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LAXMAN

v.

THE STATE OF MAHARASHTRA
(Criminal Appeal No. 246 of 2008)

SEPTEMBER 27, 2012

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[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

Penal Code, 1860 - s.302 r/w 34 - Murder - Common intention - Eleven accused - Trial court convicted A-1,2,3,4,7 & 10 u/s.302 r/w s.149 IPC and sentenced them to life imprisonment - High Court found A-1,2 & 7 guilty u/s.302 r/w s.34 IPC and confirmed their life sentence but acquitted A-3,4 & 10 - On further appeal by A-1 & 2, held: Merely because PW 3,4 & 5 were related to the family of the victim, their testimonies cannot be eschewed - PWs 3, 4 and 5 not only witnessed the occurrence but also specified the overt acts of each accused, particularly, A-1, 2 and 7 - On facts, where the PWs made all attempts to save the life of the victim by taking him to the nearest hospital through a bullock cart and they also sustained injuries, and the victim died 12 hours after the incident and the police complaint was lodged thereafter, the delay in lodging of FIR cannot affect the prosecution case - Non-recording of dying declaration is inconsequential since the victim remained unconscious all throughout till his death - Injuries sustained by some accused being minor in nature, even in absence of proper explanation by the prosecution, the prosecution story cannot be disbelieved - PW1, who conducted the post-mortem, opined that the probable cause of death was primarily head injury associated with other multiple injuries - Among the accused, at least two, namely, A-1 and A-2 were armed with sticks and A-7 was armed with axe - It is established that head injury was at the instance of A-7 and other injuries all over the body were at the instance of A-1 and 2 by means of axe and sticks respectively -

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Appellants (A-1 and 2) and A-7 had assaulted the victim, inflicted multiple injuries and shared common intention - Conviction of appellants accordingly sustained.

The prosecution case was that when 'N' came out of the house of PW-5, the accused persons who were sitting in the house of A-1 came out and they assaulted 'N' by means of axe, sticks and stones; that on seeing this, PW-5, PW-3 and PW-4 and 3 others came to rescue 'N' but they were also assaulted by the accused persons and sustained injuries. 'N' received grievous injuries and was taken to the hospital where he died subsequently. The trial court convicted 6 out of 11 accused, namely, A-1, 2, 3, 4, 7 and 10 under Section 302 read with Section 149 of IPC and sentenced them to life imprisonment. They were also convicted for the offence punishable under Sections 147 and 148 read with Section 149 of IPC, but no separate sentence was awarded. Rest of the accused persons were acquitted of all the charges. All the 6 convicts filed appeal before the High Court. The High Court found A-1, 2 and 7 guilty under Section 302 read with Section 34 of IPC and confirmed the sentence imposed upon them by the trial Court but acquitted A-3, 4 and 10 by giving them the benefit of doubt.

In the instant appeals, A-1 and 2 challenged their conviction on the ground that the witnesses relied on the side of the prosecution, viz., PWs 3, 4 and 5 were relatives of the deceased 'N'. They also submitted that there was no proper explanation for the delay in lodging of FIR; that though the deceased was alive for 12 hours, no dying declaration was recorded and finally that the prosecution had not offered any explanation for the injuries sustained by some of the accused persons, and, hence, the entire prosecution story was to be disbelieved.

Dismissing the appeals, the Court

HELD: 1.1. The entire prosecution rests on the

A evidence of PWs 3, 4 and 5. PW-3, who made the
complaint to the police is brother of the deceased.
Likewise, PW-4, who witnessed the occurrence is the son
of the deceased and PW-5 is the mother-in-law of grand-
daughter of the deceased. But merely because the
B witnesses are related to the family of the deceased, their
testimonies cannot be eschewed. However, their
testimonies have to be scrutinized carefully and if there
is no infirmity, there is nothing wrong in accepting their
statement. Apart from this, it is also not in dispute that
C PWs 3 and 4 sustained injuries which is evident from the
deposition of the Doctor who examined them. [Para 6]
[917-G-H; 918-A-B]

1.2. It is seen from the evidence of PWs 3, 4 and 5
that they not only witnessed the occurrence but also
D specified the overt acts of each accused, particularly, A-
1, A-2 and A-7. Among those 3 persons, PWs 3 and 4
sustained injuries. In such circumstance, on perusal of
their entire testimonies, there is no reason to reject the
same, on the other hand, the trial Court has rightly
E accepted their testimonies. [Para 10] [919-G-H; 920-A]

*Abdul Rashid Abdul Rahiman Patel and Ors. v. State of
Maharashtra (2007) 9 SCC 1 - relied on.*

2. The incident occurred at 7 a.m. on 19.01.1992 and
F the deceased died at around 7:30 p.m. on the same day
and, thereafter, the complaint was lodged with the police.
Taking note of the fact that the prosecution witnesses
made all attempts to save the life of the deceased by
taking him to the nearest hospital through a bullock cart
and they also sustained injuries, the delay in lodging of
G FIR cannot affect the prosecution case. [Para 11] [920-B-
C]

3. It is true that no dying declaration was made and
recorded, however, the prosecution witnesses clearly
H stated that throughout the day, 'N' was unconscious. In

view of the categorical statement and the position of the deceased till his death, the prosecution cannot be blamed for not recording his dying declaration. [Para 12] [920-D-E]

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4. Insofar as the injuries sustained by some of the accused are concerned, it is seen from the evidence of Dr. (PW-2) that those injuries are minor in nature. In the case of minor injuries, merely because the prosecution has not furnished adequate reasons, their case cannot be rejected. Considering the fact that the injuries sustained by some of the accused were minor in nature, even in the absence of proper explanation by the prosecution, the prosecution story cannot be disbelieved. [Para 13] [920-E-G]

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5.1. Among the number of accused, at least two, namely, A-1 and A-2 were armed with sticks and A-7 was armed with axe. PW-1, the Doctor who conducted the post mortem has stated in his evidence that "in my opinion, cause of death was shock due to head injury with multiple injuries over the body." He further deposed that "the injury Nos. 4-6 and 8-10 were caused by hard and blunt object. Those were possible by a weapon like stick. Injury No. 7 was possible by means of sharp weapon like an axe. Internal injury mentioned in Column No. 19 of post mortem report corresponds to Injury No. 19 mentioned in Column No. 17." Finally, he opined that "probable cause of death was primarily head injury associated with other multiple injuries." The prosecution witnesses established that head injury was at the instance of A-7 and other injuries all over the body were at the instance of A-1 and A-2 by means of axe and sticks respectively. [Para 14] [920-G-H; 921-A-C]

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5.2. Taking note of the same and the evidence of the doctor (PW-1) who conducted the post mortem, namely, the cause of death, it is clear that the prosecution has

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A proved its case beyond reasonable doubt in respect of A-1 and A-2 (the appellants) and A-7 who assaulted the victim and inflicted multiple injuries and shared common intention. In conclusion, this Court fully agrees with the conclusion arrived at by the trial Court and affirmed by the High Court. [Paras 15, 16] [921-C-E]

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Case Law Reference:

(2007) 9 SCC 1

relied on

Para 6

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
C No. 246 of 2008.

From the Judgment & Order dated 11.04.2005 of the High Court of Maharashtra at Bombay, Bench at Aurangabad in Criminal Appeal No. 605 of 2003.

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WITH

Crl. A. No. 247/2008.

Vikas Upadhyay, B.S. Banthia, K.K Shukla, Brij Bhusan, Neelam Saini, Sushil Karanjakar, Nikhilesh Kumar, Sanjay E Kharde, Asha Gopalan Nair for the appearing parties.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. These appeals are directed against the final judgment and order dated 11.04.2005 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in Criminal Appeal No.605 of 2003 whereby the Division Bench of the High Court while disposing of the appeal confirmed the order of conviction and sentence dated 19.07.2003 passed by the Additional Sessions Judge, Biloli against the appellants herein and acquitted the other accused persons.

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2. Facts and circumstances giving rise to these appeals are as under:

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(a) Laxman (original Accused No. 2), appellant in Criminal Appeal No. 246 of 2008 is the son of Shetiba (original Accused No. 1), appellant in Criminal Appeal No. 247 of 2008. Both the accused persons and the rival group including that of one Nagoba (the deceased) are residents of the same village, viz., Pingri, Dharmabad Taluq, Biloli Dist, Nanded, Maharashtra.

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(b) According to the prosecution case, the grand-daughter of Nagoba (the deceased) was engaged with one Ananda, son of Anjanabai (PW-5). On 19.01.1992, at about 7.30 a.m., Nagoba went to the house of PW-5 to discuss about the settlement of marriage of his grand-daughter. After discussion, when Nagoba came out of the house of PW-5, all the accused persons were present in the house of Shetiba (A-1). They approached Nagoba and scolded him on the pretext of the marriage of his grand daughter with the son of Anjanabai (PW-5). The accused persons also expressed that the said marriage was contracted with an aim of gaining support. All the accused persons assaulted Nagoba by means of weapons like axe, stones, sticks etc. On seeing this, Anjanabai (PW-5), Nivratti (PW-3) and Datta (PW-4) and 3 others came to rescue the deceased but they were also assaulted by the accused persons and sustained injuries. After the intervention of police, the incident came to an end and Nagoba got grievous injuries and he was taken to the hospital at Karkhali wherefrom on the advice of the Doctor, he was shifted to the Civil Hospital at Nanded where he succumbed to his injuries, the same evening.

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(c) On the same day, i.e. on 19.01.1992, Devrao (original Accused No. 7) lodged a First Information Report (FIR) at the Police Station, Dharmabad alleging that he was assaulted by Nagoba (the deceased) and some other persons and as a result of which he and other persons sustained injuries. On the said report, Crime No. 6/92 was registered against Nivratti (PW-3), Datta (PW-4) and Anjanabai (PW-5) and 3 others under Sections 147, 148, 149, 324, 337 and 504 of IPC.

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(d) On the next day, i.e., on 20.01.1992, at about 9.00 a.m.,

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- A Nivratti (PW-3)-the complainant lodged an FIR with the Police Station, Vazirabad, Nanded, which was registered as Crime No. D/92 for the offence punishable under Sections 309, 147, 148, 149 of the Indian Penal Code, 1860 (in short the "IPC") and later on it was referred to Dharmabad Police Station which
- B registered the case as Crime No. 7/92 for the offences punishable under Sections 302, 147, 143, 149, 337 and 504 of IPC.

- (e) Both the cases were committed to the Court of Additional Sessions Judge at Biloli for trial and numbered as
- C Sessions Case No. 49 of 1993. The Additional Sessions Judge, vide judgment and order dated 19.07.2003 convicted 6 persons out of 11 accused, namely, Shetiba (appellant in Criminal Appeal No. 247 of 2008), Laxman (appellant in Criminal Appeal No. 246 of 2008), Babu, Devidas, Devrao and Rohidas
- D under Section 302 read with Section 149 of IPC and sentenced them to suffer imprisonment for life alongwith a fine of Rs. 500/- each, in default, to further undergo simple imprisonment for 7 days each. They were also convicted for the offence punishable under Sections 147 and 148 read with Section 149 of IPC, but
- E no separate sentence was awarded. They were acquitted of the offence punishable under Sections 337 and 504 read with Section 149 of IPC. Rest of the accused persons were acquitted of all the charges.

- (f) Being aggrieved by the order of conviction and sentence passed by the Additional Sessions Judge, all the 6 convicted accused persons filed appeal being Criminal Appeal No. 605 of 2003 before the High Court. The High Court, by impugned judgment dated 11.04.2005, found Shetiba (A-1), Laxman (A-2) and Devrao (A-7) guilty of the offence punishable
- G under Section 302 read with Section 34 of IPC and confirmed the sentence imposed upon them by the trial Court and acquitted the other accused persons, namely, Babu (A-3), Devidas (A-4) and Rohidas (A-10) by giving them the benefit of doubt.

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(g) Aggrieved by the said order of the High Court, the appellants herein have filed these appeals by way of special leave. A

3. Heard Mr. Vikas Upadhyay, learned counsel for the appellant in Criminal Appeal No. 246 of 2008, Mr. Brij Bhusan, learned counsel for the appellant in Criminal Appeal No. 247 of 2008 and Mr. Sushil Karanjakar, learned counsel for the respondent-State. B

4. Learned counsel for the appellants submitted that the witnesses relied on the side of the prosecution, viz., PWs 3, 4 and 5 are relatives of the deceased, hence, in the absence of other evidence, the conviction solely based on witnesses related to the deceased cannot be sustained. They also submitted that there is no proper explanation for the delay in lodging of FIR. Though the deceased was alive for 12 hours, no dying declaration was recorded. Finally, they submitted that the prosecution has not offered any explanation for the injuries sustained by the accused persons. In other words, according to them, there was a free fight and in the absence of proper explanation from the side of the prosecution, the entire story is to be disbelieved. On the other hand, learned counsel appearing for the State submitted that on proper appreciation of evidence and the materials, considering the fact that the eye-witnesses were injured and taking note of all acceptable materials, the appellants were convicted under Section 302 read with Section 34 of IPC, hence, there is no ground for interference. C D E F

5. We have carefully considered the rival contentions and perused all the relevant materials. G

6. It is true that the entire prosecution rests on the evidence of PWs 3, 4 and 5. It is equally true that Nivratti (PW-3), who made the complaint to the police is brother of the deceased. Likewise, Datta (PW-4), who witnessed the occurrence is the son of the deceased and Anjanabai (PW-5) is the mother-in- H

A law of grand daughter of the deceased. This Court in a series of decisions has held that merely because the witnesses are related to the family of the deceased, cannot be eschewed. However, their testimonies have to be scrutinized carefully and if there is no infirmity, there is nothing wrong in accepting their statement vide Abdul Rashid Abdul Rahiman Patel & Ors. vs. State of Maharashtra (2007) 9 SCC 1. Apart from this, it is also not in dispute that PWs 3 and 4 sustained injuries which is evident from the deposition of the Doctor who examined them.

7. Now, let us discuss the evidence of PWs 3, 4 and 5. As stated earlier, PW-3 is the brother of the deceased who also sustained injuries in the incident. In such circumstance, his presence cannot be doubted. In his statement, he deposed that the incident took place 10 years ago and it occurred in a village called Pingri in front of the house of Anjanabai (PW-5). He further deposed that it was about 6-7 o'clock and according to him, he was standing nearby. He stated that Nagoba-the deceased was in the house of Anjanabai (PW-5). When Nagoba came out of the house of PW-5 to proceed to his house, 12 persons who were sitting in the house of Shetiba (A-1) came out and they assaulted Nagoba by means of axe, sticks and stones. He further described that Shetiba (A-1) and Laxman (A-2) were holding sticks, Devrao (A-7) was holding an axe whereas Babu (A-3), Nagan (A-9), Rohidas (A-10), Devidas (A-4), Kanta (A-11), Shamrao (A-8) were holding stones. According to him, Shetiba (A-1) and Laxman (A-2) assaulted Nagoba over his shoulders, upper arm and thighs by means of sticks. Devrao (A-7) inflicted axe blows over his wrist and legs. He further stated that he was one amongst several persons who took Nagoba to the Hospital in a bullock cart and he was alive at that time. On the direction of the Doctor, they took him to the hospital at Nanded, however, he expired at about 7:30 p.m. According to him, at about 10:00 to 11:00 p.m., they lodged a report at the police chowki which was reduced into writing and he signed the same admitting that the contents

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therein are correct and he also proved his signature which is Exh. 95.

8. Datta (PW-4) has stated that Nagoba-the deceased was his father. He also mentioned that the occurrence took place 11 years ago in front of the house of Anjanabai (PW-5) at about 7 a.m. His father had been to the house of PW-5 to have a cup of tea. He further deposed that he heard hue and cry and he immediately rushed to the place of incident and saw that Devrao (A-7), Dhondiba, Laxman (A-2) and Babu (A-3) were assaulting Nagoba. He further stated that Devrao (A-7) assaulted the deceased by means of an axe and Shetiba (A-1), Laxman (A-2) and rest other accused assaulted him using sticks and stones. He also stated that Kitikabai (A-5), Indirabai (A-6) and Chautrabai had assaulted by means of fist and kicks.

9. The next witness who explained the cause of the death is Anjanabai (PW-5). In her evidence, she stated that the occurrence took place 10/11 years ago and it was 7 a.m. She called Nagoba-the deceased to have a cup of tea in order to have negotiation about proposed marriage of his grand daughter with her son. She further deposed that her brother-in-law Shetiba (A-1) was also present there. After negotiation, the marriage was settled. Nagoba-the deceased took tea and went out of her house. Immediately, she heard hue and cry and noticed that a fight was going on and Devrao (A-7), Shetiba (A-1), Laxman (A-2), Nagan (A-9), Devidas (A-4), Rohidas (A-10), Babu (A-3), Shamrao (A-8) and Kantilal were beating Nagoba by means of sticks, stones and axe. In cross examination, he also stated that Nagoba was unconscious till his death.

10. It is seen from the evidence of PWs 3, 4 and 5 that they not only witnessed the occurrence but also specified the overt acts of each accused, particularly, A-1, A-2 and A-7. Among those 3 persons, PWs 3 and 4 sustained injuries. In such circumstance, on perusal of their entire testimonies, we are of the view that there is no reason to reject the same,

A the other hand, the trial Court has rightly accepted their testimonies.

B 11. Insofar as the delay in lodging of FIR is concerned, it is true that the incident occurred at 7 a.m. on 19.01.1992 and the deceased died at around 7:30 p.m. on the same day and, thereafter, the complaint was lodged to the police. Taking note of the fact that the above mentioned prosecution witnesses made all attempts to save the life of the deceased by taking him to the nearest hospital through a bullock cart and they also sustained injuries, we are of the view that the said delay cannot affect the prosecution case.

D 12. It is the claim of the appellants that though the deceased was alive for nearly about 12 hours, no attempt was made to record his dying declaration. It is true that no declaration was made and recorded. The prosecution witnesses mentioned above clearly stated that throughout the day, the Nagoba (the deceased) was unconscious. In view of the categorical statement and the position of the deceased till his death, the prosecution cannot be blamed for not recording his dying declaration.

F 13. Insofar as the injuries sustained by some of the accused are concerned, it is seen from the evidence of Dr. D. Trimabak (PW-2) that those injuries are minor in nature. This Court on various occasions has held that in the case of minor injuries, merely because the prosecution has not furnished adequate reasons, their case cannot be rejected. Considering the fact that the injuries sustained by some of the accused were minor in nature, even in the absence of proper explanation by the prosecution, we hold that the prosecution story cannot be disbelieved.

H 14. The above analysis clearly shows that among the number of accused, at least two accused persons, namely, A-1 and A-2 were armed with sticks and A-7 was armed with axe. Dr. Kishore (PW-1), the Doctor who conducted the post mortem

has stated in his evidence that "in my opinion, cause of death was shock due to head injury with multiple injuries over the body." He further deposed that "the injury Nos. 4-6 and 8-10 were caused by hard and blunt object. Those were possible by a weapon like stick. Injury No. 7 was possible by means of sharp weapon like an axe. Internal injury mentioned in Column No. 19 of post mortem report corresponds to Injury No. 19 mentioned in Column No. 17." Finally, he opined that "probable cause of death was primarily head injury associated with other multiple injuries." The prosecution witnesses established that head injury was at the instance of A-7 and other injuries all over the body were at the instance of A-1 and A-2 by means of axe and sticks respectively.

15. Taking note of the same and the evidence of the doctor (PW-1) who conducted the post mortem, namely, the cause of death, we are satisfied that the prosecution has proved its case beyond reasonable doubt in respect of A-1 and A-2 (appellants herein) and A-7 who assaulted the victim and inflicted multiple injuries and shared common intention.

16. In the light of the above discussion, we fully agree with the conclusion arrived at by the trial Court and affirmed by the High Court, consequently, both the appeals are dismissed.

B.B.B.

Appeals dismissed.