-5, A-12 and A-13 on the statement of PW-3. In view of the said case, Head Constable-S.D. Pawar [PW-37], in-charge of the police station, sent Jamadar 026 Pasthe by jeep to village Hal Budruk to bring the accused persons to the police station. A-4, A-5, A-12 and A-13 were brought to the police station by police jeep. The other accused persons, i.e., A-1, A-3, A-6, A-9 and A-11 also arrived at the police station. The police warned the accused persons not to commit breach of peace. A-9, who was also police Patel of the village, promised to bring both the parties to the police station at 7 a.m. next day. The Police obtained a written undertaking from the parties to the above effect.

4. According to the prosecution, accused persons left the police station by auto rickshaw whereas PW-3 and PW-4 on their cycles in the midnight of 28-29.8.1982 and on their way they took Ismail with them. By about 12:00 or 12:30 of the same midnight, the relatives of Ismail became concerned because he did not return to the village. Therefore, Badruddin Pechker, Ibrahim and Yunus Jalgaonkar and others decided to go and search for him. They reached hotel Delhi Durbar and decided to have tea and wait there for Ismail. PW-3 and PW-4 along with Ismail reached hotel Delhi Durbar where Badruddin and all others were waiting. All of them had tea in the hotel and left for the village between 2:00 to 2:30 in the midnight. PW-4 was ahead of others, since he had to go to Bombay for purchasing fish in connection with his business. Ismail was following him. Usman Yunus and Badruddin lagged behind for smoking. All the accused persons armed with swords, iron bars and sticks were waiting near a well for the return of the Jalgaonkars, i.e., the members of prosecution party. A-1 to A-5, A-8 and A-10 were armed with swords. When PW-4 arrived near the tamarind tree, the accused persons stopped and blamed him for going to the police station and lodging a case. The accused persons thereafter became abusive and started hurling harsh words against him. PW-4 was on his cycle. A-1 tried to hit PW-4 in his stomach with the sword he was holding. PW-4 avoided the blow but was hit on the left side of the abdomen. At this stage Ismail was seen coming behind him. Therefore, the accused persons turned towards Ismail. In the meanwhile, PW-4 escaped and reached the house of Ismail, called Abdul Qadir, son of Ismail, and

told him that Ismail was being beaten up by the accused persons. Another son of Ismail, Shaikh Mohammad, also heard PW-4 saying so. Ismail came to be attacked near the tamarind tree. A-1, A-2, A-3, A-4 and A-10 dealt sword blows on the head of Ismail. PW-4, while going to his house, met PW-12 on the way who in turn enquired about her husband [PW-3] as he had not returned along with him. Having learnt about the incident from PW-4, she started towards the place of occurrence. Likewise, PW-2 as well as Yusuf proceeded towards the place of occurrence. While Ismail was being hit, Suleman reached near him and tried to save him from the accused persons. A-1, A-2, A-3, A-4 and A-10 struck Suleman with their swords over his head. Some other accused also joined them. The prosecution witnesses, who tried to intervene, were also assaulted. By this time Yusuf also reached there who was also attacked by A-2, A-3, A-5 and A-10 as a result of which he fell down. In the meantime PW-12 also reached there and was also assaulted by some of the accused. When this was going on, PW-2 thought of reporting the matter to the police and accordingly, he came to the Bombay-Pune road, boarded a taxi, reached Khalapur Police Station and informed the Station In-charge, Shivaji Dhondu Pawar [PW-37] at 2:45 in the night that A-1 was moving with a sword in the village and was indulging in massacre and there was great commotion in the village. Sub-Inspector, Madhav Bajirao Malve [PW-39], who was present in the police station, left for the place of occurrence where statement of PW-2 was recorded at 3:15 in the midnight, on the basis of which an FIR was drawn up at the police station on 29.08.1982.

5. Police after registering the case took up investigation and on completion thereof submitted charge sheet, on receipt whereof the learned Magistrate took cognizance and committed the seventeen accused persons to the Court of Sessions to face trial.

6. Defence of the accused persons was that they were innocent, had no complicity with the crime and no occurrence much less the occurrence alleged had taken place. According to the accused persons, some of them and members of prosecution party had received injuries in some other manner of occurrence at some other place, but they were falsely implicated in the case on hand.

7. During trial the prosecution examined several witnesses and on conclusion of the same, Trial Court acquitted all the accused persons but on appeal being preferred High Court partly reversed the order of acquittal and convicted eight accused persons as stated above. Criminal Appeal No. 9 of 2001 has been filed by A-5, A-6 and A-11 and Criminal Appeal No. 504 of 2000 by A-1, A-2, A-3, A-4 and A-10, whereas, Criminal Appeal No. 60 of 2001 has been filed by the informant in which leave has been granted in relation to that portion of judgment of the High Court whereby it has confirmed acquittal of A-5, A-6 and A-11 in relation to the charge under Section 302 IPC.

8. Shri Shekhar Naphade, the learned senior counsel appearing on behalf of the appellants in Criminal Appeal No. 504 of 2000, in support of the appeal, submitted that the prosecution failed to prove its case and participation of the appellants in the crime by credible evidence. Shri S.K. Aggrawal, learned senior counsel appearing on behalf of the appellants in Criminal Appeal No. 9 of 2001, submitted that the High Court was not justified in convicting A-5, A-6 and A-11 under Sections 148 and 324/149 IPC. Learned counsel then submitted that out of these appellants, A-5 and A-6 have already undergone the sentences imposed upon them and have been released from custody, but so far as A-11 is concerned, he has remained in custody for a period of 15 months, as such the sentences of imprisonment awarded against him should be reduced to the period already undergone.

9. On the other hand, Shri Ravindra Keshavrao Adsure, learned counsel appearing on behalf of the State of Maharashtra, submitted that the High Court was quite justified in reversing the order of acquittal as the same was perverse and convicting the appellants of Criminal Appeal No. 504 of 2000 and Criminal Appeal No. 9 of 2001.

Shri A.K. Ganguli, learned senior counsel appearing on behalf of the complainant-appellant in Criminal Appeal No. 60 of 2001 submitted that no interference is called for with the conviction of accused persons and the High Court was not justified in affirming the acquittal of A-5, A-6 and A-11 of the charge under Section 302 IPC.

10. In the present case the prosecution examined thirteen eyewitnesses, out of whom, eleven were injured witnesses. The witnesses can be put into four categories. In the first category the prosecution examined Abdul Kadir Ismail Jalgaonkar [PW-6], Mohd. Swale Yusuf Jalgaonkar [PW-13] and Badrudin Pechkar [PW-14]. These witnesses claimed that they received injuries during the course of the occurrence but in support of the same no medical evidence has been produced. As such their evidence has been rightly discarded by the Trial Court as well as the High Court.

11. In the second category Nizam Mukadam [PW-4], Mohd. Hanif Suleman [PW-5] and Abdul Latif Lalumiya Jalgaonkar [PW-9] were examined, who also claimed to be injured eyewitnesses and in support of their claim medical evidence has been produced, but the Trial Court, upon threadbare discussion of the evidence, came to the conclusion that their evidence was not corroborated by medical evidence produced by the prosecution, as such, it was not safe to place reliance thereupon. We have been taken through the evidence of these witnesses and we are of the view that the Trial Court was quite justified in not relying upon the evidence of these witnesses and the High Court was not right in placing reliance upon them.

12. In the third category Yunus Ismail Jalgaonkar [PW-7], Shaikh Mohd. Lalumiya Jalgaonkar [PW-8], Abdul Latif Abdul Rahaman Dhanse [PW-11], Salma Usman Dhanse [PW-12] and Usman Hasanmiya Jalgaonkar [PW-19] were examined, who were injured witnesses and their evidence is corroborated by medical evidence. PW-7 is son of deceased Ismail. He stated that A-4 and A-10 assaulted deceased Ismail with sword on the head and A-1 and A-4 inflicted injuries with sword on the head of deceased Suleman. A-6 inflicted two blows with iron bar on the shoulder of this witness, whereas A-10 inflicted injury with sword on his shoulder. The evidence of this witness of inflicting sword injuries upon deceased Ismail, deceased Suleman and this witness is corroborated by medical evidence. His evidence in Court is consistent with statement made by him before the Police and supported by medical evidence. As such, we do not find any ground to disbelieve him.

13. Next witness was PW-8, who is brother of deceased Yusuf. He stated that A-2, A-3 and A-10 inflicted injuries with sword upon deceased Yusuf. The witness further stated that when he tried to intervene, A-4 asked others to finish him and thereupon A-3, A-5 and A-10 assaulted him with sword whereas A-9 [against whom appeal abated before the High Court on account of his death] inflicted injury upon him with iron bar. The evidence of this witness is supported by the medical evidence of deceased Yusuf as well as this witness. His statement in Court is in conformity with the statement made by him before the Police. As such, it is not possible to reject his evidence, especially, when the same is corroborated by medical evidence.

14. Another injured eyewitness was PW-11, who is also related to the members of the prosecution party. He stated that A-1 and A-2 inflicted injuries with sword upon deceased Yusuf and others assaulted him with iron bar. He further stated that A-5 assaulted this witness with a sword. The medical evidence of deceased Yusuf and that of PW-11 corroborates the statement of this witness. His evidence is not only supported by his statement made before the Police but medical evidence as well.

15. The next injured eyewitness was PW-12. Deceased Yusuf was husband of the sister of this witness. She stated that A-1, A-2 and A-10 assaulted deceased Yusuf with sword. This witness was assaulted on the head by A-8 [against whom appeal abated before the High Court on account of his death] and A-15 since acquitted. The

evidence of this witness is also supported by her statement made before the Police as well as medical evidence.

16. Last witness in this category was PW-19, who is brother of deceased Ismail. He stated that A-1, A-2 and A-3 assaulted deceased Yusuf with sword. The witness further stated that when he tried to intervene he was assaulted with iron bar by A-9 [against whom appeal abated before the High Court] and A-11. The statement of this witness is consistent with his statement made before Police and corroborated by medical evidence of deceased Yusuf and this witness.

17. The learned counsel for the appellants submitted that no reliance should be placed upon the evidence of PWs 7, 8, 11, 12 and 19 as all of them are related to members of the prosecution party. It is well-settled that in a criminal trial merely because a witness is interested his evidence cannot be discarded if the same is otherwise found to be credible. In the present case, as we have come to the conclusion that the evidence of these witnesses is consistent and corroborated by medical evidence it is not possible to discard the same on the ground that they were interested persons.

18. In the last category Mohd. Usman Mandlekar [PW-10] and Usman Mohd. Kasim Duduke [PW-15] were examined, who were independent eyewitnesses, though not injured. PW-10 stated that A-2, A-3 and A-10 inflicted injuries upon the head of deceased Yusuf with sword, A-6 with a stick and A-9 [whose appeal abated before the High Court on account of his death] with iron bar. The evidence of this witness is corroborated by medical evidence of deceased Yusuf. He was examined by the Police at the earliest point of time, i.e., on the next day of the occurrence. The witness supported the prosecution case in all material particulars. His statement in Court is consistent with statement made before the Police and the same is supported by medical evidence of deceased Yusuf, as such we do not find any reason to disbelieve him.

19. Next independent eyewitness was PW-15. He stated that A-2, A-3, A-4 and A-10 assaulted deceased Ismail with sword. He further stated that A-1 and A-4 inflicted injuries with sword upon deceased Suleman. This witness was examined on 31.8.1982, i.e., only two days after the occurrence. His evidence in Court is consistent with statement made by him before the Police and medical evidence of deceased Ismail and Suleman. The witness has also supported the prosecution case in all material particulars and we do not find any ground to discard him.

20. Shri Shekhar Naphade, learned senior counsel submitted that in the present case some of the accused persons received injuries and the prosecution failed to explain the same. It is true that A-1, A-2, A-3, A-4, A-5, A-12 and A-13 were examined by Dr. Shivaji Tukaram Barphe [PW-28] on 30.8.1982 who found injuries on their person. PW 28 stated that all the injuries found on the aforesaid accused persons were simple and minor. He further stated that the injuries were possible by accidental blows from accused upon themselves while they were attacking some other persons. From the aforesaid statement of PW-28 it cannot be said that the minor and simple injuries on the accused persons have not been explained by the prosecution. It is well-settled that if injuries on the defence are not explained by the prosecution, the same may be taken to be a ground to discard the prosecution case, in case the truthfulness of prosecution case is otherwise doubted. But, in cases like the present one, where there is consistent evidence of the injured eyewitnesses apart from evidence of independent eyewitnesses, even if it is assumed that the prosecution has failed to explain the minor and simple injuries on the defence, the same cannot be taken to be a ground to reject the testimony of such witnesses.

21. Learned counsel for the appellants next submitted that on the basis of statement of PW-2 Station Diary Entry [Exhibit 72] was made at the police station in the night of the occurrence at 2:45 a.m. which was the earliest version of the occurrence wherein neither

names of any of the three deceased persons nor names of any of the injured persons nor names of any of the accused persons, excepting A-1, were mentioned, and after due deliberation at 3:15 a.m. an FIR was lodged, which is Exhibit 27, in which names of all the accused persons were mentioned. From the Station Diary Entry [Ex. 72], it appears that there was some commotion in the village and in order to control the situation PW-2 rushed to the police station and he had not seen any occurrence. Undisputedly, by the time PW-2 went back to the village the entire occurrence was over. It appears that this witness had not seen any of the accused persons assaulting either any of the deceased persons or any of the injured witnesses and the claim in the FIR [Ex. 27] that he witnessed the actual assault is an exaggeration. His evidence in Court that he witnessed the assault on deceased Suleman and Ismail besides injured witnesses is also an exaggerated version, as such the same cannot be relied upon. It is true that names of the accused persons other than A-1 were not mentioned in the Station Diary Entry [Ex. 72], which was earliest version of the occurrence, PW 2 cannot be said to be an eyewitness to the actual assault and his evidence to this effect is not trustworthy, but the same cannot be a ground to reject consistent evidence of injured eyewitnesses and independent eyewitnesses, more so, when their evidence is corroborated by medical evidence of the three deceased persons and the injured eyewitnesses.

22. So far as the convictions of A-5, A-6 and A-11 under Sections 148 and 324/149 IPC are concerned, the High Court has placed reliance upon the evidence of PWs 7, 8, 11 and 19. So far as A-5 is concerned, he has been named by two injured eyewitnesses viz., PWs 8 and 11. A-6 has been named by injured eyewitness PW 7. A-11 has been named by another injured eyewitness PW 19. These witnesses have made consistent statements and their evidence is corroborated by medical evidence. In our view High Court was quite justified in convicting them under Sections 148 and 324/149 IPC. As A-11 has remained in custody for a period of 15 months, in our view, ends of justice would be met in case the sentences of imprisonment awarded against him under Sections 148 and 324/149 IPC are reduced to the period already undergone. So far as charges under Section 302/149 IPC and 302 read with Section 34 IPC framed against A-5, A-6 and A-11 are concerned, we are of the view that the order of acquittal of these appellants of the aforesaid charges recorded by the Trial Court cannot be said to be perverse as such the High Court was quite justified in refusing to interfere with the same.

23. In view of the foregoing discussions we are of the view that the High Court was quite justified in convicting A-1, A-2, A-3, A-4, A-5, A-6, A-10 and A-11 but the sentences of imprisonment awarded against A-11 should be reduced to the period already undergone.

24. In the result, Criminal Appeal No. 9 of 2001 is allowed in part and while maintaining convictions of appellants of this appeal, the sentences of imprisonment awarded against A-11 are reduced to the period already undergone. A-11, who is on bail, is discharged from the liability of bail bonds. Criminal Appeal No. 504 of 2000 is dismissed, bail bonds of appellants of this appeal, who are on bail, are cancelled and they are directed to be taken into custody forthwith to serve out the remaining period of sentence. Criminal Appeal No. 60 of 2001 is dismissed.