

# **Ramesh Baburao Devaskar & Ors vs State Of Maharashtra on 12 October, 2007**

**Author: S.B. Sinha**

**Bench: S.B. Sinha, Harjit Singh Bedi**

CASE NO. :

Appeal (crl.) 844-846 of 2005

PETITIONER:

Ramesh Baburao Devaskar & Ors

RESPONDENT:

State of Maharashtra

DATE OF JUDGMENT: 12/10/2007

BENCH:

S.B. Sinha & Harjit Singh Bedi

JUDGMENT:

**J U D G M E N T WITH CRIMINAL APPEAL NOS. 837, 843 and 847 OF 2005 S.B. SINHA, J :**

1. Shivaji Patil, brother of the complainant Sarjerao Patil (PW-13) and one Baburao Patil were residents of Phulewadi situate in the District Kolhapur, State of Maharashtra.

There were two groups in the village; one belonging to Sarjerao Patil and the other known as Mahipati Shankarrao Bondre (Accused No. 4) group. Brother of the Accused No. 4 was an M.L.A. He was also a former Minister. In a municipal election which took place between the first informant and one Nagoji Patil, Sarjerao Patil was elected. Bitterness between the two groups came to such a pass that the brother of one Bindu More (Accused No. 9) was murdered. Accused No. 4 Mahipati Shankarrao Bondre was the first informant in that case. There was bad blood between the two groups. In the murder case of the brother of Accused No. 9, the deceased Shivaji was granted bail. The accused allegedly intended to take revenge thereof.

2. On the fateful day, viz., at about 10 O clock on 21.10.1993, PW-11 Subhash Pandurang Kalke was taking his cart to bring grass from the land of one Rajaram Patil. On his way, he met his friend PW-12 Sanjay Laxman Belgaonkar. PW-11 asked PW-12 to accompany him. He promised to come later as he was to deliver medicine at his house.

3. While PW-11 was coming back after loading the grass in his cart, at or near the place of occurrence, Shivaji Patil and Baburao Patil who were coming on a motorcycle overtook him.

Accused persons, who were 11 in number, had allegedly been waiting for them. They were accosted by the accused persons. The accused persons formed a threatening semi-circle around them. Accused No. 9 Bindu More exhorted others to assault but he himself inflicted vital injuries upon Shivaji Patil. Baburao Patil intervened. He was also threatened. He started running away from the scene of occurrence. He was chased. PWs 11 and 12 seeing them chasing Baburao hid themselves nearby in a sugarcane field. Baburao Patil was found murdered in front of the house of Sou Padma (PW-14). Babasaheb, brother of the deceased (PW-9) Shivaji Patil who was also coming back from his village along with others found his brother murdered. PW-11 informed him about the details of the incident. He came to his house and informed his sister-in-law. She in turn asked PW-10 Sadashiva to go to the Corporation Office and inform about the incident to the first informant PW-13. PW-13 reached the police station at about 12.30 p.m. He allegedly did not furnish the details of the incident. He only named Accused No. 9. He disclosed that PW-16 Vijay that murders of Shivaji Patil and Baburao Patil have been committed. He was asked to furnish details of the incident. He did not do so. He asked PW-16 (I.O.) to come to the place of occurrence. An entry of the said information was made in the station diary. PW-16 came to the place of occurrence with PW-13. The details of incident were narrated to PW-9 by one of the alleged eye-witness, viz., PW-11, on the basis whereof the First Information Report was lodged at the spot.

4. The First Information Report was lodged at about 2.15 p.m. In the First Information Report, nine persons were named as accused. It, however, reached the Court of the Magistrate only on 25.10.1993. Before the learned Sessions Judge, a large number of witnesses were examined. PWs 11 and 12 were eye-witnesses. Relying on or on the basis of their testimonies before the Court as also the testimonies of other witnesses, the learned Sessions Judge passed a judgment of conviction against Accused Nos. 1, 2, 3, 5, 6, 7, 9 and 11 and acquitted Accused Nos. 4, 8 and 10. Appeals were preferred thereagainst by the appellants. A revision application was also filed by Sarjerao Patil against the judgment and order questioning acquittal of Accused Nos. 4, 8 and 10.

5. Six criminal appeals were filed before the High Court. By reason of the impugned judgment and order, the High Court dismissed the appeals of the appellants before us.

6. Before us, four criminal appeals have been filed. Criminal Appeal No. 844-846 of 2005 has been filed by Ramesh Baburao Devaskar (A-5), Bajirao Govind Mane (A-6) and Bapu Shripati Yadav (A-7). Criminal Appeal No. 837 of 2005 has been filed by Sunil Krishnat More (A-3). Criminal Appeal No. 843 of 2005 has been filed by Hindurao Pandurang Chougule (A-1), Ainuddin Abdul Gavandi (A-2) and Criminal Appeal No. 847 of 2005 has been filed by Bindu Ramchandra More (A-9) and Sunil Bhimrao Bodke (A-11).

7. Mr. R. Sundravardhan, learned senior counsel appearing on behalf of the appellants in Criminal Appeal No. 844-846 of 2005 has raised the following contentions:

(i) The First Information Report was lodged by way of an after-

thought. It was ante-timed and ante-dated. In any event it was hit by Section 161 of the Indian Penal Code as despite knowledge of all the details of the incident were known to the first informant PW-9,

he did not furnish the same and lodged another report at the spot.

(ii) The delay of more than three days to send the First Information Report to the Court of Magistrate clearly proves that the First Information Report was ante-dated.

(iii) PWs 11 and 12 were chance witnesses. There was absolutely no reason as to why they should be there.

(iv) The investigating officer examined them at the police station and not at the place of occurrence.

(v) They are not reliable witnesses as although, they had not seen the murder committed of Baburao, as they had hidden themselves in the sugarcane field, they projected themselves as a witness to the murder of Baburao also and as such they are not trustworthy.

(vi) In any event, apart from PW-9, there is nothing to show that any overt act was committed by any of the other appellants.

(vii) PW-14 having been declared hostile, there is no eye-witness so far as the murder of Baburao is concerned.

8. Mr. Sundravardhan's submission was adopted by Mr. Anil K. Jha and Dr. Rajeev B. Masodkar, learned counsel.

9. Mr. Sushil Karanjkar, learned counsel appearing on behalf of the State, however, on the other hand, would submit:

(i) The motive of commission of the crime has been proved beyond any shadow of doubt. The brother of the Accused No. 9 had been killed and the deceased Shivaji had been released on bail and it is, thus, evident that the accused persons intended to commit the crime for the purpose of taking revenge.

(ii) Sarjerao Patil (PW-13) being not an eye-witness and he had been informed about the incident by PW-10 who was also not an eye-

witness, it was not possible for him to give details of the incident. He, being concerned with the murder of his brother Shivaji and Baburao, thought it fit to ask the investigating officer to come to the place of occurrence. The First Information Report was recorded upon obtaining the details of incident from PW-11. The statement given by him before the officer incharge of Karvir Police Station cannot be said to be a First Information Report and the one recorded at the place of occurrence had rightly been accepted as the First Information Report.

(iii) The sequence of events which took place in quick succession clearly goes to show that the accused persons who had common intention to commit the said offence not only committed the murder of Shivaji but also chased Baburao when he started fleeing away and also committed his

murder.

(iv) Although there are inconsistencies, omissions and improvements, the same, being minor in nature, have rightly been ignored by the Courts below.

10. The principal question which arises for our consideration is as to whether the second First Information Report can be treated to be the First Information Report in relation to the incident and in any event any reliance can be placed thereupon.

An information received by the officer-incharge of a police station for commission of a cognizable offence must be reduced in writing so as to enable him to start investigation. PW-13 met the investigating officer at the police station. He informed him about the incident. However, he did not disclose the details for whatever reason. A First Information Report although need not be encyclopedic, but in this case PW-9 did not say that he was not aware of the details. He named Accused No. 9. He disclosed about the murder of his brother. The alleged eye witnesses had disclosed all the details about the incident to all whom they had met including another brother of the deceased viz. Baba Saheb. Why he did not lodge the first information report has not been disclosed.

Strangely enough, the First Information Report was recorded at the spot. Panchnamas were also held immediately thereafter. Inquest Panchnamas were taken. In the inquest report, only again Accused No. 9 was named. In the inquest Panchnama, it was stated that the Panchas felt that the deceased was attacked by some unknown assailants with sharp edged weapons and have stabbed and seriously injured him due to which he might have died . Why it was recorded like that is a mystery.

In the First Information Report, PW-11 was named as the only eye- witness to the occurrence. So far as PW-12 is concerned, he evidently was a Chance Witness. His name was not disclosed in the First Information Report.

11. Lodging of a First Information Report is necessary for setting the criminal law in motion. It can be lodged by anybody. It, however, should not be too sketchy so as to make initiation of investigation on the basis thereof impossible. Only information in regard to commission of an offence may not for all intent and purport satisfy the requirement of the First Information Report. When, however, the First Information Report is lodged by a person who claims himself to be aware of not only the commission of the offence, the name of the deceased and at least one of the accused who had committed the same, the could have been recorded on the basis thereof. It may, however, be another thing to say that any information in regard to the commission of an offence is given by way of a telephone or by a person who does not disclose his identity and such message is so cryptic that it may not satisfy the requirement of Section 154 of the Code of Criminal Procedure. [See Om Prakash alias Raja v. State of Uttaranchal (2003) 1 SCC 648]

12. We may in this connection refer to Mundrika Mahto and Others v. State of Bihar [(2002) 9 SCC 183] wherein it has been held:

9. We have carefully and minutely examined the record including, as earlier stated, the evidence of Suresh Kumar (PW-5) read with Santosh Kumar (PW-1) and Ram Briksha Mahto (PW-2). Their evidence inspires confidence. It was natural for Ram Briksha Mahto not to name the persons who were dragging the headless body because he did not know them. On all material aspects, the testimony of these witnesses is trustworthy and reliable. It is not the law that the conviction cannot be based on the testimony of relations. That alone cannot be the ground to over win the conviction.

The scratch injury, according to the testimony of the Doctor is possible as a result of dragging. The non-mention of it by the Investigating Officer in the inquest report is of no consequence, in the light of other evidence on record. The High Court seems to be right in its conclusion that when a large number of persons were dragging the trunk after catching hold of the same, only a small portion may be touching the ground as a result whereof, there may not be a large number of injuries on account of dragging. Another factor which deserves to be noticed is that the Sessions Court, on perusal of the case diary, has recorded that the Investigating Officer was deliberately trying to held the defence. The contention that was urged in this regard before the Sessions Court and also before us was that the inquest report having been held at 11.15 p.m. and the statement/furdbeyan recorded at 11.30 p.m., inquest report should be treated as the FIR and not the FIR registered on the basis of the Furdbeyan and, therefore, the mention of the name of the appellants therein deserves to be ignored. The Court of Sessions noticed, on perusal of the case diary, that it appears that Investigating Officer first recorded the Furdbeyan and thereafter held the inquest on the dead body of the deceased, but recorded in the case diary, the time of recording of the Furdbeyan as 11.30 p.m. and that of holding of inquest as 11.15 p.m. in the reverse order to help the accused. In fact, the case diary shows that the Fardbeyan was recorded earlier and inquest later and, thus, inquest could not be treated as the FIR. Similarly, the telephonic conversation also could not be treated as FIR, as contended, as it was a cryptic information that was received and recorded in the daily diary regarding the commission of offence.

13. In this case, PW-13 was asked by the investigating officer to give details thereof. We also cannot accept the submission of Mr. Karanjkar that PW-13 did not inform about the incident to others. He said that he had done so. If he had given his version to other prosecution witnesses, as a result whereof all the details were known to them, the same should have been the basis for lodging a First Information Report. We may also notice that in response to the query by the investigating officer, PW-10 did not say that he was not aware thereof. For one reason or the other, he did not do it. He asked him to go to the place of occurrence. Although anxiety on his part to take the police officer to the place of occurrence with a view to apprise him about the incident is appreciable, what is not is his refusal to disclose the details thereof. He did not say that he was not aware thereof.

14. A First Information Report cannot be lodged in a murder case after the inquest has been held. The First Information Report has been lodged on the basis of the statements made by PW-11 to the informant himself at the spot. If the said prosecution witness who claimed himself to be the eye-witness was the person who could lodge a First Information Report, there was absolutely no reason as to why he himself did not become the first informant. The First Information Report was

recorded on the basis of his information given to the first informant at the spot. All information given by him to PW-13 was made before the Investigating Officer himself. What prevented him from lodging the First Information Report is beyond our comprehension. PW-11, we may place on record, categorically stated that he had disclosed the details of information to all concerned. Therefore, it is expected that the first informant was informed thereabout. We have noticed hereinbefore that the information given by PW-13 had at least been recorded by the police in the Crime Register and he categorically stated a few facts, viz., the main accused Accused No. 9 committed murder of his brother Shivaji Patil and one Baburao Patil. Even the place where the murder took place was known to him. If we are to believe the investigating officer, he recorded the statement after holding inquest. The detailed report in regard to the nature of injuries as also the place where the injuries were inflicted was known to him as inquest report had already been prepared. Such an attempt on the part of the investigating officer has been deprecated by this Court in a large number of decisions. All other witnesses including the Panch witnesses must have been present there. If despite the same, according to Panch Witnesses, at least in respect of Baburao, unknown persons are said to be his assailants, it is evident that PW-11 did not disclose the names of the assailants; at least all of them before PW-9 as also the Investigating Officer.

15. In a case of this nature, enmity between two groups is accepted. In a situation of this nature, where the First Information Report was ante-timed or not also requires serious consideration. First Information Report, in a case of this nature, provides for a valuable piece of evidence although it may not be a substantial evidence. The reason for insisting of lodging of First Information Report without undue delay is to obtain the earlier information in regard to the circumstances in which the crime had been committed, the name of the accused, the parts played by them, the weapons which had been used as also the names of eye-witnesses. Where the parties are at loggerheads and there had been instances which resulted in death of one or the other, lodging of a First Information Report is always considered to be vital.

16. The Code of Criminal procedure provides for certain internal and external checks; one of them being the receipt of a copy of the First Information Report by the Magistrate concerned. It is not in dispute that in a grave case of this nature, the copy of the First Information Report was received by the Magistrate four days later. No explanation has been offered therefor. Section 157 of the Code of Criminal Procedure mandates that the First Information Report should be sent to the nearest Magistrate within a period of 24 hours. It has not been disputed that the occurrence took place near the District Headquarters. There cannot be any reason whatsoever as to why the First Information Report was sent after four days. [See Jagdish Murav v. State of U.P. & Ors. 2006 (8) SCALE 433].

17. In State of Rajasthan v. Teja Singh and Others [(2001) 3 SCC 147], this Court observed:

We have examined the evidence of the three eye- witnesses as also that of Iqbal Singh (PW-10), the Investigating Officer. We have also perused the evidence of Ram Pratap Sarpanch (DW-1) and we do not find any reason to differ with the finding of the High Court which sitting as the first court of appeal on facts, had every right to re-appreciate the evidence. In our opinion, the High Court, in that process, has not committed any error. As a matter of fact, the explanation put forth by the learned

counsel in regard to the delay in the FIR reaching the court is not tenable because assuming that there were some court holidays that cannot be a ground for the delay in the FIR reaching the Magistrate, because requirement of law is that the FIR should reach the concerned Magistrate without any undue delay. We are of the opinion that the explanation given by the prosecution regarding the delay in the FIR reaching the Magistrate is neither convincing nor acceptable.

18. We will assume that the presence of PWs 11 and 12 at or near the place of occurrence was possible. We have been taken through the evidence of PWs 11 and 12. The deceased Shivaji Patil and Baburao Patil allegedly were coming in a motor cycle. They crossed him but then, according to them, the incident which took place was at a distance of 100 ft. However, when the actual assault by Accused No. 9 took place by infliction of blow of an axe, the distance was reduced to 50 feet. No overt act was attributed to anybody else.

19. According to him, Baburao Patil then started running. All the assailants followed. He jumped out of the bullock-cart and ran towards the sugarcane only after the assailants crossed his bullock-cart. He did not and could not see the actual assault on Baburao.

20. Another facet must also be noticed. The investigating officer recorded his statement partly upto 6.30 p.m. He was asked to come to the police station on the next day and his remaining statement was recorded in the Karvir Police Station. According to him, his statement was recorded only after the bodies were sent for post mortem. He went to the police station at 9 p.m. and was there about half an hour. It is borne out from the record that he got his statement under Section 164 of the Code of Criminal Procedure but he could not remember thereabout. When, however, accosted therewith, he said that he had made statement before the Sub-Judicial Magistrate on 11.11.1983. He made a lot of improvements in his statement.

21. So far as Baburao is concerned, in the inquest panchnama, statements of panch witnesses had been recorded to the effect that unknown assailants had killed him. It may be true that the prosecution would be bound thereby. But, the impression we gathered therefrom is that at least at that point of time there was a general belief that Baburao had been killed by unknown assailants. The dead body of Baburao was found near the house of PW-14. PW-14 turned hostile.

22. Proof of motive by itself may not be a ground to hold the accused guilty. Enmity, as is well-known, is a double edged weapon. Whereas existence of a motive on the part of an accused may be held to be the reason for committing crime, the same may also lead to false implication. Suspicion against the accused on the basis of their motive to commit the crime cannot by itself lead to a judgment of conviction.

23. The learned counsel appearing on behalf of the appellants addressed us at a great length that the other accused persons did not share the common object with Accused No. 9. We find some substance in his submission. Their names did not appear in the First Information Report. Even PWs 11 and 12 did not attribute any overt act on their part.

24. As it is difficult for us to rely upon the testimonies of PWs 11 and 12 and for other reasons enumerated hereinbefore, we are of the view that it would be hazardous to record a judgment of conviction in this case.

25. These appeals are allowed. Appellants are set at liberty unless wanted in connection with any other case.