

LALA @ANURAG PRAKASH AASRE

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v.

THE STATE OF MAHARASHTRA

(Criminal Appeal No. 540 of 2018)

AUGUST 24, 2021

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**[SANJAY KISHAN KAUL AND
HRISHIKESH ROY, JJ.]**

Penal Code, 1860: ss. 302, 120B, 147, 148 and 324 – Unlawful assembly with common object of causing death – Prosecution case that dispute between the parties – Deadly assault on victim by 10-12 persons carrying sharp edged weapons – Victim later succumbed to his injuries – Informant also sustained injuries – FIR by the injured informant wherein six accused named, however appellant not named but his physical description given – In the supplementary statement u/s. 161 CrPC appellant identified by name – Conviction and sentence of accused including appellant u/ss. 302, 120B, 147, 148 and 324 – Upheld by High Court – Interference with – Held: Not called for – Though FIR silent on the name of the appellant, prosecution case cannot be discarded on basis thereof, when other reliable evidence available – Colloquial variation also would not render the identification unreliable – Test identification parade-TIP for the appellant was unnecessary as he was specifically identified by the prosecution witnesses as the person who wielded sword and inflicted the injuries – Failure to conduct the TIP would not vitiate his conviction – Identity of the appellant as one of the attacking group members and his specific role in the assault established beyond doubt – Prosecution produced cogent evidence of the appellant being part of a conspiracy by all the accused in the assault which led to the death of the victim and injuries to the informant and others – Evidence – First Information Report – Test Identification Parade.

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Draft Rules of Criminal Practice, 2021: Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials’ – On facts, confusion created by multiple versions of statements and depositions in the projection of either side – Reference to the Guidelines – Necessity of.

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A **Dismissing the appeal, the Court**

HELD: 1.1 The appellant was not named in the FIR by the injured informant. The prosecution however tried to co-relate the appellant as the one who was described as 'heightened person having long nose' in the FIR. This has been done through the evidence of PW1, PW2, PW4, PW6 as recorded herein. [Para 12][509-H; 510-A]

1.2 The contention of the appellant's counsel that the supplementary statements identifying the accused by name were not produced before the courts below, do not appear to be entirely correct. The trial court records clearly reveal that PW1's statement identifying the accused by name, was available before the Sessions Court. It is also plausible that the accused with the alias Lala could be referred by the witnesses as 'Lalya'. The colloquial variation is not so far removed so as to render the identification unreliable, particularly when no other person by such name is amongst the accused group. [Para 13][510-B-C]

1.3. While it is true that the FIR is silent on the name of the appellant, this Court cannot entirely throw out the prosecutorial case on such a basis as other reliable evidence are available in the case. The FIR is certainly the starting point of the investigation, but it is well within the rights of the prosecution to produce witness statements as they progress further into the investigation and unearth the specific roles of accused person. The FIR as is known, only sets the investigative machinery, into motion. [Para 14][510-D-E]

1.4. In the instant matter, two courts have concurrently concluded that appellant's name not being specifically mentioned in the FIR, would not justify his acquittal as he was specifically identified by PW2, PW4 and PW6. In view of his positive identification by the eye witnesses, the TIP not being conducted, was held to be immaterial. The eye witnesses here have ascribed the same specific role to the appellant and narrated the events in same chronology, without material discrepancies. Furthermore, this case involves multiple persons attacking in a group with

deadly weapons and it is not reasonable to expect recollection of A
every minute details by the eyewitnesses. [Para 15][510-E-G]

1.5. Test Identification Parade was unnecessary in the instant case as the identity of the appellant was known to the witnesses and he was specifically identified by PW1 and PW2 as the person who wielded sword and inflicted the injuries. In the face of appellant's such identification by name in the testimony of the eye witnesses, it can be safely concluded that the failure to conduct the TIP for the appellant would not vitiate his conviction. [Para 17][511-F-G] B

1.6. The identity of the appellant as one of the attacking group members and his specific role in the assault is established beyond doubt. The prosecution has produced cogent evidence of the appellant being part of a conspiracy by all the accused in the assault which led to the death of the victim and injuries to PW1 and others. As such, the conviction of the appellant by the trial court, as upheld by the High Court, cannot be faulted. Thus, there are no grounds to interfere with the impugnment judgment of the High Court. [Paras 18, 19][511-G-H; 512-A-B] C

Munshi Singh Gautam v. State of M.P. (2005) 9 SCC 631 : [2004] 5 Suppl. SCR 1092 – relied on. D

In Re: To Issue Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials' Suo Moto Writ (Crl.) No.1/2017 – referred to. E

Case Law Reference

[2004] 5 Suppl. SCR 1092 relied on Para 17 F

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.540 of 2018.

From the Judgment and Order dated 09.05.2014 of the High Court of Judicature of Bombay at Nagpur Bench, Nagpur in Criminal Appeal No.236 of 2011. G

Huzefa Ahmadi, Sr. Adv., Satyajit A Desai, Ms. Anagha S. Desai, Satya Kam Sharma, Shubham Singh, Kishor Lambat for M/s Lambat and Associates, Advs. for the Appellant.

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A Sachin Patil, Rahul Chitnis, Aaditya A. Pande, Jeo Joseph, Advs. for the Respondent.

The Judgment of the Court was delivered by

HRISHIKESH ROY, J.

B 1. Heard Mr. Huzefa Ahmadi, the learned Senior Counsel on behalf of the Appellant. The Respondent, State of Maharashtra, is represented by Mr Sachin Patil, the learned Advocate on Record.

C 2. The present Appeal is directed against the analogous judgment dated 09.05.2014, whereby, *inter alia*, the Crl. Appeal No.236/2011 was dismissed and the conviction of the appellant u/S302, 120B, 147, 148 and Section 324 of the Indian Penal Code was upheld.

D 3. According to the prosecution, at around 9.45 pm on 22.01.2009, the deceased Balu Mandpe was chit chatting with his friends in front of his house at a street corner. At that time, 10/12 persons arrived there on two wheelers and hurled abuse at Balu. The group then started assaulting Balu with sharp edged weapons such as sword, knives, khanjar and farsa, and after causing grievous injuries, the attackers drove away. Balu sustained grievous injuries. Within few minutes of the occurrence, Arun Pohankar, who too was injured in the assault, reported the incident to Imamwada Police Station, where many of the assailants were named

E or described by appearance. The friends rushed injured Balu to the nearby medical hospital where, he was declared dead. In the FIR, the PW1 had not named the present appellant but had named, Kunal Tagde (A1), Vinod Thakre (A2), Rajput @ Nabut (A3), Sachin Ingle (A4), Ameet Gujar (A5), Shekhar @ Husnya (A8) in the larger group

F describing one of the attackers by his build and appearance. On the basis of the Complaint, the Crime No. 6/2009 was registered u/s 147, 148, 149, 302, 120B of the Indian Penal Code (IPC). The police investigation commenced, and the Investigating Officer (IO) (PW11) immediately visited the spot and prepared Spot Panchnama and recorded statement of the witnesses. On conclusion of investigation, Chargesheet

G was filed and thereafter, the case was committed to the Sessions Court at Nagpur. The nine accused, including the appellant Lala @ Anurag Prakash Aasre faced trial in the Sessions Trial no. 232/2009 on charges drawn up for offences relatable to Sections 147, 148, 149, 302, 324, 120B of the IPC. The defense of the Accused is one of total denial.

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4. In course of trial, the prosecution presented 11 witnesses, and produced other evidence. However, none of the accused entered the witness box or presented any defense evidence. The learned Session Judge concluded that the accused had formed an unlawful assembly with the common object of causing the death of Balu Mandpe, and had assaulted him with sharp and dangerous weapons. According to the Trial Court, the present appellant who was the original Accused No.6, assaulted the informant Arun (PW1) with a sword. Accordingly, the appellant along with others was convicted u/s 302, 120B IPC and were sentenced to suffer imprisonment for life and to pay a fine of Rs.5000 each, in default, to suffer further 1 year imprisonment. The accused, including the appellant were also convicted u/s 147, 148 of the IPC and were sentenced accordingly. The appellant/accused No.6 is additionally convicted u/s 324 IPC and was sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.2000, in default to suffer simple imprisonment for 6 months. All substantive sentences were to run concurrently.

5. Four criminal appeals were then filed by the convicted accused including the Crl Appeal No. 236/2011 filed by the present appellant. The learned counsel for the appellant highlighted that the injured informant, while naming six of the assailants by name, had not named the appellant in the FIR. According to the FIR, when Arun (PW1) had intervened to protect Balu Mandpe, "*One tall person having longish nose attacked with sword*". When the informant Arun(PW1) resisted the same by his hand, he suffered a sword injury in the wrist area of his left hand. The remaining 6 accused named in the FIR, had carried knives, khanjar and farsa.

6. The incident was apparently a fallout of dispute between two groups. The findings of both the Trial Court and the High Court on the conviction of the appellant and the other accused is primarily dependent on the ocular evidence of the 4 eyewitnesses. The learned counsel for the appellant would firstly argue that the appellant was not amongst the six named and other accused in the FIR. Moreover, as the prosecution had not arranged for a Test Identification Parade (TIP), the identity of the appellant is not clearly established as one of the not named persons involved in the assault.

7. On the other hand, the learned counsel for the State contends that the appellant was specifically named by the Informant in the supplementary statement recorded immediately by the police, u/S 161 of

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- A CrPC. It is his further submission that PW2, PW4, PW6 have also named the appellant in their S.161 statement. The State counsel highlights that a specific charge u/S 324 is framed against the present appellant as the person who gave the sword blow on the informant (PW1). Therefore, the counsel argues that the involvement of the appellant in the incident, and being one of the assailants, is beyond doubt as he was identified by all the witnesses and there was no necessity to conduct a TIP for the appellant.

8. In order to appreciate the rival contentions, we must carefully consider the evidence presented against the appellant by the prosecution.

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- C At the outset however, we are constrained to note on few errors (typographical or otherwise), with regard to the FIR, witness statements and supplementary statements, presented at different stages of this case. These documents have variations either in the translation or in the transcription, when supplied by the respective counsel to the Court.

- D 9. In the above context, we may benefit by referring to the *Draft Rules of Criminal Practice, 2021* notified on this Court's directions in *Suo Moto Writ (Crl.) No.1/2017 'In Re: To Issue Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials'*. The confusion created by multiple versions of statements and depositions in the projection of either side is compelling us to reiterate the necessity of referring to these Guidelines. This Court's order dated 20.04.2021 reflects the precise concerns which we have faced in appreciating the evidence presented,
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“The Court noticed common deficiencies which occur in course of criminal trials...These related, amongst others, to the manner in which documents (i.e. list of witnesses, list of exhibits, list of

- F material objects) referred to are presented and exhibited in the judgment, and the lack of uniform practices in regard to preparation of injury reports, deposition of witnesses, translation of statements, numbering and nomenclature of witnesses, labeling of material objects, etc. These very often lead to asymmetries and hamper appreciation of evidence, which in turn has a tendency of prolonging proceedings, especially at the appellate stages.”
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The Draft Rules also dictate the manner in which depositions must be translated. The practice of translating any relevant document must not differ so significantly across forums and submissions by parties to cast severe aspersions on evidence, which may otherwise be not

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warranted. Idiosyncrasies of colloquial terms, used for naming an accused, could well be the difference between conviction and acquittal of an accused. A

10. Taking a cue from above and to ensure that we rely on the correct facts and documents, we have read and relied upon the relevant original Trial Court Records for this judgment. It is important to record that the variation extended to certain aspects on identification of the accused and as such to avoid any confusion, we have relied exclusively upon materials as they appear, in the original records. B

11. The relevant contents of the FIR as on record with the Sessions Court (Exh. 103), read as under: - C

“.....One tall person having longish nose attacked with sword and I obstructed with my arm. As a result, I sustained injury near my left wrist. Out of remaining persons, I know 1) Vinod (Surname not known) who was holding knife, 2) Amit Gujar who was holding knife, 3) Kunal who was holding knife, 4) Bhimya’s brother Husnya who was holding khanjar (dagger), 5) Sachin who was holding sword, and 6) Nabut who was holding Farsa (battle-axe). They along with some five to six people killed Balu by delivering blows on his chest...” D

11.1 The informant Arun (PW1), in his evidence deposed that “one person with strong build tried to assault Balu Mandpe with the sword and at that time I intervened and the blow of the sword landed on my left wrist. I sustained bleeding injury...I can identify the person having strong build and who tried to assault Balu Mandpe by sword and the blow landed on my wrist when I intervened.” E

Accordingly, the Trial Court recorded that “the witness has gone to the accused and identified the strongly built person among other accused. His name is Lala Asare.” In his cross examination, the PW1 stated that the first blow was given by Lala Asare (Accused No.6) and although he stated the same to the police, he is unable to say why the police failed to record the appellant’s name in the FIR. It is further stated, that “a person having a strong built” tried to assault Balu Mandpe with a sword but the witness cannot assign any reason as to why the words “strong built” are not mentioned in his FIR. F

11.2 Such variation in describing the appellant being important, would bear specific discussion. While the FIR dated 22.01.2009 G

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- A admittedly doesn't disclose the name of Lala, the appellant before us, the statement recorded within few hours of the incident (but technically the next day post-midnight) on 23.01.2009, as noted by the Trial Court contains the following description, "*one fair complexioned person having longish nose, named 'Lalya', attacked with sword and I obstructed the blow with my arm.*" That apart the supplementary statement u/S 161 CrPC submitted by the State also identifies the assailant by name, "*one heightened, white coloured boy namely Lalya attacked me with sword*".
 - 11.3 Dharmendra Ashok Yadav (PW2) in his evidence, stated that
- C "*One person having the height and long nose, whose name was Lala was armed with sword. He tried to assault Balu Mandpe with the sword. Arun Pohankar intervened. The blow of sword was landed on the left wrist. He had sustained bleeding injury and he retreated. We also retreated as we were frightened. Then Lala assaulted Balu Mandpe with sword. He received the blow on his head and because of that he fell down*". In his cross examination the PW2 stated that he did not know the name of the person having the sword. However, when he was shown the Accused No.6, he could identify him as Lala Aasre, but the PW2 is unable to assign any reason as to why same is not recorded in his statement to the police.
- E 11.4 Minute scrutiny of the Trial Court records reveals that the 23.01.2009 statement is not just about physical descriptions. The PW2 has instead noted "*One man named Lalya delivered blow of sword on him*". PW2's statement under Section 164 CrPC recorded on 31.01.2009 gives clear sequence of the attack, and the specific role of the appellant. The witness recollects that "*Lala brandished his sword which got hit on Arun's hand. Lala brandished his sword on us also*". The supplementary statement put forward by the State contains the following identification "*One heightened, white coloured boy namely Lalya*".
- G 11.5 The third eyewitness Sudhanshu Jadhav Rao Warade (PW4), mentioned about his own presence at the place of the incident and taking the injured Balu Mandpe within 5 minutes to the hospital. According to PW4, he had informed the police that Lala @ Anurag Aasre had assaulted Balu Mandpe by sword, because of which Balu fell down. PW4's statement recorded on 22.01.2009 at the Imamwada P.S. names only three accused, without naming Lala. However, his statement u/S 164
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recorded on 24.02.2009 does contain a detailed description of the incident, and specifically recognises the appellant by his real name and his alias. He has stated therein that “*One Anurag alias Lala Aasre from amongst them, delivered blow of sword on Balu Alias Satyendra. Arun Pohankar obstructed the said blow of sword.*”

11.6 The fourth eyewitness was Raju Manohar Joshi (PW6). In his testimony he mentioned about the presence of the appellant and other accused but feigned ignorance of what happened thereafter. Accordingly as the PW4 was not supporting the prosecution case, he was cross-examined by the Assistant Public Prosecutor. In his cross-examination, PW6 mentioned that barring Lala Aasre and Sachin Ingle, all the other accused are residents of Chandan Nagar. Further, he knew both Lala Aasre and Sachin Ingle, for the last one and a half years. In his cross-examination, on behalf of the advocate of Accused 5,6,7, the PW6 stated that, although he had seen the incident, he did not disclose the names of anyone.

11.7 The investigating officer in the case was Sunil S Monde (PW11), who on the date of the incident was posted as the Senior Police Inspector in the Imamwada Police Station. PW11 reportedly recorded the supplementary statement of the complainant and in his cross examination, admitted that TIP of the accused persons was not carried out in the instant case. On the issue of Supplementary Statement, the IO in his cross-examination, testified that “*I had not recorded the supplementary statement of the Complainant Arun Pohankar*”. The IO had also stated that he had truthfully recorded the statement of PW2. In his cross examination by the advocate on behalf of Accused No. 5-7, the IO stated the following “*I have recorded the statement of PW2 Dharmendra Yadav...PW2 has not stated before me that one person by name Lala Aasare, has assaulted with sword...PW2 has not stated before me that said Lala tried to assault Balu Mandpe*”. In his further cross-examination, the IO stated that PW6 knew Lala Aasre but the PW6 in his statement before the IO on the day of the incident had not stated that Lala Aasre rushed toward Balu Mandpe and assaulted him with weapons.

12. The key issue to be decided in this appeal is whether the appellant was identified as the person wielding the sword who gave the sword blow to the Informant (PW1) and also to the deceased Balu Mandpe. The appellant as earlier noted, was not named in the FIR by

A the injured informant. The prosecution however tries to correlate the appellant as the one who was described as '*heightened person having long nose*' in the FIR. This has been done through the evidence of PW1, PW2, P4, PW6, as recorded in the preceding paragraphs.

13. In the above context, the contention of the appellant's counsel

B that the supplementary statements identifying the accused by name were not produced before the Courts below, do not appear to be entirely correct. The Trial Court records as specifically noted in the preceding paragraph, clearly reveal that Arun's (PW1) statement dated 23.01.2009 identifying the accused by name, was available before the Sessions Court. It is also C plausible that the accused with the alias Lala could be referred by the witnesses as 'Lalya'. The colloquial variation, in our opinion, is not so far removed so as to render the identification unreliable, particularly when no other person by such name is amongst the accused group. Much indeed is in a name as in this case if we may take the liberty of disagreeing with one of the most famous lines penned down by the Bard D of Avon, "*Whats in a name*".

14. While it is true that the FIR is silent on the name of the appellant, we cannot entirely throw out the prosecutorial case on such a basis as other reliable evidence are available in the case. The FIR is certainly the starting point of the investigation, but it is well within the rights of the

E prosecution to produce witness statements as they progress further into the investigation and unearth the specific roles of accused persons. The FIR as is known, only sets the investigative machinery, into motion.

15. In the present matter, two courts have concurrently concluded that appellant's name not being specifically mentioned in the FIR, would

F not justify his acquittal as he was specifically identified by PW2, PW4, & PW6. In view of his positive identification by the eye witnesses, the TIP not being conducted, was held to be immaterial. The eye witnesses here have ascribed the same specific role to the appellant and narrated the events in same chronology, without material discrepancies. We also G cannot lose sight of the fact that this case involves multiple persons attacking in a group with deadly weapons and it is not reasonable to expect recollection of every minute details by the eyewitnesses.

16. The Learned Counsel for the appellant has laid much emphasis on the absence of TIP. The State counsel's stance on this matter was that the TIP was rendered non-essential as the appellant was known to

the eye witnesses and he was identified both by name and appearance. We may at this juncture refer to the nature of, and weightage attached to the evidentiary value of a TIP. In *Munshi Singh Gautam Vs. State of M.P. (2005) 9 SCC 631* Justice Arijit Pasayat writing the judgment appropriately laid down the following : -

“16. As was observed by this Court in *Matru v. State of U.P. (1971 (2) SCC 75)* identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in court. (See *Santokh Singh v. Izhar Hussain (1973 (2) SCC 406)*. The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses.....”

17. “.....The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim, a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification should be a matter for the Courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration.”

17. Having regard to the above ratio, we are inclined to agree with the State Counsel that TIP was unnecessary in the present case as the identity of the appellant was known to the witnesses and he was specifically identified by PW1, and PW2 as the person who wielded the sword and inflicted the injuries. In the face of appellant’s such identification by name in the testimony of the eye witnesses, it can in our view, be safely concluded that the failure to conduct the TIP for the appellant will not vitiate his conviction.

18. From the above analysis, the identity of the appellant as one of the attacking group members and his specific role in the assault is established beyond doubt. The prosecution in our assessment has produced

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- A cogent evidence of the appellant being part of a conspiracy by all the accused in the assault on the night of 22.01.1999 which led to the death of Balu Mandpe and injuries to PW1 and others. As such, the conviction of the appellant by the trial court, as upheld by the High Court, cannot be faulted.
- B 19. In the result of the above finding, we find no grounds to interfere with the impugnment judgment of the High Court of Judicature at Bombay. Consequently, the appeal is dismissed. The State may consider the case of the appellant for remission at an appropriate stage, on its own merits. It is ordered accordingly.

Nidhi Jain

Appeal dismissed.