

CASE NO.:
Appeal (crl.) 431 of 2006

PETITIONER:
Vikram & Ors

RESPONDENT:
State of Maharashtra

DATE OF JUDGMENT: 09/05/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

S.B. Sinha, J.

1. Appellants who are five in number are before us being aggrieved by and dissatisfied with the impugned Judgment of the High Court of Bombay, Aurangabad Bench at Aurangabad dated 5.9.2005 passed in Criminal Appeal No. 398 of 1999 affirming a judgment of conviction and sentence dated 30.9.1999 passed by the Sessions Judge, Beed in Sessions Case No. 18 of 1998 convicting the appellants herein inter alia for commission of an offence under Section 302 read with Section 149, Section 147 read with Section 149 of the Indian Penal Code.

2. Appellants herein were proceeded against for committing an offence of culpable homicide amounting to murder of one Dnyandeo and for causing hurt to one Bapu (P.W. 6) on 22.1.1997 at about 10.30 p.m. in the night in Village Pangulgavhan within the Police Station Ashti in the District of Beed. First Information Report in respect thereof was lodged at 7.30 a.m. on 23.1.1997 by PW-2 Rohidas Gite alleging that while he had been sleeping in his house after taking meal, his uncle Ajinath Gite (P.W. 3) came to his house to inform him that thieves had come and some 'tumult' is going on, whereupon both of them went towards the place of occurrence and found that both the 'deceased' and the 'injured' were being assaulted by accused No. 1 Vikram, accused No. 2 Mokinda, accused No. 3 Tatyaba, accused No. 4 Bhagan, accused No. 5 Rambhau, alongwith some others (who being juvenile, had been separately tried). They, although, tried to intervene, but were threatened not to do so. He thereafter went to the House of the deceased and informed his wife as well as Raosaheb Namdeo Gite who came to the place of occurrence. Other persons including Ashruba Pandharinath, Mahadeo Pandharinath, Shyamrao Gajaba, Ashok Baba, Mahadeo Lahanu also came to the spot. The injured were, by that time dragged upto the river by the assailants. They were asked to stop assaulting and were furthermore requested in the event they had any dispute with him in regard to their land should take recourse to the law whereupon the assailants left them in the river and fled. Both the deceased and Bapu Kisan Gite (PW-6) were found to be unconscious.

3. P.W. 2 Rohidas was advised by others to inform the Police Station on telephone whereupon he went to Village Bhalavani alongwith Ajinath, Gangaram and Bayaji Bhiva at about 1:00 a.m. and informed the Officer in charge of Police Station on telephone. On receipt of the said information, a police officer visited the place of occurrence at Village Pangulgavhan. In the meanwhile, the injured were shifted in front of the house of Laxmibai Ashruba Gite. They were later on shifted by the police personnel to the Government Hospital at Ashti. Whereas Dnyandeo Vithoba Gite was declared dead, PW-6 was admitted in the hospital. Mr. Suresh Gange, P.W. 8 registered a case under Section 147, 148, 149 and 302. He seized

three articles including a bamboo stick measuring about 2 ft. and 5 inches with a diameter of about 2 inches. Other articles were also seized. Appellants were arrested on 24.1.1997. The prosecution case was proved primarily by PW-2 the informant, PW-3 Aginath, PW-4 Janardhan and the injured witness P.W. 6 Bapu.

4. The learned Trial Judge by reason of a judgment of conviction and sentence dated 30.9.1999 on arriving at a finding of guilt, awarded life imprisonment and a fine of Rs. 1,000/- each under Section 302 read with Section 149 of the Indian Penal Code, simple imprisonment of 6 months for commission of the offence under Section 149, fine of Rs. 500/- each under Section 147 read with Section 149 and fine of Rs. 500/- under Section 149 of the Indian Penal Code. The appeal preferred by the appellants thereagainst has been dismissed by the High Court by reason of the impugned judgment.

5. Mr. Arvind V. Savant, learned senior counsel appearing on behalf of the appellants in support of this appeal inter alia would submit;

- (i) P.W. 2 having informed the officer-in-charge of Police Station Ashti on telephone which having been recorded in writing, the First Information Report lodged at 7.30 a.m. on 23.1.1997 is barred under Section 162 of the Code of Criminal Procedure.
- (ii) Some of the witnesses having been examined by the Investigating Officer on 8.8.1997, their statements could not have been relied upon.
- (iii) The fact that First Information Report reached the Magistrate only on 24.1.1997 would go to show that the same was an anti-timed one.
- (iv) The witnesses having failed to disclose vital information in their statements under Section 161 of the Code of Criminal Procedure, the learned Sessions Judge as also the High Court committed a serious illegality in passing the impugned judgment.
- (iv) In any view of the matter, no specific overt act having been attributed to any of the appellants herein, conviction under Section 302/149 of the Indian Penal Code cannot be sustained and they should be convicted only under Section 325 thereof.

6. Mr. Sushil Karanjkar, the learned counsel appearing on behalf of the State would, however, support the impugned judgment.

7. Homicidal nature of death of the said Dnyandeo is not in dispute. Sufferance of injuries by Bapu Kisan Gite, P.W. 6 is also not in dispute.

8. Dr. Subhash Mahadeo Patharkar P.W. 7 conducted the post mortem examination. He found the following ante-mortem injuries.

"1. C.L.W. on the right parietal region placed vertically 1" x 1" x bone deep. No evidence of fracture felt on palpation, object used was hard and blunt.

2. C.L.W. on right front to parietal region, oblique, placed 2" x 1" x bone deep, no evidence of fracture, felt on palpation, object used hard and blunt.

3. C.L.Ws. two in number of right index finger, =" x <" x 1/8", each, object was hard and blunt.

4. An abrasion on right Ileac region, curved 2" x 1/8".

5. C.L.W. on right leg 1" x = x <".

6. Abrasion on right medial malleouls, =" x <".

7. Multiple contusions over the back of variable size and shape placed in variable directions caused by Lathi.

8. Multiple imprint abrasion over back of variable size, caused by chain of variable directions.

9. Six contusions on right buttock and right thigh, horizontally placed, one above the other 7" x 1 =" object hard and blunt (Lathi)"

9. Amongst others, on the left lungs, two internal injuries were found;
"1. Contusion on left lower lobe 3" x 2=" cut section contains blood.

2. Contusion on left upper lobe, 4" x 3" cut section contains blood."

10. The said two injuries were referable to external injury No. 7.

11. PW-9, Dr. Dattu Zambre examined Babu Kisan Gite and found the following injuries on his person;

1. Contused lacerated wound on left parietal region, 8 cm. x 0.5 cm. x bone deep, margins irregular anteroposterior in direction.

2. Contusion over left thigh, ant, side in middle 1/3, 8" x 1 =" vertical direction margins irregular.

3. Multiple contusions over right anteromedial aspect of thigh, 5" x 1=", 4" x 1=", 6" x 1 =", 4" x 1 =", 5" x =" , intermixed with each other.

4. Contusion, on abdomen above umbilicus 3" x 1" horizontal, irregular margins.

5. Contused abrasion on left shin of tibia Lower 1/3rd, <" x <" margins irregular.

6. Contused Abrasion, on right shin of tibia Lower 1/3, <" x <," margins irregular."

12. All the injuries were caused by hard and blunt objects like lathi.

13. It is also not in dispute that the parties were having disputes over some lands.

14. It has also not been suggested before us that PW-2 was enigmically disposed of towards the appellants. Both the parties are from the said Village.

15. P.W. 2 in the First Information Report as also in his deposition before the Court categorically stated that eight persons i.e. the appellants herein and three juveniles were assaulting the deceased and PW-6. On his asking them not to assault the deceased and P.W. 6, he was told that he had no business to interfere as he was not concerned with the matter. He immediately informed Tulsabai and Raosaheb. Tulsabai and Raosaheb also asked the appellants to leave the deceased, but not only assault upon them did not stop, they were dragged towards the river on the western side. Some other persons in the meantime came to the spot and they also asked the accused to leave the victims. There was no police post in the village. As he was advised to make a phone call, keeping in view the fact that the deceased and injured were to be brought back to the village, P.W. 2 had to go to the house of Moinoddin Pathan to wake him up as the Gram Panchayat Office, where the phone was available, was adjoining to his house. His information to the police officers could not have been in great details. As he was assured that the police would be coming, he waited for the police party by the side of Ashti Bhalwani to Pangulgavan Road. The police party came at about 1 a.m. They came in a police jeep to the house of Laxmibai and then only the deceased and the injured could be sent to the

hospital. It appears from the evidence of Dr. Dutta, that the deceased was brought to the hospital under a requisition letter. It was evidently issued by the Investigating Officer.

16. The said requisition letter was proved and marked as Exh. 49.

17. PW-6 was found to be semi-conscious and he was not in a position to reply to the questions put to him.

18. He was admitted as an indoor patient in the hospital on 23.1.1997 and was discharged only on 26.1.1997. In a situation of this nature, explanation of PW-2 and others that they gave priority to the treatment of the deceased and the accused which occasioned the delay in lodging the First Information Report and the same having been accepted by two courts below, we do not find any reason to disagree. We find no reason to discard the testimony of P.W. 2 who is an independent witness.

19. Strong reliance has been placed by Mr. Savant on a decision of this Court in *State of M.P. v Kriparam* [(2003) 12 SCC 675]. In that case, the High Court had reversed a judgment of acquittal. This Court found the evidence of the eye-witnesses to be artificial. At one stage they had said that they were at the same place but later on changed their story alleging that they had been sleeping separately. The Court found so much contradictions in regard to the direction and place the witnesses said to have run away from the alleged place of occurrence and their hiding at other place till next morning, was found to be un-acceptable.

20. It is on the aforementioned backdrop of events, this Court opined that the delay in lodging the First Information Report was attempted to be explained only by inventing the story that they fled away from the scene of occurrence and were hiding till 8 o'clock in the morning. This Court furthermore found contradictions even in relation thereto.

21. The said decision cannot be said to have any application in the instant case.

22. Reliance has also been placed by Mr. Savant on *Shankarlal v State of Rajasthan* [(2004) 10 SCC 632]. In that case also, the testimonies of the alleged eye-witnesses were not believed. Therein also, the explanation for lodging the First Information Report after some delay viz. that the informant upon seeing the occurrence got scared and took different road, reached the village at about 4 or 4.15 pm, whereas the occurrence had taken place at about 1.30 a.m., the delay in lodging the First Information Report at 3.15 a.m. on the next date was not believed stating;

"In such circumstances this unexplained long delay also creates a doubt in our mind as to the genuineness of the prosecution case. Once we are not convinced with the evidence of PW 6 then there is no other material to base a conviction on the appellant, hence we are of the opinion that the appellant is entitled to the benefit of doubt, therefore, this appeal succeeds and is allowed."

23. The said decision also has no application to the fact of the present case.

24. It may be true that P.W. 2 had informed the officer in charge of the Police Station on telephone, but the circumstances in which the said call had to be made has been noticed by us heretobefore.

25. The Head Constable states that he had written down the same but then it must have been a cryptic report and only for the purpose of visiting the scene of occurrence. He as well as the Investigating Officer did not say that it was a detailed report.

26. If, in the aforementioned premise, another First Information Report which was a detailed one came to be recorded, no exception can be taken to the same being treated as a First Information Report.

27. Reliance has been placed by Mr. Savant on Tapinder Singh v State of Punjab and Another[(1970) 2 SCC 113]. Therein this Court held that cryptic and anonymous oral message which did not in terms clearly specify commission of a cognizable offence cannot be treated as first information report.

28. See also State of U.P. v P.A. Madhu [AIR 1984 SC 1523], Ramsinh Bavaji Jadeja v State of Gujarat [(1994) 2 SCC 685] Binay Kumar Singh v State of Bihar [AIR 1997 SC 322] and Soma Bhai v State of Gujarat [AIR 1975 SC 1453].

29. We must notice that the appellants have not questioned the factum of coming of the police personnel to the village, taking the deceased and the injured to the hospital, seizure of the articles, preparation of panchnamas etc.. As major part of the actions taken by the Investigating Officer pursuant to the First Information Report in this case is not disbelieved, We fail to see any reason as to why the statement of P.W. 2 made before the Officer in-charge on 23.1.1997 at 7.30 a.m. should be discarded.

30. Before embarking upon the other contentions raised by Mr. Savant, we may notice a disturbing feature of this case. Statements of the witnesses and in particular, the injured witness, P.W. 6 had been recorded. The said statement was available on the records of the learned trial judge while considering of the application for bail filed by the appellants.

31. The learned trial judge in his judgment in the proceeding sheet dated 27.2.1997 noticed as under:-

"7. Perused the case papers. It reveals from the case papers that not only the complainant is an eye witness but Ajnath, Rohidas, Tulsabai and Inured Bapu also stated about the occurrence consistently. The post mortem report support the fact of occurrence as narrated by the eye witnesses. On perusal of the F.I.R. and other witnesses at least at this stage it cannot be said that F.I.R. is belated. Thus from the aforesaid material there is a prima facie case against all these applicants for the offence punishable u/secs. 147, 148, 149 and 302 of I.P.C. The investigation is in progress. Some of the accused are yet to be arrested. Admittedly there is a long standing enmity between the accused persons and the family of the deceased and others. It is seen from the case papers that these applicant and co-accused armed with deadly weapons attacked on deceased and his nephew Bapu and though eye witness attempted to rescue them the accused did not allow them to come and make any intervention. On perusal of the case papers it is seen that the injured Bapu made a report that some of the relatives of the accused gave threats to him for not disclosing the names of the accused before the police. Thus if the circumstances in which the alleged incident taken place, the conduct of the accused persons at the relevant time of the alleged incident and the above referred facts considered together I find much substance in the contention of the learned A.P.P....."

32. Learned Trial Judge in his judgment categorically held that only an

additional statement of P.W. 6 Bapu was recorded on 8.8.1997 although initially his statement was recorded immediately after the alleged incident. P.W. 6 had also informed the authorities that he was being threatened by the relatives of the appellants not to disclose their names.

33. Despite the fact that the statement of P.W. 6 and other witnesses were on record and P.W. 6 had been threatened by the relatives of the appellants, the same did not form part of the case diary. The learned Trial Judge in the aforementioned situation opined that the Investigating Officer was helping the appellants in the following words.

"57. For above stated reasons, so far as the attack of the defence on record of the belated statement of P.W. 6 Bapu is concerned, looses it much force be cause from the previous Court record itself it is evident that there was statement of P.W. 6 Bapu which was produced for the scrutiny and perusal of the court in the month of February 1997 itself while entertaining the bail application and like magic vand the said statement vanished from the police record for which P.W. 12 P.S.I. Ovhal could not give any satisfactory explanation. Leave apart the question of vanishing of the statement from the, police record there is not a single word about it in the entire police diary which itself, I am painful to point out reflects on dishonest, perfunctory manner of investigation by the concerned police officer. I am really surprised as to how the defence could at this juncture venture to submit that the investigation is tainted favoring the accused while from the above fact the fact is otherwise."

34. The reason for the Investigating Officer in interpolating the case diary and not producing the purported recording of the information received by him on phone is not difficult to comprehend. We have grave doubt even in regard to the statement of the Head Constable that he had recorded in writing any information received from P.W. 2 on phone. Police Officers might not have recorded the said statements only to help the appellants. We would have otherwise held that benefit therefor should go to the accused, but in this case the fact that statements were made before the police at the earliest possible opportunity is available on record. We have been taken through the deposition of the eye witnesses. In particular our attention has been drawn to purported omissions of the said witnesses. We have considered each one of them carefully. The purported omissions related only to the details of the occurrence, but the fact that P.Ws. 2, 3, 4 and 6 were eye witnesses to the occurrence does not stand thereby disproved in any manner whatsoever. The occurrence took place on 22.1.1997. They were examined in Court two and a half years later, If there occurred some contradictions or even assuming they had omitted to state the incident in great details, the same by itself would not lead to a conclusion that the appellants had been falsely implicated in the case.

35. We, see no reason to differ with the findings of the courts below, particularly in view of the fact that P.W. 6 was an injured witness. He admittedly received serious injuries, remained unconscious for a long time and had to remain as indoor patient till 26.1.1997. So far as the submission of the learned counsel that the appellants did not have any common object to cause the death of Dnyandeo is concerned, we also find no merit therein. Eight persons came together. They assaulted the deceased and P.W. 6 indiscriminately. Despite having been asked to stop assaulting them, not only by P.W. 2 but also by the wife of the deceased, they did not pay any heed thereto. They continued to assault them. They dragged them to the west bank of the river and only left them there when a

large number of people gathered and asked them not to do so.

36. The question, as to whether in a given case common object has been made out or not, will depend upon the facts and circumstances thereof; Conduct of the parties and the manner in which the occurrence has taken place, will have some bearing on the question. We, keeping in view the facts and circumstances of this case, are of the opinion that the submission that it is not a case where despite the fact that specific overt acts on the part of each of the appellant herein had not been specifically stated, they cannot be held guilty only under Section 325 of the Indian Penal Code.

37. In Bhima alias Bhimrao Sida Kamble and Others v State of Maharashtra [(2002) 7 SCC 33], whereupon Mr. Savant placed strong reliance, this Court noticed that some accused persons were held to be carrying common object whereas another was held to have common intention. There was no evidence as to the nature of weapons with which they were armed; and in fact there was no evidence to show that the appellants therein had any weapon with them or caused any hurt to anybody. A large number of persons were involved. In the aforementioned situation, this Court found that the object of the mob was to teach the deceased a lesson who was a bully in the village and only in that situation an inference was drawn that the common object was to commit offences under Section 323 and 325 and not under Section 302 read with Section 149 of the Indian Penal Code.

38. The said decision have no application to the facts of the present case.

39. There is, thus, no merit in this appeal, which is accordingly dismissed.