

EKNATH GANPAT AHER AND ORS.

v.

STATE OF MAHARASHTRA AND ORS.

(Criminal Appeal No. 173 of 2007)

MAY 7, 2010

[V.S. SIRPURKAR AND DR. MUKUNDAKAM SHARMA,
JJ.]

Penal Code, 1860: ss.302/149 – Previous enmity over land – Mob of 75-100 persons entered into clash with complainant party – Two persons belonging to complainant party died and about 9 persons received injuries – About 14 accused persons received injuries including some who suffered grievous injuries – Conviction of 35 accused persons by trial Court – High Court acquitted 21 and upheld conviction of 14 accused/appellants – On appeal, held: There was no evidence to specifically ascribe any definite role to any of the accused/appellants – Also there was no explanation regarding the injuries on accused persons – Appellants entitled to benefit of doubt and hence acquitted – Criminal trial – Benefit of doubt.

Prosecution case was that there was a dispute between the complainant party and the accused persons regarding certain land. On the fateful day, a mob of about 75-100 people gathered at the place of occurrence. In the clash, PWs 2, 5, 8 and 9 received injuries whereas the two others received grievous injuries resulting in their death in the hospital. A number of accused persons also received injuries including some having received grievous injuries.

Trial Court convicted 35 accused persons under ss.302/149 IPC while acquitting one. The High Court, on appeal, acquitted 21 of the 35 convicted accused

A persons. Fourteen convicted accused persons filed the appeals.

Allowing the appeals, the Court

HELD: 1.1. Nine persons including four witnesses
B belonging to the complainant party received injuries
whereas as many as 14 accused persons received
injuries including some who even suffered grievous
injuries. Admittedly, there was a mob of about 75-100
C persons who descended from the hill side to the place
of occurrence by pelting stones and a melee followed.
Not even a single witness including the injured witnesses
could specifically state as to who had caused what injury
either to the deceased or to the injured witnesses or to
the accused. A very general statement was made that the
D accused persons were armed with deadly weapons and
caused injuries to the complainant party. In a situation
where a mob of 75-100 persons entered into a clash with
the complainant party it could not have been possible for
any of the witnesses, who would naturally be concerned
with their own safety and to save themselves from the
E assault, to see as to who had inflicted what type of injury
either on the deceased or on the injured witnesses. In
view of such omnibus and vague statements given by
the witnesses, the Court below acquitted as many as 21
F accused persons on the ground that there was no
evidence on record to implicate them in the offences
alleged. There being no other evidence to specifically
ascribe any definite role to any of the 14 appellants, it
was difficult to hold that any of the appellant had inflicted
any particular injury on any of the deceased or the injured
G witnesses. Unless there is cogent and specific evidence
attributing a specific role in the incident to the accused
persons, who were themselves injured and there being
no explanation forthcoming as to such injuries, it would
be unsafe to pass an order recording conviction and
H sentence against the appellants, moreso when the

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prosecution produced, in support of its case, witnesses A
who were inimical to the accused persons. It is crystal
clear from the records that land of Gat No. 170 was the
bone of contention between the complainant party and
the accused. Civil cases with regard to the question of
title and ownership to the said land were instituted by B
both the accused and the complainant party which are
pending final adjudication. [Paras 19, 20] [586-E-G; 587-
B-E]

1.2. It is an accepted proposition that in the case of C
group rivalries and enmities, there is a general tendency
to rope in as many persons as possible as having
participated in the assault. In such situations, the Courts
are called upon to be very cautious and sift the evidence
with care. Where after a close scrutiny of the evidence, a D
reasonable doubt arises in the mind of the Court with
regard to the participation of any of those who were
roped in, the Court would be obliged to give the benefit
of doubt to them. It was an unfortunate incident in which
two persons lost their precious lives. Not only the
members of the complainant party received injuries, the E
members of the accused party were also injured during
the course of the incident and some of the accused
persons even sustained grievous injuries. A bare look at
the injury report contained in the impugned judgment, F
would prove and establish the said fact. On appreciation
of the entire evidence on record, the findings recorded
by the High Court as also by the trial Court cannot be
upheld. The said findings were against the basic canons
of the Evidence Act and the penal law. The appellants are
granted benefit of doubt and are acquitted. [Paras 21-23- G
24] [587-F, G, H; 588-A, B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 173 of 2007.

From the Judgment & Order dated 14.03.2006 of the High H

A Court of Bombay, Aurangabad Bench in Criminal Appeal No. 617 of 2004.

WITH

B Criminal Appeal No. 174 of 2007.

U.R. Lalit, Shrikant Shivade (for Brij Bhusan) for the Appellants.

C Sushil Karanjakar, Sanjay Kharde, Asha G. Nair, Uday B. Dube, Kuldip Singh for the Respondents.

The Judgment of the Court was delivered by

D **DR. MUKUNDAKAM SHARMA, J. 1.** By this judgment and order, we propose to dispose of the two appeals filed by the fourteen accused persons who have been convicted and sentenced by the 2nd Ad-hoc Additional Sessions Judge, Ahmednagar by judgment and order dated 10.09.2004 which has been upheld by the High Court of Bombay, Aurangabad Bench.

E 2. Originally, there were altogether 38 accused persons, out of which two were juveniles. Consequently, the trial Court of the 2nd Ad-hoc Additional Sessions Judge, Ahmednagar tried 36 accused persons and by judgment and order dated 10.09.2004 convicted 35 accused persons of the offences
F under various sections of the Indian Penal Code [for short 'IPC'] including the offence punishable under Section 302 read with Section 149 IPC and the remaining one accused person was acquitted.

G 3. Being aggrieved by the aforesaid judgment and order of conviction and sentence passed by the trial Court, all the 35 accused persons filed an appeal being Criminal Appeal No. 617 of 2004 before the High Court of Bombay, Aurangabad Bench. By its judgment and order dated 14.03.2006, the High
H Court acquitted 21 out of the 35 convicted accused persons

while upholding the order of conviction and sentence of the remaining 14 accused persons. A

4. Being aggrieved by the aforesaid order of conviction and sentence passed by the High Court, two appeals have been filed by the 14 convicted persons which we have heard together. B

5. The counsel appearing for the parties have taken us through the judgments of the Courts below against which the present appeals are filed as also through the evidence on record. C

6. Before we proceed to discuss the issues that arise for our consideration, it would be relevant and appropriate to recapitulate the facts out of which the present appeals arise.

7. Accused numbers 1 to 36 were charge-sheeted and sent for trial for committing offences including of being members of an unlawful assembly, for causing grievous hurt in prosecution of the common object of the unlawful assembly and also for committing murder. The said 36 accused persons were charge-sheeted under Sections 143, 147, 148, 149, 325/149, 326/149, 324/149, 504/149, 506/149, 337/149, 338/149, 341/149, 307/149 and 302/149 of the IPC. In addition to the aforesaid offences, the accused persons were sent for trial for possession of weapons in contravention of the provisions of the Arms Act and thereby committing offence under Section 4 read with Section 25 of the Arms Act. D
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8. A criminal case [FIR Crime No. 138/2003 – Exh.138] was registered on 12.09.2003 on the basis of the complaint of one Bajirao Bhaguji Zavare [PW2]. The said complaint was recorded by Mohan Bankar [PW-12], P.S.I. attached to the Police Station, Parner who has stated that prior to the recording of the aforesaid complaint of PW-2, information was received on telephone by the Parner Police Station from the Kotwali Police Station, Ahmednagar regarding the admission of injured H

A and the deceased in the hospital of Dr. Deshpande. On receipt
of the said information, PW-12 immediately rushed to the said
hospital. On reaching the hospital, he had drawn the inquest
panchnama of the two dead bodies of deceased Balasaheb
Rambhau Salunke and Vilas Rambhau Salunke, who had died
B in the meantime. In the said hospital, he also recorded the
complaint of PW-2 and thereafter he returned to the Police
Station whereafter the aforesaid FIR was registered.

9. It is also alleged that both the accused party as well as
C the complainant party were in dispute, although, they are
residents of different villages. It has also come on record that
some of the accused persons and the complainant are
relatives. There is a temple of Khandoba situated at village
Kamatwadi and the same was initially managed by Khandoba
Deo Panch Committee constituted of the respectable villagers.
D Subsequently, Shri Khanderao Deosthan Trust was given the
responsibility of managing the said temple. It is also alleged
that Shri Khanderao Deosthan Trust, of which some of the
accused persons are members, owns and holds several
properties at village Kamatwadi including the lands Gat Nos.
E 166, 168 and 170, although, there is a serious dispute with
regard to the title and possession of land, particularly, Gat No.
170. The deceased and the complainant party claims title in
respect of 2/3rd. of the land Gat No. 170 contending, *inter alia*,
that the said land was previously owned by Bhosales from
F whom some members of the complainant party had purchased
the said land. It is needless to state at this stage that there are
civil suits instituted by both the parties and pending in respect
of title and possession of the aforesaid land. An order of status
quo was also passed by the trial Court in respect of the said
G land under its order dated 06.08.2003.

10. It is alleged that on 12.09.2003 at about 10.00 a.m.
complainant Bajirao Bhaguji Zavare along with Balasaheb
Rambhau, Vilas Rambhau, Ratanbai Sulbha, Kantabai,
Pandurang Maruti Hingade and others went to the land Gat No.
H

170 for removing tomato plants and grass for cleaning the lands. At about 1.00 p.m., a mob of about 75-100 persons of Kamatwadi came on the top of north side hill situated adjacent to land Gant No. 170. It is alleged that the members of the said mob while scaling down the hill also pelted stones, upon which, the members of the complainant party started running to save their lives. They were chased by the accused persons and thereafter it is alleged that the accused persons beat up the members of the complainant party by sticks, iron rods and swords and thereby seriously injuring Balasaheb Rambhau Salunke, Vilas Rambhau Salunke and some other persons belonging to the complainant party. All the aforesaid injured persons were rushed to the hospital where Balasaheb Rambhau Salunke and Vilas Rambhau Salunke were pronounced dead whereas the rest of the injured persons were admitted as indoor patients. It is also to be noted that a number of accused persons, namely, A-7, A-10, A-12, A-13, A-20, A-23, A-25, A-27, A-28, A-31, A-33, A-34, A-35 & A-36 received different kinds of injuries including grievous injuries on the vital parts. It is also alleged that Bajirao Bhaguji Zavare [PW2], Pandurang Maruti Hingade [PW-5], Sulbha Vilas Salunke [PW-8] and Rathan w/o Balasaheb Salunke [PW-9] were eye-witnesses to the said occurrence. Apart from the aforesaid injured eye-witnesses, several other members of the complainant party namely, Janabai Hingade, Babaji Hingade, Uttam Hingade, Zumberbai Pandurang Hingade were also injured.

11. On completion of the investigation, police submitted chargesheet against 36 accused persons inasmuch as two of the 38 accused persons were found to be juvenile. On completion of the trial, the trial Court convicted 35 accused persons while acquitting the remaining one accused person. The High Court, on appeal, acquitted 21 of the 35 convicted accused persons. Hence, the remaining 14 convicted accused persons have filed the present two appeals.

A 12. Mr. U.R. Lalit, learned senior counsel appearing for the appellants submitted before us that the evidence against the 35 accused persons being similar in nature, the Courts below committed an error of law and facts in acquitting the 21 out of the said 35 accused persons while maintaining the conviction B and sentence of the remaining 14 accused persons. He submitted that this was done despite the fact that there is no independent and specific evidence to prove and establish that the said convicted persons have played any independent and separate role in committing the aforesaid offences. It was also C submitted by learned senior counsel that none of the eye-witnesses had named any of the accused ascribing to him any specific role in causing injuries to the deceased Balasaheb Rambhau Salunke and Vilas Rambhau Salunke or to any other injured witness.

D 13. Mr. Lalit, after drawing our attention to the evidence of the witnesses, submitted that there is an omnibus statement involving all the accused persons in the death of Balasaheb Rambhau Salunke and Vilas Rambhau Salunke as also for injury to some of the members of the complainant party and that E there is no independent evidence to show the specific role played by each one of them in the incident. It was also submitted by him that there is total absence of any explanation in respect of the injuries sustained by the accused persons, some of whom had even sustained grievous injuries. Relying on the F same, it was submitted by him that when a large mob of about 75-100 people descended to the place of occurrence and there were a number of people from the complainant side also present, it was not possible to see as to what really happened during the melee and therefore when 22 of the 35 accused G persons were acquitted in view of lack of specific evidence, the remaining 14 persons should also have been acquitted.

H 14. In the light of the aforesaid submissions of the learned senior counsel appearing for the appellants, we have examined the records and also heard the learned counsel appearing for the State.

15. Admittedly, there is a dispute subsisting between the complainant party and the accused persons regarding the land of Gat No. 170. According to the accused persons, the said land belongs to the Trust whereas the complainant party alleges that a part of the said land had been purchased by some of them from Bhosale group and they therefore tried to enter into possession of the same by removing tomatoes planted by PW- 4 who was cultivating the said land. The incident happened at about 1.00 p.m. on the fateful date when a mob of about 75-100 people descended to the place of occurrence. In the melee that followed PWs 2, 5, 8 & 9 received injuries whereas Balasaheb Rambhau Salunke and Vilas Rambhau Salunke received grievous injuries and consequently they were declared dead at the hospital. A number of accused persons also received injuries including some having received grievous injuries but no explanation is forthcoming regarding the said injuries from the prosecution side.

16. The High Court based its order of conviction and sentence regarding the appellants on the ground that the accused had admitted that it was Balasaheb Rambhau Salunke and Vilas Rambhau Salunke who had received grievous injuries on account of assault by the mob and that the right of private defence of protecting the possession of the land Gat No. 170 was not available to the accused persons inasmuch as the accused had not been able to establish by unimpeccable evidence that Devasthan Trust or the accused who were injured were in possession of land Gat No. 170.

17. It was also held by the Courts below that the accused persons who had sustained injuries were members of the unlawful assembly which was formed with the common object of committing murder of both the deceased persons and it was in prosecution of the common object that the accused persons also caused injuries to the said eye-witnesses. The aforesaid findings were recorded by both the Courts below despite recording a finding that not even a single eye-witness was able

- A to categorically name the particular accused who had inflicted injuries to the deceased or to any of the injured witnesses and that only vague and omnibus statements were made.

18. The High Court disbelieved the statement of Rathan w/o Balasaheb Salunke [PW-9] with regard to identification of the assailants on various grounds, one of which was that her statement came to be recorded only on 18.11.2003, i.e., the date on which the charge-sheet against the accused persons came to be filed. Despite the fact that a number of accused persons had received injuries and also despite the fact that no reason was forthcoming from the prosecution in regard to the injuries suffered by the accused persons, the Courts below discarded the said injuries holding that the said injuries were extremely minor and that injured accused persons could not prove that they had been assaulted by the complainant party. The Courts below were of the opinion that stand taken by the accused persons was not enough to discard the credible evidence of the injured eye-witnesses.

19. In our considered opinion the aforesaid approach of the Courts below was incorrect. Nine persons including four witnesses belonging to the complainant party received injuries whereas as many as 14 accused persons received injuries including some who even suffered grievous injuries. Admittedly, there was a mob of about 75-100 persons who descended from the hill side to the place of occurrence by pelting stones and a melee followed. Not even a single witness including the injured witnesses could specifically state as to who had caused what injury either to the deceased or to the injured witnesses or to the accused. A very general statement has been made that the accused persons were armed with deadly weapons and caused injuries to the complainant party. In a situation where a mob of 75-100 persons entered into a clash with the complainant party it could not have been possible for any of the witnesses, who would naturally be concerned with their own safety and to save themselves from the assault, to see as to

who had inflicted what type of injury either on the deceased or on the injured witnesses. A

20. In view of such omnibus and vague statements given by the witnesses, the Court below acquitted as many as 21 accused persons on the ground that there is no evidence on record to implicate them in the offences alleged. There being no other evidence to specifically ascribe any definite role to any of the 14 appellants herein, it is difficult to hold that any of the present appellant had inflicted any particular injury on any of the deceased or the injured witnesses. Unless there is cogent and specific evidence attributing a specific role in the incident to the accused persons, who have themselves been injured and there being no explanation forthcoming as to such injuries, it would be unsafe to pass an order recording conviction and sentence against the appellants, moreso when the prosecution has produced, in support of its case, witnesses who are inimical to the accused persons. It is crystal from the records that land of Gat No. 170 is the bone of contention between the complainant party and the accused. As noted above, civil cases with regard to the question of title and ownership to the said land have been instituted by both the accused and the complainant party which are pending final adjudication. B
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21. It is an accepted proposition that in the case of group rivalries and enmities, there is a general tendency to rope in as many persons as possible as having participated in the assault. In such situations, the Courts are called upon to be very cautious and sift the evidence with care. Where after a close scrutiny of the evidence, a reasonable doubt arises in the mind of the Court with regard to the participation of any of those who have been roped in, the Court would be obliged to give the benefit of doubt to them. F
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22. There is no doubt that the incident which happened on 12.09.2003 was an unfortunate incident in which two persons have lost their precious lives. Not only the members of the complainant party received injuries, the members of the H

A accused party were also injured during the course of the incident and some of the accused persons even sustained grievous injuries. A bare look at the injury report, which is contained in the impugned judgment, would prove and establish the said fact.

B 23. On appreciation of the entire evidence on record, we cannot uphold the findings recorded by the High Court as also by the learned trial Court. In our considered opinion, the aforesaid findings are against the basic canons of the Evidence Act and the penal law.

C 24. Consequently, we allow both the appeals and set aside the order of conviction and sentence passed against the appellants herein and acquit them giving them the benefit of doubt. The appellants accused shall be released forthwith unless they are required in some other case and those who are on bail, their bail bonds shall stand discharged.

D.G.

Appeals allowed.