

CASE NO.:
Appeal (crl.) 626 of 2002

PETITIONER:
Maruti Rama Naik

RESPONDENT:
State of Maharashtra

DATE OF JUDGMENT: 09/09/2003

BENCH:
N.Santosh Hegde & B.P.Singh.

JUDGMENT:
J U D G M E N T

(With CrI.A.No.625 of 2002)

SANTOSH HEGDE, J.

Fifteen accused persons including the two appellants herein who were arrayed as A-11 and A-15, were charged for offences punishable under Sections 147, 148, 302 read with 149, 307 read with 149, 325 read with 149 and 337 read with 149 IPC before the Additional Sessions Judge, Raigad at Alibag in Sessions Case No.128/1994. Since only two appellants are before us, it may not be necessary for us to refer to the facts pertaining to the other accused persons in this case.

As stated above, said appellants were A-11 and A-15 before the trial court. These two accused persons along with some other accused persons were convicted firstly for an offence punishable under Section 302 read with Section 149 IPC for having committed the murder of one Krishna Mahada Naik and were sentenced to undergo imprisonment for life, and to pay a fine of Rs.2,000/-. They were also convicted under Section 307 read with Section 149 IPC and sentenced to suffer 7 years' RI and to pay a fine of Rs.2,000/- for having attempted to commit the murder of one Dharma Jana Naik, PW-3. The learned Sessions Judge also convicted these accused persons for other lesser offences, details of which are not necessary for disposal of these appeals. In an appeal filed before the High Court of Judicature at Bombay by the convicted accused persons which also included the two appellants herein, the conviction and sentence of these appellants under Section 302 read with section 149 IPC for having caused the death of said Krishna Mahada Naik was confirmed. They were also convicted for offences punishable under Sections 147 and 148 IPC and were sentenced to undergo one year RI and to pay a fine of Rs.1,000/- each. Appellant Maruti Rama Naik was also convicted under Section 325 IPC for having caused injuries to PW-3 and was sentenced to undergo 3 years' RI and to pay a fine of Rs.2,000/-. However, these appellants were not found guilty for having caused the death of the other deceased Krishna Nama Bhoir. It is against the said judgment and conviction these two appellants have preferred the above appeals. Brief facts necessary for the disposal of these appeals are as follows :

All the accused persons, including these appellants, deceased and the prosecution witnesses were residents of a village by name Koli in Panvel taluk of Raigad district. There were two groups in the said village and the said groups were at

loggerheads because of certain Government contracts acquired by one group or the other. It is in the background of these disputes, the prosecution alleges that on 22.3.1999 on the outskirts of the said village, the accused persons who were 15 in numbers, attacked Krishna Mahada Naik, one of the deceased, between 7.30 and 8 a.m. with deadly weapons like swords, knives, sickles etc. due to which attack the said deceased was seriously injured. According to the prosecution, this incident was witnessed by PW-3 who was then travelling on his scooter along with a pillion-rider, namely, Narayan Ganu Naik (not examined). The prosecution also alleges that Dhanraj Ambu Bhoir, PW-4, also noticed the said incident. The further case of the prosecution is that the accused persons after assaulting said Krishna Mahada Naik chased PW-3 who by then had turned his scooter and drove the same towards the village and took refuge in the house of one Suresh Kana Naik. The accused persons allegedly entered the house of said Suresh Naik and dragged PW-3 out of the house and started beating him with swords, knives, sickles etc. and due to which PW-3 suffered injuries. The prosecution alleges that after the attack on PW-3, the accused went to the house of one Gangaram Naik, broke open the door of his house and attacked one Krishna Nama Bhoir who happened to be in that house (who later died) and then attacked Pandharinath Ram Bhoir, PW-5 and Bharat Krishna Naik, PW-6 who were also injured because of the said attack. It is the prosecution case that one Meena Mohan Naik, PW-2, went to the city Police Station and narrated the incident to Police Sub-Inspector Sopan Kadu Choudhary, PW-21 who after recording the facts in the station diary proceeded to the scene of occurrence and shifted all the injured persons to the Municipal Dispensary, Panvel. The prosecution alleges that Krishna Nama Bhoir made a dying declaration before the Special Executive Magistrate, PW-13 at Panvel. It is the further case of the prosecution that PW-2 again went to the city Police Station, Panvel and gave a written complaint to the Sub-Inspector, and it is based on the said complaint, a crime was registered against all the accused persons and further investigation was undertaken by PW-21. Out of the injured persons, Krishna Mahada Naik and Krishna Nama Bhoir died while being treated in the hospital. PW-3 who was one of the injured persons was first taken to Bombay for treatment and thereafter brought back to Panvel where his statement was recorded on the day following the incident on 23.3.1993 at about 10 a.m. The prosecution also alleges that in the meantime, the statement of PW-4 was recorded at about 6 p.m. on 22.3.1993 in the village where he was residing. During the course of the investigation, it is stated that the accused persons including the appellants herein were arrested on 31.3.1993 near a Railway building in the village Dapoli, and on statements made by these appellants, certain blood-stained weapons like sickles and spear were recovered from the bushes near a Railway crossing. It is based on the above prosecution case that the accused persons including the appellants were tried by the Additional Sessions Judge, Raigad, who convicted them, as stated above, and which conviction to the extent stated hereinabove, was confirmed by the High Court.

Mr. V.Rao Anumolu and Mr. S.M. Jadhav, learned counsel appearing for A-11 and A-15 respectively, contended that the courts below seriously erred in basing a conviction as against these appellants on the evidence of PWs.-3 and 4 who are the only two witnesses who have deposed against these appellants. They contended that these two witnesses are highly interested witnesses either being related to the deceased or owing allegiance to the faction to which the victims in this case

belonged. They also pointed out from record that the conduct of these two witnesses after the incident in question was highly artificial and opposed to ordinary human conduct. Therefore, a conviction on such unreliable evidence of PWs.3 and 4 could not have been based so far as these appellants are concerned.

Mr. Arun R. Pednekar, learned counsel for the State contended that though PWs.3 and 4 may be treated as interested witnesses that, by itself, is no ground to reject their evidence because their presence at the time of the incident was quite natural. Learned counsel further submitted that though there may be some delay in recording the statements of these 2 witnesses but the same will not in any manner make their statements unbelievable under the prevailing circumstances.

We have heard learned counsel and perused the records. So far as these two appellants are concerned, the prosecution solely relies on the evidence of PWs.3 and 4 as also some recoveries made at their instance. Therefore, we consider it appropriate to analyse the evidence of these two witnesses rather carefully.

>From the evidence of PW-3, it is seen that at the time of the incident, he was travelling on a scooter along with one Narayan Ganu Naik when he saw these accused persons including the appellants attacking the deceased Krishna Mahada Naik. He then states that having seen the incident and apprehending danger to his life, he turned his scooter and went to village Koli where he took refuge in the house of Suresh Kana Naik. In his further evidence he states that the accused persons including the 1st appellant came to the said house, dragged him out and assaulted him causing injuries to him. But what is important to be noticed is that he did not state before the Police when his statement was recorded a day later that these two appellants had attacked deceased Krishna Mahada Naik for which omission we find no explanation whatsoever. Though this witness, PW-3, is an injured witness, we find it difficult to place reliance on his evidence not only because of the omissions mentioned hereinabove but also because of the fact that his statement was recorded a day later when the investigating officer had ample opportunity to record the said statement on the day of the incident itself. The explanation given in regard to this unwarranted delay is that this witness was injured, and had to be taken to Bombay and brought back to Panvel for treatment. Taking into account the nature of injuries suffered by this witness and the opportunity investigating officer had to record his statement, we think this explanation given by the prosecution is not convincing. Bearing in mind the fact that even according to this witness, large number of people attacked the deceased and his omission to state the names of these appellants as the assailants in his previous statement, we think it not safe to place reliance on the evidence of PW-3 to find the appellants guilty of the offences charged without there being any material corroboration from other independent acceptable source. That is even applying the test laid down by this Court in the case of Masalti Etc. vs. State of U.P. (AIR 1965 SC 202) which was followed by the High Court in its judgment.

We will now consider whether the evidence of PW-4 in any manner corroborates the evidence of PW-3 or for that matter the said evidence of PW-4 is acceptable at all. PW-4 has admitted that he is a close relative of deceased Krishna Mahada Naik. While he had noticed the incident of the attack on the deceased Krishna Mahada Naik, he has not spoken in any

manner about the subsequent attack which includes the attack on PW-3. According to this witness, at the relevant time, he was going to the bus-stand to board a bus to reach his factory where he was working when he saw the assault on the deceased Krishna Mahada Naik by the assailants including the appellants. Having noticed the incident, he did not go to any one of his relatives' house to inform about the attack in question. He knew at that point of time that Krishna Mahada Naik was injured and still alive, still he did not make any effort whatsoever to get any help to shift the injured to a hospital. According to this witness, even after seeing Krishna Mahada Naik lying injured in a critical condition, he without informing anybody about the incident, went to the bus-stand, took a bus and went to his factory and even at that point of time, he had sufficient opportunity to inform the other people about the incident or for that matter, even the Police which he did not do. It is interesting to note from the evidence of this witness that even though he had an opportunity of approaching the police, he did go to them because he did not know whom he had to inform about the incident in the Police Station. The witness further states that he went to the factory, worked for a while, took leave from the factory and went back home. Even after reaching home, he did not bother to find out from anybody there about the fate of the victims nor did he inform anybody about he having witnessed the incident. It is only at about 6 p.m. when PW-21 recorded the statement for the first time, he came out with the fact of having witnessed the incident. It is rather surprising as to how and in what manner, PW-21 came to know that PW-4 was a witness to the incident. The prosecution has also failed to explain the delay in recording the statement of this witness, therefore, bearing in mind the conduct of PW-4 in not informing anybody about his having witnessed the incident and the delay in recording his statement makes us hesitant to place any reliance on his evidence. The only other piece of evidence relied by the prosecution to support its case against these two appellants is that of recovery which even according to prosecution, was made from a place which was not in the exclusive possession of the appellants and the said place was easily accessible by other people and also the fact that recovery was made almost 9 days after the incident in question, in our opinion, this piece of evidence also would not at all be sufficient to base a conviction of these appellants without further acceptable corroboration. Therefore, we are of the opinion that these appeals must succeed. The conviction and sentence imposed on the appellants are set aside and the appeals are allowed.