

## **Raju Trambak Magare And Ors. And Laxman ... vs State Of Maharashtra on 12 December, 2000**

**Equivalent citations: JT2001(3)SC411, (2001)10SCC385, AIR ONLINE 2000 SC 580**

**Bench: M.B. Shah, Ruma Pal**

### **ORDER**

1. In Sessions Case No. 89/1986 the Addl. Sessions Judge, Jalgaon convicted the appellants-accused under Section 302 read with Section 34 I.P.C and sentenced them to undergo rigorous imprisonment for life and to pay a fine of Rs. 3,000/- each and in default in the payment of fine to suffer further rigorous imprisonment for one year. Against the said judgment and order the appellants preferred Criminal Appeal No. 94/1994 in the High Court of Judicature of Bombay which was dismissed by the judgment and order dated 3rd, 4th, 5th and 10th August, 1998. That judgment and order is challenged by the accused by filing these appeals. Original accused Nos. 2,3 and 4 have filed Criminal Appeal No. 1071/ 1999 and accused No. 1 has filed Criminal Appeal No. 1072/1999.

2. It is the prosecution story that information was received at Police Station Bazar Peth, Bhusaval that one person by name Rashid @ Bhurya, son of Babu Tadvī was brought to the hospital and he was dead. As per the prosecution version the incident took place on 4.2.1986 at about 7.00 p.m. because accused No. 1, Laxman Kautik Soyankē started abusing the persons of the Muslim community in general. The deceased Rashid asked accused No. 1 Laxman as to why he was abusing the Muslim community in general. Hence the accused No. 1 got enraged. He and accused No. 4 Rahul Shankar Sonawane caught hold of the deceased Rashid and dragged him towards the house of one Raheman Murgiwala. When they took deceased Rashid near the house of Raheman Murgiwala, accused Nos. 1 and 4 were still holding the deceased and accused No. 1 asked the other persons who were present there to assault the deceased. Thereafter, accused No. 2 Raju Trambak Magare armed with a knife, dealt blow on the person of Rashid causing him bleeding injury. Soon thereafter accused No. 3 Ravindra Parashram Kamble who was armed with gupti gave the blow by gupti thereby causing injury to Rashid. Having received injuries Rashid fell down on the ground and it is alleged that the accused No. 7 Sanjay Trambak Magare who had a steel rod, gave several blows on the person of the deceased. Similarly, other persons also gave stick blows or blows by iron rods. As the people gathered there and intervened, the accused persons fled away.

3. On receipt of information at the police station, PSI Waghare directed PSI Kadanor to go to the hospital and record the FIR. Accordingly, PSI Kadanor went to the hospital and recorded the information given by the father of the deceased Babu Tadvī wherein he has stated that he had five sons and at about 7 p.m., his son Rashid had gone out. Thereafter, immediately his other son Raju came running after some time and stated that 13 persons named therein had surrounded his brother Rashid and they were carrying weapons like knives. Hence, he, along with his wife and son Saleem Babu went running towards the mutton market and there he found his son Rashid lying in front of

the house of Laxman. They took him to the Municipal Hospital in a rickshaw. In the hospital, Dr. Umap examined him and said that on account of injury, Rashid had died at about 7,40 p.m.

4. It is the say of PW-10 Pandharinath R. Maghare who was attached to the Police Station Bazar Peth of Bhusaval that on 4.2.1986, when he was on duty, he received the intimation in writing from Municipal Hospital, Bhusaval, that the dead body of Rashid was brought to the hospital and therefore he directed PSI Kadanor to visit the hospital and obtain complaint in writing from the father of Rashid and at the same time he received a telephonic message from the police constable Gokul Shankar that marpit is going on in Shivaji Nagar locality. Therefore, he deputed PSI Gavali and the police staff to proceed to that place for bandobast. After some time, accused No. 2 Raju Trambak Magare, accused No. 5 Vilas Trambak Magare and one Ganga Ram came to the police station in an injured condition. He referred them to the Municipal Hospital, Bhusaval along with requisition. He has further stated that about 9.45 p.m. the policeman of the cycle squad produced before him accused Nos. 1 to 12 who were arrested by him. On the next day, i.e. 5.12.1986, he went to the hospital and drew inquest panchnama. Thereafter, he went to the scene of offence and prepared the panchnama for the same. During the course of panchnama, he seized two cycles lying in front of the house of accused No. 1 Laxman and one wooden cot lying in front of the house of Akbar. Subsequently, he recorded the statements of 14 witnesses. Thereafter, he recorded the panchnama of the clothes of the deceased. On the next day, i.e. 6.2.1986, he recorded the statement of some more witnesses. On 7.2.1986, he recovered mudammal articles from the accused after preparing necessary panchnamas. After completing the investigation, the accused were charge sheeted before the trial court and subsequently committed to the sessions court.

5. By judgment and order dated 19.2.1994, the Addl. Sessions Judge, Jalgaon, arrived at the conclusion that accused Nos. 1 to 4 were liable to be convicted and the remaining accused were entitled to get benefit of doubt. He further held that the accused were liable to be convicted on the ground that they were members of unlawful assembly consisting of 5 members and more and two of them were armed with deadly weapons like knife and gupti. He, therefore, convicted them for the offences punishable under Section 302 read with Section 149 of the I.P.C. and imposed sentence as stated above. In appeal High Court confirmed the conviction but set aside the conviction under Section 148 or under Section 149. The High Court held that the accused were liable to be convicted under Section 302 read with Section 34 of the Indian Penal Code.

6. Mr. Sushil Kumar, the learned senior Counsel appearing for accused Nos. 2 and 3 submitted that at the initial stage the prosecution brought out the story of riots, but failed to bring any evidence on record for that purpose. Thereafter, suppressed the genesis of the entire story and examined few witnesses who have narrated only one part of the incident without disclosing how the incident took place and who caused the injuries to the appellants-accused Nos. 2 and 3 as well as acquitted accused No. 5. Vilas Trambak Magare and one deceased Gangaram. He has also submitted that prosecution has failed to prove the motive. It is his contention that the investigation carried out by the police was one sided as investigating officer had not examined the material witnesses on the date of incident or on the next date, i.e. on 5.2.1986 and therefore courts below materially erred in relying upon one-sided improved version given by the prosecution witnesses PWs 4,6 and 8. He also pointed out that the accused, after receiving injuries, went to the police station for lodging FIR. This

also indicates that the accused were not aggressors and that the incident had not occurred in the manner as stated by the prosecution witnesses.

7. Mr. R. Sundravardhan, the learned senior Counsel appearing for accused Nos. 1 and 4 submitted that considering the prosecution version as it is, there is no evidence on record for drawing inference that accused Nos. 1 and 4 shared any common intention for convicting them for the offence punishable under Section 302 read with Section 34 of I.P.C. He pointed out that the incident took place as alleged by the prosecution witnesses on a trivial matter, namely, accused No. 1 abused the Muslim community in general and the deceased Rashid objected to the said utterances. Neither accused No. 1 nor 4 were armed with any weapon nor they knew that accused Nos. 2 and 3 were armed with either knife or gupti.

8. As against this Mr. I.G. Shah, the learned senior Counsel appearing for the respondent submitted that the trial court as well as the High Court has considered the entire evidence led by the prosecution and after giving benefit of doubt to the rest of the 11 accused, only 4 persons to whom specific role is assigned and proved by the witnesses are convicted. It is his contention that there is no manifest error committed by the High Court or the trial court in convicting the appellants and therefore, the appeals should be dismissed.

9. For appreciating the contentions raised by the learned senior Counsel for the parties, we would first refer to the evidence of PW-6 Enurbee who is the resident of the locality in which the incident had taken place. She has deposed that at about 7.00 to 7.30 p.m., when she was sitting at the house of her niece Shari-fabi, she heard the shouts from the side of the road. There she saw that accused No. 1 Laxman and accused No. 4 Rahul had caught hold of the deceased Rashid. It is her say that along with accused Nos. 1 and 4, other accused were also present. At that time, accused No. 2 had a knife and accused No. 3 Ravindra had a gupti. Accused Laxman was abusing the Muslim community and therefore, Rashid asked that he should not abuse the community. She asked the accused Nos. 1 and 4 not to quarrel. Subsequently, accused Nos. 1 and 4 dragged deceased Rashid near the house of Raheman Murgiwala and accused No. 1 shouted that Rashid should be beaten. Thereafter, accused No. 2 Raju Trambak Magare gave a knife blow at the left side of the chest of Rashid and accused No. 3 Rahul dealt with gupti blow near the waist of Rashid. All the remaining accused there after started beating Rashid by sticks and/ or steel rods. Her statement was recorded on 6.2.1986. In cross-examination she has stated that before the incident there was no quarrel between Rashid and accused No. 1 and that she did not know the reason for the quarrel on that day. She has further stated that she was not present at the spot till the assailants ran away. The aforesaid prosecution story that accused Nos. 1 and 4 caught hold of deceased Rashid, is also stated by PW4 Raheman. He has also stated that Raju gave a knife blow on the person of the deceased and accused Rahul dealt 2-3 gupti blows on the person of Rashid. After receiving injuries, deceased fell down and thereafter, other accused assaulted the deceased with sticks or steel rods. In his cross-examination, he has specifically stated that he did not see deceased Rashid assaulting accused No. 2 Raju by weapon like knife or gupti. He has also specifically stated that Rashid was assaulted in his presence at a distance of 5 to 6 feet from the electric lamp post near his house and that he did not know whether anything had taken place near the house of accused No. 1 Laxman. In further cross-examination he has stated that he did not know the reason for the marpit and that he came out of the house after the quarrel

started. The other evidence led by the prosecution is that of one Mohd. Habib, PW-5, who is also resident of the same locality where the incident had taken place. He has also repeated the same version as stated by PW-6. In his cross-examination he has stated that he had not seen deceased Rashid assaulting anybody in exercise of his right of private defence. Nor had he seen any other person assaulting the said accused in order to save Rashid. It is his say that his statement was recorded by the police on the next day of the incident. The High Court has not relied upon the evidence of PW-7 and therefore, we are not inclined to deal with it.

10. Considering the aforesaid evidence produced on record it is apparent that the incident took place all of a sudden because accused No. 1 was abusing the Muslim community in general. That was objected to by the deceased Rashid. Consequently, Rashid was given blows by accused Nos. 2 and 3 as stated by the prosecution witnesses. Injury to the deceased by knife or gupti is probablised by the medical evidence and in the postmortem report it has been specifically mentioned that deceased was having as many as 4 stab wounds and 3 incised wounds. According to Dr. Sheshrao, PW-9, who conducted the postmortem examination, injury Nos. 1, 3 and 4 were sufficient to cause the instant death. He has also stated, that by describing some injury as stab injury and some as incised wound the type of weapons used for causing such injury cannot be distinguished between pointed cutting weapon or sharp weapon. This witness has also examined accused No. 2 Raju and acquitted accused Vilas Trambak Magare and one Ganga Ram on the day of incident and he had found the following injuries on their person:

...On examination of Raju, following injuries were found on his person :-

1) Oblique incised wound 1" x " x " on left clavuoulor region of chest middle part.

It was caused within 3 hours and was caused by sharp cutting instrument.

I accordingly issued the injury report. The contents therein are correct. It bears my signature and it is Ext. 58.

On the same day at about 8.50 p.m. I examined accused No. 5 Vilas Trambak Magare. He had brought with him the police requisite letter. On examination following injuries were found:-

1) Abrasion x x " on front of right leg.

2) Abrasion x ", of back of right middle finger x " on back of right ring finger.

3) Abrasion x on back of left hand.

4) Abrasion x on back of left thigh.

5) Contusion 2 " x 2" on middle front of left forearm.

6) Abrasion transverse 4" x " on upper part of back, both sides in center.

The injuries could have been caused by stone, steel rods and sticks. I accordingly issued the injury report. The contents therein are correct. It bears my signature. It is Ext.59.

At 8.30 on the same day I examined Gangaram Fula Gavhane and found the following injuries on his person :-

1. Tenderness on left side of chest. 2. Lacerated wound 2" x x " on left parietal region of head...

11. He has also examined accused No. 3 and issued certificate Ext. 61 to the following effect:

...He has been treated at this dispensary for the following:

1. Caused abrasion on the left lower lip x ".
2. Abrasion on the left forearm lower part 3 x ".
3. Abrasion on the left index finger 1st phalange postorbital x 1/4".
4. Abrasion on the left middle posteriorly 1st phalange posterital x 1/2".
5. Abrasion on the left ring finger 1st phalange x .

12. The learned Counsel for the accused submitted that considering injuries received by the accused 2, 3, 5 and deceased Gangaram during the course of incident and the fact that there is no mention by the prosecution witnesses with regard to the assault on the accused, would clearly reveal that there is total suppression of material facts and the genesis of the incident. It is, therefore, pointed out that the trial court as well as the High Court manifestly erred in reconstructing the prosecution story by relying upon improved version given by PW-6 and PW-8. It is also pointed out that after receiving injuries the accused had gone to the police station and lodged the FIR. In support of his contention, Shri Sushil Kumar, the learned senior Counsel referred to the decision of this Court in the case of Lakshmi Singh and Ors. v. State of Bihar 1976 AIR SC 2263.

13. Before referring to the aforesaid decision, we would state that as opined by the doctor the injuries received by the accused 2, 3, and 5 were minor injuries. Apart from being minor injuries it would be difficult to arrive at the conclusion that there is suppression on the part of the witnesses with regard to the injuries received by the accused. It is true that in the present case prosecution has not proved previous incident or enmity between accused No. 1 and other persons of Muslim community. For the incident which had taken place on 4.2.1986 it is the say of the prosecution witnesses that the incident started all of a sudden when accused No. 1 abused the Muslim community in general and deceased Rashid objected to the said abuse. Further there is nothing on record to establish that PWs 5, 6 and 8 are interested witnesses. On the contrary, it is proved that they are residents of the same locality and they came out after hearing the hub of quarrel between accused No. 1 and Rashid. In Lakshmi Singh's case (supra) after considering the various decisions

this Court observed that the omission on the part of the prosecution to explain injuries on the persons of the accused assumes greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. It is to be stated that in the present case there is nothing on record to arrive at the conclusion that the prosecution witnesses are in any way interested or inimical with the accused. Nor there is any defence version which competes in probability with that of the prosecution. As such almost all accused have denied the prosecution version and have not stated anything else except that the accused Nos. 1 and 4 submitted that they were not present at the scene of occurrence.

14. In the case of Lakshmi Singh (supra) the court has found that accused Dasrath Singh had received serious injuries during the incident which have not been explained by the prosecution. In that set of circumstances the court held that it would be difficult to rely upon the evidence of prosecution witnesses when some of these witnesses have lied by stating that they did not see any injury on the person of accused. The Court added and observed thus "We must hasten to add that as held by this Court in State of Gujarat v. Bai Fatima there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries.

15. In our view same would be the position in the present case and omission, if any, on the part of disinterested witnesses far outweighs the effect of non-explanation of injuries to the accused.

16. Further it has come in evidence PSI that after receiving information from the Municipal Hospital that the dead body of Rashid was received, he received further information that still marpit was going on at the place of incident. For that purpose he sent the other police PSI and police constables at the scene of the occurrence. Now in that set of circumstances if something had happened after the deceased was taken to the hospital it would be difficult to hold that prosecution has suppressed the genesis of the incident. The immediate genesis of the incident was solely because accused No. 1, abused Muslim community in general.

17. The learned senior Counsel contended that the trial court and the High Court have reconstructed the prosecution version and in support of this contention he has referred to the decision in Ugar Ahir and Ors. v. State of Bihar 1965 (1) CrLJ 256 wherein this Court observed: (6) The maxim falsus in uno, falsus in omnibus (false in one thing, false in every thing is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest. That is what the courts have done in this case. In effect, the courts disbelieved practically the whole version given by the witnesses in regard to the pursuit, the assault on the deceased with lathis, the accused going on a bicycle, and the deceased wresting the bhala from one of the appellants and attacking with the same,

two of the appellants, the case that the accused attacked the witnesses, and the assertion of the witnesses of their being disinterested spectators. If all this was disbelieved, what else remained? To reverse the metaphor, the courts removed the grain and accepted the chaff and convicted the appellants....

18. As stated above, in the present case the facts are entirely different. The courts below have not disbelieved the entire prosecution version. It is true that with regard to the assault by the acquitted accused, court has given benefit of doubt, but with regard to the assault by accused Nos. 2 and 3, the prosecution story is consistent and fully corroborated by the medical evidence and there is no question of reconstructing the entire prosecution version. It would be difficult to hold that the courts below removed the grain and accepted the chaff and convicted the appellants. On the contrary the court has cleared the grains by removing the chaff.

19. In this view of the matter, it would be difficult to hold that the courts committed error in convicting accused Nos. 2 and 3. The role assigned to them by the prosecution witnesses is specific, clear, consistent and cogent one.

20. The next question would be as to whether accused Nos. 1 and 4 would be liable to be convicted. It has been pointed out that accused Nos. 1 and 4 were unarmed. It is also the prosecution version that they have not taken any part in assaulting the deceased. As alleged, accused nos. 1 and 4 dragged the deceased at some distance from the front of the house of Sharifabi to the house of Rehman Murgiwala. It is also admitted that the incident took place all of a sudden. There is nothing on record from which it can be inferred that A-1 or A-4 knew that A-2 and A-3 were armed with deadly weapons. There is nothing on record that when A-2 and A-3 came at the scene of offence and they accompanied A-1 and A-4. It is true that the prosecution witnesses have alleged that accused No. 1 shouted that Rashid should be beaten. But from the alleged word "beat" used by accused No. 1, it is not possible to arrive at the conclusion that accused No. 1 shared any common intention with A-2 and A-3 of murdering Rashid. As stated above, it is the prosecution version that the incident took place all of a sudden and there is no other circumstance from which it can be inferred that accused Nos. 1 and 4 shared any common intention with accused Nos. 2 and 3 or that the assault was by A-2 and A-3 in furtherance of common intention of all the accused. It appears that the High Court has not considered this aspect before convicting accused Nos. 1 and 4.

12.12.2000

21. Today we have heard the learned Counsel for A-2 and A-3 with regard to the offence committed by them. Considering the facts found by us it is apparent that prosecution story with regard to assault by accused Nos. 2 and 3 by knife and gupti blows is clear consistent and cogent. They were armed with deadly weapons and gave fatal blows to the deceased. In that set of circumstances, it would be apparent that there was the common intention on their part. Hence accused Nos. 2 and 3 are rightly convicted by the High Court under Section 302 read with Section 34 of I.P.C.

22. In the result, Criminal Appeal No. 1072/1999 filed by accused No. 1 (Laxman Kautik Soyankhe) is allowed and he is acquitted. The bail bonds shall stand discharged. Criminal Appeal No. 1071/1999

insofar as it relates to A-4 (Rahul Shankar Sonawane) is concerned is allowed, he is acquitted. The bail bond shall stand discharged. Insofar as the appeal relates to A-2 (Raju Trambak Magare) and A-3 (Ravindra Parashram Kamble is concerned, it is dismissed.