

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.259 OF 2002

1. Madhukar Tayappa Hazare
2. Macchindra Tayappa Hazare ... Appellants

V/s.

The State of Maharashtra ... Respondent

A/W

CRIMINAL APPEAL NO.174 OF 2002

Sanjay Atmaram Bhandare ... Appellant

V/s.

The State of Maharashtra ... Respondent

AND

CRIMINAL APPEAL NO.462 OF 2002

The State of Maharashtra ... Appellant

V/s.

Madhukar Tayappa Hazare & Ors. ... Respondents

Mr.A.P. Mundargi with A.B. Vagyani for Appellants
in Appeal Nos.259 and 174 of 2002 and for
Respondents in Appeal NO.462 of 2002

Mrs.V.R. Bhosale, APP, for State in Appeal Nos.259 and
174 of 2002 and for Appellant in Appeal NO.462 of 2002

CORAM: V.G. PALSHIKAR, Acg.C.J. &
SMT.NISHITA MHATRE, J.

DATED: SEPTEMBER 29, 2006

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. Appeal Nos.259 of 2002 and 174 of 2002 are
directed against the impugned judgment which convicts
and sentences the appellants in these two appeals. The
accused in appeal No.259 of 2002 have been convicted

under section 302 r/w section 34 of the Indian Penal Code and have been sentenced to suffer life imprisonment and payment of fine. Accused No.3 who is the appellant in Appeal No.174 of 2002 has been convicted under section 324 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for two years and payment of fine of Rs.500/-. Appeal No.462 of 2002 is filed by the State for enhancement of the sentence awarded to the accused.

2. The entire dispute in the present case appears to have arisen because of rivalry in the local politics. One Vasant Pandhre, the deceased, was returning home with Shivaji Pandhre, PW1, after purchasing meat on 18.1.1998 at about 10.30 am. An autorickshaw halted at a distance of 10 feet from them. Accused Nos.1 and 2, the appellants in Appeal No.259 of 2002 and accused No.3, the appellant in Appeal No.174 of 2002 got down from the rickshaw armed with choppers, while accused No.3 was holding a sickle. All the Accused persons assaulted the victim on the occipital region and hands and legs. Shivaji also sustained injuries in the melee on his right hand, near the wrist. as Accused No.3 inflicted a blow with a sickle. The victim fell down. One Bhanudas Ananda Patil, Anu Gadade and some other shopkeepers in the area rushed to the spot. They lifted the injured Vasant into an autorickshaw and took him to hospital where he was declared dead. In the meantime,

the assailants fled away from the scene of offence in an autorickshaw. Shivaji who was accompanying the victim lodged a complaint with the police after receiving treatment for the injuries sustained by him. He had named Accused Nos.1 and 2 and an unknown person in his complaint. Thereafter on 19.1.1998, the police recorded a supplementary statement in which Shivaji mentioned the name of the accused No.3. The accused were arrested and charged under sections 302, 325 of the Indian Penal Code r/w section 34 of the Indian Penal Code. The trial was then committed to the Sessions Court, Kalyan.

3. The prosecution has examined 11 witnesses to substantiate the charges against the accused. PW1 is the star witness for the prosecution who was accompanying the deceased when he was attacked. This witness has named all the accused and the weapons that they were carrying. He has named the role played by each of the accused in the attack on the victim as well as himself. He has stated that accused No.3 pulled at his shirt when the witness had got hold of accused No.1. He claims that he did not release his grip on the wrist of accused No.1 and therefore, accused No.3 assaulted him on his right hand near the wrist with a sickle. He has spoken about the shopkeepers in the area and certain other persons rushing to the spot after the attack on them. He has also stated that he was admitted to hospital owned by Dr.Choudhary for being treated for the

injuries sustained by him. Significantly, this witness

did not mention the name of accused No.3 in the First Information Report lodged by him. However, in the supplementary statement recorded the next day after the incident, he has roped in accused No.3. In the cross-examination he has admitted that he knew accused No.3 even before the incident. However, because of the injuries sustained he states that he forgot to tell the police the name of accused No.3. He has denied that his mental faculties were not in proper order or that he was frightened and therefore, he did not mention the name of accused No.3 in his complaint. The witness has also stated that he was assaulted with a sickle by accused No.3. He has then stated that the incident of assault continued for about 10 to 15 minutes. About 30 to 40 people had gathered around and nobody intervened. The witness has also admitted that accused Nos.1 and 2 had filed a complaint against the deceased and others who were charged under section 307 of the Indian Penal Code. The trial was pending before the Sessions Court. The accused has also admitted that Sanjay, accused No.3 was his relative as are accused Nos.1 and 2. He has admitted the enmity between accused No.1 and the deceased which had led to accused No.1 being assaulted by the deceased on two previous occasions.

4. The evidence of PW1 indicates that he has implicated accused No.3 as an afterthought. It is impossible that he would have forgotten remembered to name accused No.3 when admittedly accused No.3 was related to him. Accused Nos.1 and 2 are the uncles of Accused No.3. If the witness could remember the names of accused Nos.1 and 2, it is hardly possible or probable that he would not have remembered the name of accused No.3 when he lodged the FIR. What the revelation experienced by him was, which induced him to name accused No.3 the next day when a supplementary statement was recorded, has not been brought out in the evidence. However, this witness has categorically stated about the complicity of accused Nos.1 and 2 in the assault on the deceased. He has described the role played by each of them and to that extent his evidence is believable.

5. The evidence of this witness has been corroborated by Shantabai, PW2. She is the sister-in-law of the deceased and was present in the market when the assault on the deceased occurred. This witness had seen the deceased and PW1 talking to each other in the market place. On hearing a hue and cry while she was purchasing flowers, he turned around and found the accused assaulting the deceased. They assaulted him with choppers and a sickle. She has stated that Accused No.3 was holding a sickle in his hand while accused

Nos.1 and 2 had choppers in their hands. She has described the assault on the deceased in an almost similar manner as stated by PW1. She has then spoken about the other persons mentioned by PW1 having rushed to the spot to remove the deceased to Anand Hospital in Ambernath. She has stated that the assault on the victim continued for about 10 minutes. Her saree was stained with blood when she rushed to his aid. She has also stated that except for PW1 no other person intervened in the assault to rescue the victim. She has admitted that the victim's cousin who was also present at the spot did not rescue him.

6. The seizure panchanama and arrest panchanama which have been proved by PW11, the panch witness, speak of the recovery of the choppers used by accused Nos.1 and 2 at their instance. However, there is no mention of any recovery made from accused No.3.

7. The Doctor, PW6, has proved the postmortem report drawn after she conducted the examination. The victim had sustained 25 injuries. The Doctor has opined that these injuries could have been caused by choppers and that the injuries which the victim had sustained led to his death.

7. PW1 has stated that he was treated for the injuries sustained by him at the hospital run by PW7.

However, PW7, Dr.Ashok Choudhary, does not speak of treatment to PW1. He only speaks about the victim having been brought to his hospital where he succumbed to the injuries. Although PW7 has not spoken about the injury to PW1, PW8, Dr.Manoj has stated that he was called by PW7 to his hospital where he examined PW1. He has stated that PW1 sustained a sharp cut injury on the dorsal aspect of right forearm which was bone deep. He states that he had administered first aid to PW1 and then operated on him. He has proved the case papers prepared when PW1 was treated at the hospital run by PW7.

8. PW3 is the panch witness for the recovery of the weapons at the instance of accused Nos.1 and 2. PW4 is a panch witness who has proved the seizure panchanama drawn up when the clothes were attached. PW5 is also a panch witness who speaks about the recovery of the sickle at the instance of accused No.3. This sickle according to the witness was blood stained. The clothes worn by Accused No.2 at the time of the incident were also recovered at his instance, according to this panch witness. These clothes were blood stained. PW9, 10 and 11 are the police personnel involved in the investigation of the crime.

9. The report obtained from the Chemical Analyser indicates that the blood group of Accused Nos.1 and 3

was 'O'. The blood group of the deceased was also 'O' group and that of PW1 was 'AB' while the blood group of accused No.2 was 'B' group. The report also indicates that the analysis of the blood group on the blood stained clothes of the accused is inconclusive. However, the blood stains on the apparel on the deceased were analysed and grouped as 'O' group while those on the apparel of PW1 belonged to 'AB' group. The sickle and clothes of accused No.3 had blood stains on them according to the panch witnesses. However, the Chemical Analyser's report shows that the analysis of the group of these blood stains was inconclusive although the blood stains were of human blood. This analysis by the Chemical Analyser indicates that there is no reliable evidence to connect accused No.3 with the assault either on the deceased or PW1.

11. Having considered the entire evidence on record with the assistance of the learned Counsel appearing for the defence and the learned Assistant Public Prosecutor, we have no doubt that the judgment of the trial Court convicting and sentencing Accused Nos.1 and 2 is correct. We have independently by reappreciating the evidence on record arrived at the same conclusion that accused Nos.1 and 2 were involved in the assault on the deceased and that he had succumbed to the fatal injuries inflicted on him by accused Nos.1 and 2 with choppers.

12. This leads us to consider whether accused No.3 was involved in the incident. As noticed earlier, PW1 who was the complainant, has not mentioned the name of accused No.3 when he lodged the FIR. Surprisingly, however, the name of Accused No.3 was included when the police recorded a further statement of the complainant, PW1. According to PW1, he forgot to mention the name of accused No.3. This, as we have said earlier, is unbelievable, especially since PW1 is related to Accused No.3. It is obvious that the politics of the town & the urge for vendetta got the better of PW1. Accused Nos.1 and 2 were no doubt involved in the assault. Accused No.3 is the nephew of accused Nos.1 and 2 who are brothers. Undoubtedly, there were cross complaints filed against the victim. The victim was standing trial in a complaint filed by accused Nos.1 and 2 under section 307 of the Indian Penal Code. The inclusion of name of Accused No.3 in this case is obviously motivated.

13. None of the prosecution witnesses speak about the accused No.3 having assaulted the deceased. PW1 and PW2 have spoken about accused No.3 assaulting PW1 with a sickle. The sickle was recovered at the instance of Accused No.3. However the blood stains on it could not be analysed and therefore, there is no direct evidence that the sickle recovered was in fact used by Accused No.3 to assault PW1. The recovery of the weapon can only be a piece of corroborative evidence and cannot be

substantive evidence. The substantive evidence would come from PW1 and PW2. The testimony of both these witnesses is difficult to accept as we have stated earlier. PW1 had not mentioned Accused No.3 in the FIR despite being closely related.

14. In such circumstances, the Appeal filed by Accused Nos.1 and 2 i.e., Appeal No.259 of 2002 is dismissed. The Appeal filed by Accused No.3 i.e., Appeal No.174 of 2002 is allowed. Since the Appeal filed by Accused No.3 has been allowed, there is no question of enhancement of the sentence imposed and therefore, the Appeal filed by the State i.e., Appeal No.462 of 2002 is dismissed.