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SHRAWAN BHADAJI BHIRAD AND ORS.

v.

STATE OF MAHARASHTRA

NOVEMBER 13, 2002

B

[UMESH C. BANERJEE AND Y.K. SABHARWAL, JJ.]

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*Penal Code, 1860—Sections 147, 148, 307 read with 149—Accused assaulting a person with sword—Victim admitted to hospital and disclosing names of accused—Conviction by trial court—Accused taking plea that victim did not know names of the accused and their names mentioned by way of speculation due to enmity—High Court disagreeing with the submission, upholding the conviction—On appeal, Held: Disclosure of names stood corroborated by eye-witness account—Hence High Court justified in its conclusion.*

D

**Appellants-accused assaulted one G with sword all over his body as resulting in numerous incised wounds. G was then admitted to the hospital where he was confined for about three months. He also disclosed the names of appellants-accused. Doctors opined that injuries sustained by G were sufficient in the ordinary course of nature to cause his death. Sessions Judge convicted appellants-accused under Sections 147, 148 and 307 read with Section 149 IPC. In appeal it was contended that victim was not aware of the names of the assailant and their names were mentioned by way of speculation because of old enmity. High Court negatived the contention and upheld the order of Sessions Judge.**

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**In appeal to this Court appellants contended that their alleged involvement has no basis and is only a speculation.**

**Dismissing the appeal, the Court**

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**HELD: High Court dealt with the matter in a proper manner and rightly held that it cannot be agreed that victim was not aware of the names of the assailant and their names were mentioned by way of speculation because of old enmity. In any event disclosure of names in the dying declaration seems to be of a definite significance. Though such a declaration was taken down, but by reason of the efforts of the doctors**

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attending, the victim survived and as such the statement made need not stand the strictest scrutiny of dying declaration but at best a statement under Section 164 of Code of Criminal Procedure. This piece of evidence however stood corroborated by the eyewitness account of prosecution witnesses. There is over-whelming evidence on record in support of the prosecutor and thus, there is no reason to interfere with the concurrent findings recorded by Sessions Judge as also by High Court.

[163-B-C; G-H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 577 of 1993.

From the Judgment and Order dated 8.6.1993 of the High Court of Bombay in Crl. A. No. 73 of 1988.

Ram Jethmalani, Ms. Lata Krishnamurti, Ashok Kumar Singh and Sapam Biswajit Metei, for the Appellant.

Manish Pitale and S.V. Deshpande for the Respondent.

The Judgment of the Court was delivered by

**BANERJEE, J.** The appellants herein all belong to the family of Bhirads : Whereas Shrawan Bhadaji Bhirad, appellant no.1 is the father Kamal Shrawan, Arvind Shrawan and Surendra Shrawan are the sons being appellant nos. 2, 3 and 4 and Gajanan, Vasudeo and Ambadas are the nephews. Ambadas, however, has expired during the pendency of the matter before the High Court. The Additional Sessions Judge, Akola, on basis of the evidence available on record recorded the finding of conviction against the appellants for offences under Sections 147, 148 and 307 read with Section 149 of the Indian Penal Code for having formed an unlawful assembly on 29th June, 1985 at about 8.00 a.m. and assaulted Ganesh, P.W. 1 in a locality known as Shivaji Nagar of Akola with the aid of swords.

Before advertng to the rival contentions, a brief note to the prosecution case ought to be adverted to at this juncture, and the same runs as below :

Shrawan Bhirad accused no.1 and his nephews reside in Shivaji Nagar locality, so also Ganesh Dhage resides in the same locality in a small galli. For this locality are provided public latrines circumscribed with a compound wall with entrances on the east and on the south. On the eventful day in the morning when Ganesh Dhage was proceeding to the latrines to ease off, a

- A Fiat car bearing No. MZQ 581 owned by Shrawan Bhirad came from his back side and dashed him whereby he was tossed and fell to the ground. Getting on his feet when he however, looked backwards he has stated to have seen accused nos.1 to 7 and deceased Anil Bhirad getting out of the car armed with swords. Sensing the danger, he rushed through the eastern gate of the latrine premises and went inside just to get out of the same through the southern gate. When however near the gate inside the premises, he slipped his feet due to a ditch with mud and fell to the ground and was caught by the said persons, who happened to be chasing him. It is at that juncture, they assaulted Ganesh Dhage with swords all over his body making him suffer numerous incised wounds. Completing the assault, the assailants-accused nos.1 to 7 and deceased Anil rushed back from the eastern gate and, got into the car and went away. The prosecution case further depicts that the accused persons proceeded towards the farm house owned by accused no.1 and situated on the road to village Loni. There was already stationed a Jeep brought by accused nos.1 and 2 from Wamanrao Pundlikrao Patil, resident of Village Bhaurad (PW.5). The assailants got into the said Jeep and asked the driver Khaja Aminoddin to drive it towards Balapur side guiding him to take the Jeep via Paras, Akot, Daryapur, Amravati, Chadur Railway and further to Wardha, and reached Nagpur, at about 4.30 to 5.00 p.m. There they asked the driver to take the Jeep back to Akola and Aminoddin brought it to Akola, at about 10.00 p.m. at the residence of the owner of the Jeep. At Akola, after the assault in the meantime the brother of Ganesh Dhage i.e. Keshao Dhage and one Venubai got Ganesh Dhage into a rickshaw and took him to the Main Hospital Akola. The incident was also seen by another brother of Ganesh Dhage i.e. Kishore Dhage (P.W.9). Seeing that Ganesh Dhage was being attended to by his brother Keshao Dhage, he rushed to City Kotwali Police Station Akola and lodged complaint at 8.10 a.m. Many people including the eye-witnesses stated to have witnessed the incident.

Ganesh Dhage was admitted in the hospital and attended by one Dr. Bhagwat, who found the following injuries on his person:

- G (1) Right forearm multiple incised wounds which were bone deep. It has underlying multiple communicated fractures of radius and ulna. The soft tissue injuries were extending upto middle 3rd of arm.
- H (2) Incised wound on right knee anteriorly and laterally, 9" x 2" joint cavity deep, upper articular surface of tibia was chopped out anteriorly.

- (3) Incised wound on right thigh laterally and upper third 8" x 2" muscle deep. A
- (4) Avulsion of heel and on right side. The avulsion of calcaneal bone piece laterally 6" x 4".
- (5) Incised wound in the 2nd web space cutting metatarsal and tarsal. The toes medially were hanging by a skin tag dorsally 4" length. B
- (6) Left upper extremity. Zig-zag incised wound extending from the middle 3rd of arm posteriorly upto dorsum of the hand. It has multiple incised wounds extending all over the extremity. Loss of little finger. It has multiple fractures. C
- (7) Multiple incised wounds on the scalp about 15 in number of varied dimensions and were bone deep. Every wound has underlying outer table fractures of skull bone. C
- (8) Multiple incised wounds all over body of subcutaneous deep nature. D

Incidentally, be it noted that the opinion of Dr. Bhagwat has been that the injuries could be caused by hard and sharp object like sword.

Incidentally, be it noted that Ganesh Dhage was confined in the hospital for about three months and during which period, his right hand was amputated and left hand elbow joint and right knee suffered from very severe stiffness, which happens to be permanent in nature and the learned Sessions Judge held the same to be the proximate cause or direct result of the injury sustained by him, since no other extraneous factors were intervening. Needless to record that the observations of the learned Sessions Judge as regards the physical condition of Ganesh Dhage, have been in consonance with the opinion expressed by Dr. Bhagwat, which stands uncontradicted and is not under challenge in any way. That there have been severe injuries sustained by Ganesh at no point of time stand disputed by the defence and the case made out by the prosecution stands out to be wrong implication by reason of political enmity. Another factual element that needs to be addressed at this juncture is in regard to the death of Anil, being another accused person during the course of trial - and who happens to be the son of appellatant no.1. The learned Sessions Judge had the advantage of having Ganesh examined in Court as PW1, apart from four other witnesses said to be the eye-witnesses, namely PW.3, PW.7, PW.8 and PW.9. E  
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A Before proceeding with the matter further, the doctor's evidence ought to be noted since the identification of the accused persons by the injured seems to have some relevance, as contended by Mr. Jethmalani. The injuries suffered by the victim as noticed above lead the doctor to opine "that but for the team of surgeons and necessary medical help such as blood transfusion etc. the injuries sustained by Ganesh Dhage were sufficient in the ordinary course to cause his death. Ganesh Dhage was confined in the hospital for three months, during which period he was unable to attend to his personal care. During the cross-examination on behalf of the accused, only one question was put and it was about Ganesh Dhage telling the doctor about his having been assaulted by some persons. The doctor has stated that the injured had not given the names of the assailants and that he was capable of talking when the doctor examined him."

D It is on this score of identification that Mr. Jethmalani has been rather emphatic that involvement alleged against the appellants has thus no basis and is speculation only as such no reliance ought to be placed thereon admittedly an impressive submission but let us see as to how the High Court dealt with the issue. The High Court stated:

E "Undisputedly from the inquiry certificate at Exh. 128, it appears that the victim had received multiple injuries all over the body and some of them were on vital parts. Immediately he was carried from the spot to the District Hospital. Dr. Bhagwat attended him. Even if it is proved that he could not disclose the names of the assailants to Dr. Bhagwat, it could not lead to an inference that at that stage he was not aware of the accused persons. It is pertinent to note that the victim was severely injured. His agony could be imagined and he was in a shock and strain, in that mental set up his immediately not disclosing to Dr. Bhagwat the names of the assailants was quite natural and more probable in a condition in which the victim was placed. We therefore, do not agree with the submission of Mrs. Sirpurkar that the victim was not aware of the names of the assailant.

G .....Further more his testimony implicating the accused appellants in the incident of assault is supported by Exh. 108 which is the oral report lodged by PW 9 Kishore Dhage wherein again these persons are referred to as the assailants. Taking these aspects into consideration, we are unable in being convinced by Mrs. Sirpurkar that the names of the accused persons were mentioned by way of speculation because of old enmity. Even otherwise the victim because of rivalry would

not allow the real assailants whom he had seen to go scot free only with a design to settle a score with these accused persons. A

As a matter of fact identification of the accused persons and prosecutor's utter failure on that score has been the principle attack against the judgment. We however do not feel it inclined to accept such a submission. The High Court has dealt with the matter in a manner proper and the last few lines of the quote above cannot but have our concurrence as well. In any event disclosure of names in the dying declaration on 29th June, 1985 seems to be of a definite significance. But before anything further be it noted that though such a declaration was taken down, but by reason of the efforts of the doctors attending, the victim survived and as such the statement made need not stand the strictest scrutiny of dying declaration but at best a statement under Section 164 of the Code and the statement runs as below: B C

“This day at about 8 O'clock in the morning I was going to the latrine. One Fiat car No.581 dashed against me from my back side as a result of which I fell down on the ground. I got up from the ground and ran away. Six-seven persons armed with swords got down from the vehicle from the back side and chased me. I fell down while running. They started to assault me by means of swords. The persons viz. Shrawan Bhirad, Kamal Bhirad, Anil Bhirad, Arvind Bhirad, Surendra Bhirad, Wasudeo Bhirad and Vidyadhar Bhirad were amongst the assaulters. They were assaulting me by means of the swords. I sustained more injuries by means of the swords held by Wasudeo Bhirad, Ambadas Bhirad and Surendra Bhirad. They assaulted me in this way by means of swords and went away. When my friends came to know this incident they came to the spot of occurrence and brought me to the hospital. D E F

The aforesaid persons of the Bhirad family were working against me in the election of Nagar Parishad.”

This piece of evidence however stands corroborated by the eyewitness account of PWs 3,7,8 and 9. G

On this state of the facts we do not think it fit to lend concurrence to the submissions in support of the appeal. There is on record over-whelming evidence in support of the prosecutor and we do not see any reason to interfere with the concurrent findings as recorded by the learned Sessions Judge as also by the High Court. H

**A** Incidentally some criticism has been levelled against the judgment impugned, as being a rather slipshod way of dealing with such a serious matter concerning the liability of so many persons, while it is true that the judgment could have been slightly more elaborate but that does not itself vitiate the order of concurrence. There is no prejudice to the accused persons warranting an order of acquittal.

**B**

In that view of the matter, this appeal fails and is dismissed. The bail bonds stand cancelled. The appellants ought to be put back to prisons to serve out the remaining period of the sentence.

N.J.

Appeal dismissed.