

PETITIONER:
MANOJ @ BHAI & ORS.

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT: 08/04/1999

BENCH:
G.B.PATTANAIK & M.B. SHAH.,

JUDGMENT:

PATTANAIK, J.

The three appellants, who are accused nos. 1, 2 and 3 respectively, along with 3 others who have not preferred any appeal were tried by the learned Additional Judge, Nagpur in Sessions Case No. 70 of 1990 for the offences punishable under 147, 148 and 302 read with Section 149 Indian Penal Code on the allegation that they formed an unlawful assembly and mercilessly assaulted deceased Raju by means of gupti, knife, hockey sticks and motor-cycle chain on account of which Raju succumbed to injuries sustained by him. The learned Sessions Judge on the basis of the prosecution evidence convicted all of the under Sections 147, 148 and 302 read with Section 149 Indian Penal Code and sentenced them to suffer R.I for one year and to pay a fine of Rs. 100/- and, in default of suffer R.I for one week and imprisonment for life for the conviction under Section 302 read with Section 149 IPC with the further direction that the sentences would run concurrently. Against the conviction and sentences two Criminal Appeals were preferred; one by the present appellants which was registered as Criminal Appeal No. 237 of 1991 and the other by the rest 3 accused persons which was registered as Criminal Appeal No.227 of 1991 and both the appeals were heard and were disposed of by the common impugned judgment and the learned Judges of Bombay High Court, Nagpur Bench, dismissed both the appeals and maintained the conviction and sentences imposed upon the accused persons. As has been stated earlier, only 3 of the appellants have preferred the appeals whereas other 3 accused persons have not preferred any appeal.

The prosecution case in nutshell in that the 3 appellants are all brothers and the other 3 accused persons who have not preferred any appeal are their friends. The appellants have their houses in front of the house of deceased Raju. The appellants belong to one political organisation called 'Chhatrapati Sena' and deceased Raju also was a member of the said organisation. But during the election of Legislative Assembly in the year 1989 deceased Raju carried the propaganda for the candidate belonging to Congress (I) and on account of this incident the relationship between the accused persons and deceased Raju was strained. On 18.4.1990 at about 9.00 p.m. while

deceased and his parents PWs 1 and 8 and one Pitamber were sitting on the terrace of their house accused nos. 1 to 6 come out of the house of accused no. 4 and went to the house of one Shrikhande which is infact right in front of the house of deceased Raju. All of them then entered into the courtyard and abused Raju and challenged him to come down to the courtyard. When Raju came down, Accused no.4 caught hold of the right hand of deceased and dragged him outside the courtyard whereafter all of them together took him to the front house of Shrikhande. Accused no.1 was holding a Gupti, accused no 2 was holding a stick and accused no.3 was holding a motorcycle chain while accused no.4 was having a hockey stick and accused nos. 5 and 6 were having knife with them. As per the prosecution case the accused persons surrounded deceased Raju and assaulted him by giving blows with the weapons in their hands on account of which Raju fell down on the ground but notwithstanding the same the accused persons continued inflicting blows on him as a result of which he died on the spot. It is also the prosecution case that PWs 1 and 8 followed Raju and when PW 8 requested the accused persons not to assault Raju she was pushed aside. After the accused persons left the scene of occurrence the parents of the deceased cried for help when people from the village gathered and then father of the deceased, PW1 went to the Policy Station and lodged a report which was treated as First Information Report - Exhibit 21. The police then registered the case and started investigation and after completion of investigation submitted the chargesheet. The case was then committed to the Court of Sessions and the accused persons were tried, as already stated. The postmortem report Exhibit - 27 and the evidence of the doctor who conducted the autopsy over the dead body PW-2 indicate that the deceased had as many as 17 external injuries and injuries nos. 1,2 and 3 were sufficient in the ordinary course of nature to cause death individually or collectively. The injuries were ante-mortem in nature. This conclusion of the learned Sessions Judge, as affirmed by the High Court has not been assailed before us in this appeal. Out of the three eye witnesses PWs 1, 8 and 12 learned Additional Sessions Judge relied upon their testimony and came to the conclusion that the prosecution case as against the accused persons have been proved beyond reasonable doubt. On appeal the High Court, however, disbelieved the evidence of PW12 on a finding that his presence at the scene of occurrence itself was doubtful but the conviction and sentences passed by the learned Sessions Judge was affirmed relying upon the testimony of the two other eye witnesses namely, PWs 1 and 8.

Mr. U.R. Lalit, the learned Senior counsel appearing for the appellants vehemently argued that the two eye witnesses have made so much of embellishments, exaggeration and padding to their statements recorded under Section 161 Cr.P.C. that it is difficult for a Court of law to rely on such testimony and the Sessions Judge and the High Court committed serious error in relying upon such untrustworthy testimony to base the conviction. Mr. Lalit further contended that very foundation of the prosecution case as unfolded in the First Information Report given by PW1 having failed the superstructure, as unfolded by the two eye witnesses also must fail and it is highly unsafe to rely on the testimony of these two eye witnesses only, so far as the alleged assault by the accused persons on the deceased Raju is concerned in as much as the entire evidence is only

chaff and no grain therein. Mr. Lalit also submitted that on reading of the evidence of PWs 1 and 8 it would appear that both of them were not present at the scene of occurrence and therefore, they could not have been relied upon as eye witnesses.

The learned counsel appearing for the respondent-State on the other hand urged that the alleged embellishment and exaggeration pointed out by Mr. Lalit, learned senior counsel appearing for the appellants do not relate to the substratum of the prosecution case, and therefore, the Courts below were justified in relying upon the testimony of the aforesaid two witnesses in coming to the conclusion that it is the accused persons who assaulted the deceased with the respective weapons on their hands and this fact is corroborated by the medical evidence indicating the presence of injuries on the deceased which could be caused by the weapons which were found to be in the hands of the accused persons. According to the learned counsel for the respondent there is no justification in the comment of Mr. Lalit that the presence of these two witnesses have become doubtful. In view of the respective contentions of the learned counsel appearing for the parties we think it appropriate to examine the evidence of the two eye witnesses on whose evidence the conviction of the appellants is based. Ordinarily this Court does not reappreciate the evidence when two courts have already scanned and believed the same. But on going through the omissions and exaggerations from their earlier version we thought it fit to scrutinise the evidence of the aforesaid two witnesses to find out whether the so-called exaggerations and embellishments really pertain to the basic prosecution case so that the entire evidence has to be discarded as being untrustworthy or the court would be justified in embarking upon an enquiry for the purpose of separating chaff from the grain and accept the grain to base the conviction. PW1 lodged the report at the Police Station at 9.30 p.m. on 18.4.90 intimating about the occurrence that took place at 9.00 p.m. and the distance between the Police Station and the place of occurrence is 3 Kms. Thus the information to the Police has been given with utmost promptitude. In the First Information itself the names of the 3 appellants had been given as the members of the unlawful assembly who assaulted the deceased Raju with different weapons in their hands. A graphic picture has been indicated as to how the accused persons called Raju and after Raju came down dragged him and surrounded him and thereafter assaulted him. In course of the argument Mr. Lalit, learned senior counsel had urged that the FIR is rather sketchy and vivid account of the incident has not been stated therein. But it is too well settled that the First Information Report need not be an encyclopedia of the evidence and what is required to be stated is the basic prosecution case. Judged from that stand point no grievance can be made in respect of the First Information Report that was given by PW1.

According to PW1, who is the father of the deceased, the 3 appellants accused nos. 1,2 and 3 were residing in front of his house and he knew them fully well. While the deceased Raju, PW1 and PW8 were sitting on their terrace accused persons entered the courtyard of their house and then called Raju to come down. When Raju came down from the terrace to the courtyard then all the accused persons surrounded him, dragged him to the place in front of the house of Shrikhande and accused no. 1 was holding gupti in

his hand while accused nos. 2 and 3 were holding a hockey stick and motorcycle chain respectively. According to the witness all the accused persons including the 3 who have not preferred any appeal started giving blows on Raju with their respective weapons and even after Raju fell down some blows were further given. It is his further evidence that when mother of the deceased PW8 intervened accused no.1 caught hold of her and pushed her aside. Though this witness has indicated that accused no.1 dealt 4 or 5 blows of gupti on the person of Raju but had not stated any specific overt act to have been committed by accused nos.2 and 3 apart from the general statement that all accused persons surrounded and assaulted. In other words that accused nos.2 and had given blows on the deceased by means of cycle chain and stick has not been stated by the witness even in the chief examination. In the cross examination it has been elicited that he had gone on foot to lodge the report after he had visited the scene of occurrence and on this statement Mr. Lalit wanted to urge that he was not present at the scene of occurrence and reached there later. But this is belied by the very next sentence stated by the witness. It is not true that I have not witnessed the incident." The defence had elicited from this witness certain omissions as indicated in paragraph 13 of his evidence which is to the effect that he had not stated before the police that accused nos. 1 to 6 had come out of the house of accused no.4 and that they had come out and then entered his courtyard and the explanation offered was that he was not in a proper frame of mind. The further omission brought out from the witness is that he had not stated before the police that accused nos. 1, 4, 5 and 6 abused Raju by mother and sister and also that accused no. 4 caught hold of right hand of Raju and dragged him and all the accused persons then surrounded him as I was then frightened. He had also not stated before the police that accused no.4 had dealt a blow of hockey stick on Raju's head. He had also not stated before the police that Lakhmibai PW8 had placed herself over the body of Raju and told the accused not to assault Raju. It has been elicited in his cross-examination that he had not stated before the police that accused no.4 had given a threat that if an evidence is given in the Court then he will be murdered. It was also brought out that he omitted to say that the tube light was burning in front of his house. Considering these omissions from the earlier statement as confronted to the witness we are not in a position to appreciate the contention of Mr. Lalit that his entire evidence should be disbelieved, particularly when there has been no material omission so far as the role played by accused no.1 is concerned, that he had a gupti in his hand and assaulted Raju by means of gupti by given 4 or 5 blows. The nature of injuries found on deceased Raju and the medical evidence of the doctor fully corroborates the oral evidence of PW1 so far as the role ascribed to accused no.1. As has been stated earlier so far as role ascribed to accused 2 and 3 are concerned the witness has not given any definite overt acts excepting making the general version that all accused surrounded and assaulted. In this view of the matter though the evidence of this witness does not assist the prosecution in bringing home the charge against accused nos.2 and 3 but so far as accused no.1 is concerned the prosecution case can be said to have been proved beyond reasonable doubt on the basis of the evidence of PW1.

Coming now to the evidence of PW8, she also apart from stating in her evidence in chief that accused no.3 had

an iron chain, accused no.2 had a stick in his hand, while indicating the blows given by each of the accused persons she stated that accused nos. 2 and 3 had dealt stick blows on the person of Raju. This actually contradicts her evidence that accused no.3 had an iron chain in his hand. So far as accused no.1 is concerned, she corroborates PW1 by stating that accused no.1 started giving gupti blows on the deceased Raju. The omissions from her earlier statement to the police which had been confronted to her that she had not stated before the police that she herself and her husband and Raju were sitting on the terrace and she had stated before the police that her husband had reached there after accused had ran away, on the basis of the aforesaid material Mr. Lalit had urged that PW1 cannot be said to be an eye witness to the occurrence. We are unable to appreciate this argument in as much as reading the evidence as a whole it cannot be said that PW1 reached the scene of occurrence only after the entire occurrence was over. So far as accused no.1 giving gupti blows on the deceased there has been no embellishment and no exaggeration made by this witness in her earliest statement to the police. But though in the Court she had stated that accused no.3 had an iron chain she had not stated so in her statement to the police and that was duly confronted to her. Even she had not stated that accused no.2 had a stick in his hand and that was also confronted to her. Having examined the aforesaid omissions we have no hesitation to come to the conclusion that the role ascribed by this witness to the accused no.1 fully corroborates the evidence of PW1 and there is no reason why the statement of the aforesaid two witnesses shall not be relied upon. Which have been relied upon by two courts of fact. On the aforesaid basis we agree with the conclusion of the two courts below that accused no.1 holding a gupti in his hand, dealt several blows on the deceased Raju as a result of which Raju ultimately died. But so far as two other accused, namely, accused nos. 2 and 3 are concerned, we are of the considered opinion on going through the evidence of aforesaid two eye witnesses PWs 1 and 8, that prosecution case as against the said two appellants cannot be said to have been proved beyond reasonable doubt. Excepting bald, vague and general statement that all the accused surrounded and assaulted, while ascribing positive role to different accused persons and how many blows have been given, but so far as accused nos. 2 and 3 are concerned, there has been no whisper by either PW1 and PW8 and even PW8 in her earliest statement to the police had not stated that accused nos. 2 and 3 were having a stick and cycle chain in their hands. In this state of affairs it would be unsafe to convict appellants nos. 2 and 3 by taking recourse to Section 149 IPC as necessary ingredients to attract the said Section as against accused nos. 2 and 3 are totally absent. We have not discussed the role played by those accused persons who have not preferred any appeal, but suffice it to say the eye witnesses have ascribed positive role to those non-appealing persons as to how they have given blows on deceased Raju.

In the aforesaid premises, we acquit accused nos. 2 and 3 of the charges levelled against them and direct that they shall be set with liberty forthwith unless required in any other case. But so far as accused no. 1 is concerned, he is convicted alongwith non-appealing accused persons under Section 302/34 IPC and their sentence of imprisonment for life is affirmed. The appeal is thus partly allowed.

JUDIS