

Ingale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 390 OF 2015**

Mr.Ramesh Namdeo Naikwade  
Age 32 years, Occ:  
R/o. Dahegaon, Shirasgaon Road,  
Tal. Yeola, District Nashik  
(At present Nashik Central Prison) .. Appellant

V/s.

The State of Maharashtra  
At the instance of Ozar Police Station  
(to be serve to APP High Court, Bombay) .. Respondent

Mr. Aniket Vagal, for the Appellant.  
Mr.H.J.Dedhia, APP for the Respondent - State.

**CORAM : S.S.SHINDE, J. &  
M.S.KARNIK, J.**

**RESERVED ON : AUGUST 12, 2020  
PRONOUNCED ON : SEPTEMBER 03, 2020**

**JUDGMENT (PER M.S.KARNIK, J. ) :-**

1. The appellant challenges the judgment rendered by the Additional Sessions Judge, Niphad convicting the appellant for an offence punishable under section 302 of Indian Penal Code (hereinafter 'IPC' for short) and sentenced to suffer rigorous imprisonment (R.I.) for life and also to pay fine of Rs.1,000/-, and

further suffer rigorous imprisonment for three months in default of payment of fine.

2. The appellant is the original accused No.1. The prosecution case as unfolded during the trial is as under :-

3. The date of the incident is 16<sup>th</sup> May 2013. It is alleged that around 7.00 p.m., the appellant - original accused Ramesh Namdeo Naikwade and one person took deceased - Dagu on discover motorcycle towards Dahegaon Road. At about 8.00 p.m. to 8.30 p.m., the appellant along with two others had beaten deceased Dagu. The place of the incident is the ground of Janata High School. P.W.3 - Nabindu alias Balu Sangram Pagare witnessed the incident. P.W.3 left the spot and upon reaching the bus-stand called some persons and told them about the incident. P.W.3 also informed the said incident to Kiran - nephew of deceased Dagu.

4. P.W.10 - Mr.Yogesh Ashok Chavan - I.O. was in-charge of the investigation. FIR was registered on a complaint made by Kamlabai Dagu Nikam - P.W.1 - wife of deceased Dagu. P.W.10 reached the spot of the incident. He seized simple soil, blood mixed soil and one pair of chappal from the spot and accordingly

prepared seizure panchanama - Exhibit 28. P.W.5 is the panch of the seizure panchanama. Thereafter P.W.10 went to the second spot of the incident i.e. near temple on the bank of a river where dead body of deceased was thrown. The spot panchanama was prepared at Exhibit 28. P.W.6 - Bharat Narayan Jadhav is the witness of spot panchanama along with one Yogesh who acted as second panch. P.W.10 collected simple soil, blood mixed soil on the second spot of the incident and seizure panchanama is prepared at Exhibit 29. P.W.5 is examined as seizure panch of Exh.29. The appellant - original accused - Ramesh was arrested on the same day vide arrest panchanama - Exhibit 45. Thereafter P.W.10 - Yogesh Ashok Chavan - I.O recorded the statement of P.W.1 - Kamal Dagu Nikam, Shivaji Bhise, P.W.3 - Nabindu - eye-witness, P.W.4- Pravin Prakash Pagare and others. The clothes on the person of appellant - Ramesh were seized vide panchanama - Exhibit 22. P.W. 5 is a panch witness of this panchanama Exhibit 22. P.W.10 then arrested original accused No. 2 - Sharad Arjun Jadhav and accused No.3 - Ashok Subhash Mali.

5. The blood samples of the appellant and other accused were collected by Medical Officer. P.W.10 then sent the seized muddemal in the crime to the forensic science laboratory

for analysis on 8<sup>th</sup> August 2013 vide letter Exhibit 48. The school leaving certificate of the appellant was obtained from Janata Secondary and Higher Secondary school, Patode, Yeola. As per certificate, the appellant is shown as belonging to 'Maratha' community. This certificate is marked as Exhibit 'A'.

6. Vide panchanama - Exhibit 20, the blood stained clothes of the deceased were seized on 17<sup>th</sup> May 2013. The shirt is at Article 10 and Pant is at Article 11. P.W.5 - Shankar Bhaskarrao Ingale is the panch of the seizure of the clothes panchanama of the appellant. On 20<sup>th</sup> May 2013 - Devidas Naikawade - brother of appellant brought the motorcycle used in the commission of crime to the police station. The motorcycle was seized under panchnama Exhibit 38.

7. P.W.8- Dr.Sagar Lokhande, on 17<sup>th</sup> May 2013 conducted the post-mortem of the dead body from 2.30 p.m. till 5.00 p.m. P.M. notes are at Exhibit 35.

8. The charge-sheet was filed after completion of the investigation before the Judicial Magistrate, First Class, Yeola, District - Nashik. The case was committed to the Sessions Court by committal order dated 2<sup>nd</sup> September 2013. The Sessions

Court framed the charge against the appellant and original accused Nos. 2 & 3. The prosecution examined as many as ten witnesses in support of the prosecution case. The Sessions Judge convicted the appellant. The original accused Nos. 2 & 3 are acquitted.

9. With the assistance of the learned Counsel for the appellant and learned APP, we have gone through the evidence and the findings recorded by the trial Court. Learned APP argued in support of the findings of the trial Court and submitted that there is no error in the judgment of the trial Court which is rendered after properly appreciating the evidence on record.

### **Analysis of the Evidence**

10. P.W.1 - Kamal Dagdu Nikam is the wife of deceased Dagdu Nikam. She deposed that Dagdu was working as a labourer. Dagdu came home at 4.00 p.m. on 16<sup>th</sup> May 2013. After taking meals, he had gone to the village. As Dagdu did not return till 6.00 p.m., she asked her nephew - Kiran about his whereabouts. Kiran replied that Dagdu was seen near the bus-stand. At 9.00 p.m. Kiran asked P.W.1 whether the deceased had returned home or not. As the deceased Dagdu had not returned, Shivaji Bhise

and Kiran went in search of Daggu. However, P.W.2 - Raju Kurhade told Kiran and Shivaji Bhise that he had seen the appellant & Daggu on motorcycle proceeding towards the school. They returned at 11.00 p.m. finding no trace of Daggu. As it was late in the night, they did not go in search of Daggu. On the next day morning at 6.00 a.m., when P.W.1 and her sister-in-law Sakharabai went in search of Daggu towards the school, they noticed the dead body of Daggu under a Babul tree near Khanderao temple situated on the bank of a river. P.W.1 noticed injury on the face of her husband and also behind his left ear. She deposed that the appellant committed murder of her husband. She deposed that they belong to the Bhilla community which is notified as Scheduled Tribe. She identified the original caste certificate at Exhibit 16.

11. In cross examination, she deposed that the appellant is not from their caste. She deposed that she did not notice any article near the spot where the dead body of her husband was lying. She noticed tyre marks of four-wheeler near the spot. It is in her evidence that Daggu was working with a Mandap decorator. She further deposed that on the date of the incident marriage ceremony was performed in Vadar wadi. On the date of the incident, she did not inform the police patil of her village or

anybody about the information given to her by Kiran. P.W.1 was not able to say as to why there is no mention in her statement about she being told by Kiran that her husband was taken by the appellant on motorcycle towards school. P.W.1 further deposed that she could not assign any reason why there is no mention in the complaint about her noticing injury behind left ear of her husband.

12. P.W.2 - Raju Valoba Kurhade deposed that on the date of the incident at about 7.00 p.m., he saw the appellant and one other person along with Dagu on motorcycle which proceeded towards Dahegaon Road. He deposed that Janata High school is adjacent to Dahegaon Road. It is in his evidence that he had informed Kiran about the appellant and another person taking the deceased on motorcycle which went towards Dahegaon Road. In cross examination he has deposed that on next day between 9.15 a.m. again Kiran met him near Khandarao temple. There was no talk between P.W.2 and Kiran. P.W.2 admitted that on 16<sup>th</sup> May 2013 at night, there was varat (a part of marriage ceremony rituals). He deposed that the appellant is physically challenged in one leg.

13. P.W.3 - Nabindu alias Balu Sangram Pagare is an

eye witness of the incident. He deposed that his cousin brother P.W.4 Praveen Pagare called him on telephone informing that three persons are beating one man in the campus of Janata High school. P.W.3 along with his cousin brother Lahanu Pagare reached the ground of Janata High school on the motorcycle. In the light of motorcycle, P.W.3 noticed three persons beating one man. Deceased Daggu was the person who was being beaten. P.W.3 noticed the appellant beating Daggu. He further deposed that all the accused persons present before the Court were seen by P.W.3 on the ground of Janata school in the light of motorcycle. Thereafter P.W.3 and his cousin brother Lahanu left the spot. P.W.3 says that he did not notice his cousin brother P.W.4 - Praveen Pagare who had informed him on telephone about this incident. P.W.3 further deposed that thereafter they went to the bus-stand and told some persons about the incident which they witnessed. P.W.3 then along with Lahanu Pagare, Kiran and one Hussain walked upto Janata school. P.W.3 deposed that he told Kiran that the appellant and two associates had beaten Daggu. On reaching Janata High school, they did not notice anybody on the ground. They had taken search of Daggu, but could not find him.

14. During the course of cross examination, P.W.3



deposed that he was using mobile phone and that Praveen Pagare had given a telephone call on his mobile. P.W.3 deposed that on the date of incident or on the next day, he did not go to the police station. PW..3 further deposed that he did not inform this incident to the sarpanch or police patil or any other responsible person. P.W..3 then said that on the date of the incident, he had inspected the ground of Janata Vidyalaya along with three or four persons when they noticed liquor bottles. No weapon was noticed. He further deposed that they did not intervene because of fear. Even the persons beating Daggu did not question P.W.3. P.W.3 says that he did not notice any weapon with those persons who were beating Daggu. He further did not hear the shouts as "vachava vachva" (please save me). P.W.3 denied the suggestion about his father contesting grampanchayat election against Nivrutti Bondare. He further deposed that he could not say whether Nivrutti is the son of maternal aunt of the appellant. He deposed as true that Nivrutti belongs to 'Maratha' community. P.W.3 deposed that he does not belong to 'Maratha' community. P.W.3 denied the suggestion that he is deposing falsely against the appellant to take revenge as his father lost grampanchayat election. P.W.3 denied the suggestion about his deposing falsely of having told Kiran the incident of accused persons beating Daggu.

15. P.W.4 - Pravin Prakash Pagare in his deposition stated that while exercising on the ground of Janata Vidyalaya at 8.00 p.m., he heard a noise of quarrel. As it was dark, he did not go to the place where he heard the noise of quarrel. He informed his brother P.W.3 about the said quarrel. In the cross examination, he deposed that he does not remember whether Sangram Pagare - father of PW..3 who is distantly related to him, contested grampanchayat election of the village. He stated that he does not remember whether Sangram lost the election against Nivrutti Bondare. He further says that he did not inform anybody about the incident. He accepted that 50 to 60 students of his age used to be there on the ground for running.

16. Let us now analyze the evidence of P.W.1, P.W.2 & P.W.4 closely. P.W.4 in his evidence deposed that as he aspired for a job in the police department, he practiced running on the ground of Janata Vidyalay. P.W.4 did not see persons who were quarreling but only heard the noise of a quarrel at 8.00 p.m. P.W.4 is not an eye-witness. He informed his brother PW.3 - Balu about the incident. He did not inform or disclose this incident to anybody in the village. P.W.3 - Balu in his evidence says that P.W.4 informed him that three persons are beating one man in the campus of the school and therefore called him immediately.

That P.W.4 informed P.W.3 about three person beating one man in the campus of the school is nowhere in the evidence of P.W.4. On the contrary, P.W..4 deposed that as it was dark, he did not see anything but only heard the noise of a quarrel.

17. Then P.W.3 says that he along with Lahanu had gone to the ground on motorcycle when he noticed four persons in the light of the motorcycle. He saw three persons beating one person. P.W.3 saw appellant - Ramesh while beating Daggu. P.W.3 having gone to the spot along with Lahanu with knowledge that one person was being beaten up, it is surprising that he did not react. Though he says that it is out of fear he did not react, we find his presence doubtful as even the accused did not react to the presence of P.W.3 witnessing the incident. It is difficult to believe that P.W.3 witnessed appellant beating the deceased in the light of motorcycle and simply left the spot. P.W.3 has also deposed that deceased did not shout for help.

18. Then P.W.3 says that he along with Lahanu , Kiran and one Hussain walked upto to Janata School. He says that he informed Kiran about accused Ramesh and his two associates beating Daggu. He says that they took search of Daggu on the ground, but did not notice him. P.W.1 - Kamal in her evidence

has deposed that at 9.00 p.m., Kiran asked her whether Daggu returned home. Thereupon Shivaji Bhise and nephew Kiran went to take search of Daggu. P.W.1 says that Shivaji Bhise and Kiran took search till 11.00 p.m. however, could not trace out her husband. P.W.1 says that Kiran and Shivaji Bhise were informed by Raju Kurhade about seeing accused taking her husband Daggu on motorcycle towards the school. It is surprising that though P.W.3 had already informed Kiran at around 9.00 p.m. about accused and two others beating Daggu, whereafter P.W.3 along with Kiran & others went in search of Daggu to the school, Kiran did not inform this to P.W.1. P.W.1 in her evidence only says that when Shivaji and Kiran returned home at 11.00 p.m., they could not trace out Daggu. There is no mention by P.W.1 about Kiran telling her about the accused and two other persons beating Daggu, though according to P.W.3, he did inform Kiran about the assault on Daggu. Moreover, P.W.1 has stated that Shivaji Bhise and Kiran went in search of Daggu at 9.00 p.m. and returned home at 11.00 p.m. having failed to trace out Daggu. As per her version Kiran & Shivaji Bhise left home together & returned together saying that they could not trace Daggu. However, P.W.3 does not say that Shivaji Bhise also accompanied them when they went walking towards Janata School in search of Daggu. P.W.3 has specifically named the persons who accompanied him

including Kiran but does not name Shivaji Bhise as one of them.

19. P.W.3 has seen the incident in the light of the motorcycle as it was dark. He does not say that Daggu was assaulted with a weapon. In any case, it is not the prosecution case that the accused persons beat the deceased with a weapon. P.W.3 in his evidence, though mentions about the appellant beating deceased Daggu, he does not say that appellant used any weapon. P.W.3 says that he had not informed about this incident to anybody on that day or even on the next day. He did not go to the police station. He also did not mention about this incident to the sarpanch or police patil. In such circumstances, having regard to the inconsistency and infirmity in the evidence of P.W.1, P.W.3 and P.W.4, it is difficult to believe the version of P.W.3. His presence at the spot is very doubtful. We therefore find the evidence of witness P.W.3 as unreliable and untrustworthy. Also having regard to the evidence on record, the possibility of a false implication on account of political rivalry cannot be ruled out.

20. Now we will consider whether other circumstances on record are sufficient to incriminate the accused. The Trial Court has observed in paragraph 32 that it is not the case of the prosecution that the accused persons beat the deceased with a

weapon and therefore question of recovery of weapon from them does not arise. The Trial Court has acquitted original accused Nos.2 & 3. The accused No.1 is convicted as Trial Court found the evidence of P.W.3 reliable and supported by other corroborative evidence, mainly blood stained clothes recovered at the instance of the appellant having blood stains of 'A' group which is also the blood group of the deceased. The Trial Court has relied upon the evidence of P.W.3 to come to the conclusion that on the day of incident, appellant - Ramesh had beaten deceased Daggu. Deceased Daggu succumbed to injuries sustained by him.

21. The evidence of P.W.8 assumes significance in this context. Following are the injuries mentioned in the P.M.Notes.

**External Injuries stated in column 17 -**

1. Incised injuries below left ear on mastoid process, sharp edged, clotted blood was present. It was 8x2x $\frac{1}{2}$  cm. It was 8 cm long, 2 cm deep and  $\frac{1}{2}$  cm breadth and it was vertical in shape.
2. CLW on left ear on which clotted blood was present, its dimension was  $\frac{1}{2}$  x  $\frac{1}{2}$  cm.

**Internal Injuries stated in column 19 -**

3. A large hammatoma on parietal region which was reddish in colour and its dimension was 6x2 cm.

#### 4. Intra-cranial hemorrhage.

P.W.8 has clearly opined that Dagu died due to shock due to intra cranial hemorrhage due to head injury. He has further stated that if a person is beaten by means of a stick by applying full force then, the injuries mentioned by him in column 17 as well as injuries mentioned in column 19 can be possible. He has further stated that if blow of stick is given on the head forcibly then, there will be injury on the head. P.W.8 further deposed that the incised wound mentioned by him in column 17 at serial no.1 is possible because of sharp edged weapon. There is no recovery of weapon and even it is not the prosecution case that accused had beaten deceased with a weapon. Having regard to the medical evidence on record, as P.W.8 - Medical Officer specifically deposed about the injuries being possible by means of a stick used with full force and a sharp edged weapon, it is unsafe to attribute injuries to the appellant, when it is the prosecution case that accused has not used a weapon while beating Dagu.

22. In the facts of the case, once we find the evidence of eye-witness P.W.3 unreliable, it is not possible for us to sustain the conviction only on the basis of recovery of blood stained clothes at the instance of appellant. The accused Nos. 2 & 3

who were also seen beating deceased Dagu along with appellant, have been acquitted. No appeal has been filed by the State against the acquittal of the original accused Nos. 2 & 3. The recovery of blood stained clothes and the evidence of last seen together will only give rise to suspicion about the complexity of the appellant in the crime. Moreover it is in evidence of P.W.2 that on the motorcycle along with appellant & deceased Dagu when he was last seen, was one more person.

23. The Apex Court in the case of **the State of Punjab Vs. Bhajan Singh and others** has held that suspicion, by itself, however strong it may be, is not sufficient to take place of proof and warrant a finding of guilt of the accused. The prosecution has failed to prove the charge of murder against the appellant beyond the reasonable doubt.

24. The appreciation of evidence by Trial Court is erroneous. Appeal therefore deserves to be allowed. Hence, we pass the following order.

#### **ORDER**

(i) The Appeal is allowed.

(ii) The impugned judgment and order dated 17<sup>th</sup> January

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1 1975 CRI.L.J.282



2015 passed by the Trial Court is quashed and set aside.

(iii) The appellant - original accused No.1 - Ramesh Namdeo Naikwade is acquitted of the offences with which he was charged with by the Trial Court. He shall be set at liberty forthwith unless he is required in any other case.

(iv) The fine amount which was deposited shall be refunded to the appellant - original accused No.1.

(v) In terms of provisions of section 437A of the Code of Criminal Procedure, 1973, the appellant shall execute bail bonds in the sum of Rs.15,000/- with one or more sureties of the like amount to the satisfaction of the Trial Court.

25. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

**(M.S.KARNIK, J.)**

**(S.S.SHINDE, J.)**

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