



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NOS. 313-314 OF 2012

Saheb, s/o Maroti Bhumre etc.

... Appellants

Versus

The State of Maharashtra

... Respondent

J U D G M E N T

SANJAY KUMAR, J

1. Twenty-two persons stood accused of the murder of Madhavrao Krishnaji Gabare and were tried by the learned Additional Sessions Judge, Basmathnagar, Maharashtra, in Sessions Trial No. 20 of 2006. By judgment dated 24.04.2008, the learned Additional Sessions Judge held nine of them guilty of offences punishable under Sections 148, 302 and 324, both read with Section 149, of the Indian Penal Code, 1860 (IPC). They were sentenced to imprisonment coupled with fine. Aggrieved thereby, all nine of them filed appeals under Section 374 Cr.P.C. before the High Court of Judicature of Bombay, Aurangabad Bench. Accused No. 2 (Khemaji s/o Maroti Gabare),

was the appellant in Criminal Appeal No. 695 of 2008, Accused No. 3 (Saheb s/o Maroti Bhumre), was the appellant in Criminal Appeal No. 89 of 2009; and Accused No. 5 (Sitaram Pandurang Gabare), was the appellant in Criminal Appeal No. 618 of 2009. By judgment dated 06.12.2010, a Division Bench of the High Court sustained the conviction of Accused Nos. 2, 3 and 5 and acquitted the remaining six accused on the ground that the charges levelled against them were not specific in relation to the injuries afflicted on the deceased and other injured persons. Accused Nos. 2, 3 and 5 were also acquitted of the offence punishable under Section 324 IPC read with Section 149 IPC, but their conviction under Section 302 IPC read with Section 149 IPC and under Section 148 IPC were confirmed. Aggrieved thereby, Accused Nos. 3 and 5 are in appeal before this Court. Criminal Appeal No. 313 of 2012 was filed by Saheb, Accused No. 3, while Criminal Appeal No. 314 of 2012 was filed by Sitaram Pandurang Gabare, Accused No. 5. Significantly, Khemaji s/o Maroti Gabare, Accused No. 2, did not choose to file an appeal against the confirmation of his conviction.

2. Both the appellants were incarcerated on 08.04.2006 and remained in custody. It was only on 30.06.2016 that this Court directed their release on bail. In effect, the appellants have suffered imprisonment for over ten years.

3. The case of the prosecution was as follows: On 08.04.2006, at about 7.30-8.00 pm, the deceased Madhavrao Krishnaji Gabare and his family members, viz., his wife, Janakibai Gabare, their son, Ganesh, and their

daughter-in-law, Annapurnabai, and others were attacked by the accused with axes and sticks at the residence of the deceased in Village Singi. On Janakibai Gabare's complaint, FIR No. 36 of 2006 was registered. The deceased was stated to have expired on the spot. His post-mortem examination revealed that he had suffered as many as nine injuries. The cause of his death was ascertained as - head injury and intracranial hemorrhage with multiple fractures. Nine other persons were said to have been injured during the incident. The cause for the altercation was stated to be political rivalry. The deceased, as per his widow, was the Sarpanch of the Village about 15 years prior to the incident and since then, Khemaji and Sambhaji, two of the accused, were on inimical terms with him. Thereafter, Laxmibai, the wife of the nephew of the deceased, became the Sarpanch of the Village, leading to further animosity. Significantly, both Khemaji and Sambhaji were the nephews of the deceased being the sons of his brothers, Maroti and Deorao.

4. Admittedly, at the time of the incident, there was a power cut due to load shedding, but according to the widow, Janakibai, who was examined as PW-1, there was sufficient moonlight to identify all the accused and the weapons that they used during the attack. Fifteen witnesses, in all, were examined by the prosecution to bring home the guilt of the accused. Documents and material objects were marked in evidence through them. PW-1 (Janakibai Gabare), PW-4 (Kamalbai Gabare), PW-5 (Govind Gabare)

and PW-8 (Ganesh Gabare) were examined as eye-witnesses to the attack on the deceased. All four of them are closely related. As already noted, Janakibai Gabare is the wife of the deceased while Ganesh Gabare is their son. Govind Gabare is the nephew of the deceased and Kamalbai Gabare is his wife. The Trial Court, having placed reliance on the evidence of these witnesses, came to the conclusion that except Accused Nos. 1 to 5, 11 to 13 and 15, none of the other accused participated in the assault on the deceased. Holding so, the Trial Court convicted and sentenced Accused Nos. 1 to 5, 11 to 13 and 15 accordingly.

5. However, in appeal, the High Court found that there was no indication as to when Govind Gabare (PW-5) and his wife, Kamalbai Gabare (PW-4), actually came to the spot so as to witness the incident. Janakibai (PW-1) had clearly stated that, at the time of the incident, she, along with her husband, her son, Ganesh (PW-8), and daughter-in-law, Annapurnabai, were present in the house. In view of this, the High Court disbelieved that PW-4 and PW-5 were eye-witnesses. Similarly, the evidence of Ganesh Gabare (PW-8) was discarded by the High Court on the ground that he did not state anything about the assault on the deceased. The High Court, therefore, placed reliance only upon the evidence of Janakibai (PW-1). Even in relation to her testimony, the High Court recorded that she had, no doubt, embroidered her story but concluded that it did not mean that her evidence was not reliable totally. As she had stated that the assault on the deceased

was made by Khemaji (Accused No. 2), Saheb (Accused No. 3) and Sitaram (Accused No. 5), the High Court acted upon the same. As she did not attribute any overt act or active participation to Sambhaji who had accompanied Khemaji (Accused No. 2), the High Court gave him the benefit of doubt. Similarly, the other accused, who were found guilty by the Trial Court, were let off by the High Court on the ground of omissions. Insofar as conviction under Section 324 IPC read with Section 149 IPC was concerned, the High Court opined that as no specific charges were levelled against each of the accused in relation to inflicting of the injuries sustained by injured persons, as evidenced by their medical certificates, their conviction under Section 324 IPC read with Section 149 IPC could not be sustained.

6. We are conscious of the fact that Madhavrao Krishnaji Gabare was brutally murdered in his own house on 08.04.2006, but the guilt of those responsible for his murder has to be proved beyond reasonable doubt. All that the defence needs to establish is the existence of reasonable doubt for the accused to be given the benefit thereof. In the case on hand, the guilt of the appellants hinges solely upon the testimony of the widow, Janakibai (PW-1), as the other so-called eye-witnesses have been discarded by the High Court. Notably, Annapurnabai, the daughter-in-law, a key eye-witness by all accounts, was not even examined by the prosecution.

7. Certain facts, admitted as they are, may first be noted. The incident occurred between 7:30-8:00 PM on 08.04.2006 and there was a power cut at

that point of time. The attack upon the deceased appears to have been in the courtyard of his house, as his dead body was also found there. However, except for the statement of Janakibai (PW-1), that there was moonlight at that time, no other evidence has been adduced by the prosecution to substantiate that fact. Further, Janakibai (PW-1) also does not state that it was a full-moon night or, at least, nearing the full-moon night, whereby the moonlight would have been bright enough for her to see, with clarity and certainty, the events that unfolded during the attack, i.e., the weapons used in the course thereof and the persons who actually wielded those weapons.

8. In her deposition before the Trial Court, Janakibai (PW-1) stated that, at the time of the incident, along with the deceased, their son, Ganesh, daughter-in-law, Annapurnabai, and she were present in the house. Accused No. 2, Khemaji, and Accused No. 4, Sambhaji, allegedly came to the house and the rest of the accused followed them. She further stated that Accused No. 13, Chandu Gabare, caught hold of the hands of the deceased and Accused No. 2, Khemaji; Accused No. 3, Saheb; and Accused No. 5, Sitaram; dealt axe blows to him. The rest of the accused were stated to be holding sticks in their hands. She said that the deceased succumbed to the injuries on the spot. She further stated that one of the accused hit her on the head with a stick and that, her son, Ganesh, and her daughter-in-law, Annapurnabai, were also beaten. She then added that the accused also beat Govind Gabare and others. According to her, one of the accused picked up

Govind's infant daughter from the cradle and threw her down. Thereafter, she said that all the accused persons ran away from the spot. She identified the complaint given by her in the hospital which was marked as Exh-111. In her cross-examination, PW-1 stated that, except for Khemaji, Accused No. 2, and Sambhaji, Accused No. 4, they had cordial relations with the other accused till the incident. She stated that the moon was there on that night at about 7:00 PM and denied the suggestion that the moon rose at 10:00 PM on that day. She further denied that there was darkness throughout the village due to load shedding. She further stated that Ganesh and Pravin, her sons, had not taken dinner at home on that night. She added that they were intending to take their dinner after her sons ate. She claimed that the deceased returned to the house at 7:30 PM and that she did not enquire with him about his dinner. She again stated that one of the accused picked up Govind's 2-3 months old daughter and threw her in front of the house. She, however, did not know whether the baby sustained any injury, which is rather unbelievable and manifests that this allegation was an afterthought, added to shock and prejudice the Court. She conveniently claimed that she had stated this fact but the same was not recorded in her complaint given at the hospital. She further stated that she could not say as to which accused had held which axe or stick in his hand. According to her, the incident went on for two hours!! She then stated that the accused first beat the deceased and, thereafter, hit her on the head. She said that she lost consciousness after she was given the blow

on the head and remained unconscious till she was taken to the hospital at Basmathnagar.

9. Significantly, in her complaint recorded on 09.04.2006 at the hospital, Janakibai (PW-1) had a different story to tell. She stated that the deceased and Ganesh, her son, had their dinner and she along with her daughter-in-law were just sitting down to have their dinner at the time the attack occurred. She further stated that the accused, without speaking a single word, started beating the deceased and her, her son, Ganesh, her daughter-in-law, Annapurnabai, her nephew, Govind, and others. She identified Khemaji, Accused No. 2; Sitaram, Accused No. 5; Saheb, Accused No. 3 and Chandu Gabare, Accused No. 13, as the persons who had axes and who attacked them with the same. She further stated that she was hit on the head and was also injured on her back but owing to the chaos, she did not know who had hit her.

10. Juxtaposition of her deposition before the Trial Court and her initial complaint clearly demonstrate that Janakibai (PW-1) embellished her narration of how the attack occurred, resulting in a lot of inconsistencies. On the one hand, she stated that Chandu, Accused No. 13, was holding an axe and was one of the persons who attacked with an axe, but on the other, she stated that Chandu caught hold of the hands of the deceased as soon as the accused came to their house, which would mean that he was unarmed. Further, she clearly tried to include more witnesses and added extra details of

the assault in her deposition. The contradictions in her story would raise reasonable doubt, as her statement in her deposition that she was attacked after the attack on the deceased was made to buttress her narration as to who attacked the deceased with axes, but in the first instance, she had stated that the accused attacked all of them as soon as they entered the house.

11. Picturing a scenario where twenty-two persons entered into the premises armed with axes and sticks on a dark night, even if dimly lit by moonlight, it is difficult to believe that, in the melee that ensued, any person who was under attack would be in a position to identify, clearly and with certainty, as to who was assaulting whom and with what weapon. More so, as PW-1 claimed that Sambhaji, Accused No. 4, was one of the first persons to enter the premises along with Khemaji, Accused No. 2, but no attack was attributed to him, leading to his acquittal by the High Court.

12. It is no doubt possible that PW-1 could have identified the accused who first entered the premises armed with axes and launched the initial attack on her husband, but given her contrary statements on even these crucial facts and more particularly, in the context of Sambhaji, Accused No.4, and Chandu, Accused No.13, her evidence is placed wholly in the realm of uncertainty and no credence can be given to her solitary testimony on any aspect. Though the maxim '*Falsus in uno, falsus in omnibus*' is only a rule of caution and has not assumed the status of a rule of law in the Indian context, an attempt must be made to separate truth from falsehood and where such

separation is impossible, there cannot be a conviction (See *Narain vs. State of M.P.*¹). We find that to be so in the case on hand.

13. As already noted, the appellants have suffered 10 years' incarceration. Given the lacunae in the prosecution's case and the shaky evidence adduced in support thereof by PW-1, we necessarily have to extend the benefit of doubt to the appellants. The appellants are, therefore, acquitted of the offences under Section 148 IPC and Section 302 IPC read with Section 149 IPC.

The appeals are accordingly allowed.

The bail bonds and sureties furnished by the appellants shall stand discharged. Fine amount, if any, paid by the appellants shall be refunded.

.....,J
(SANJAY KUMAR)

.....,J
(ARAVIND KUMAR)

**September 18, 2024;
New Delhi.**

¹ (2004) 2 SCC 455