

Rahul and Others Vs. The State of Maharashtra

Rahul and Others Vs. The State of Maharashtra

SooperKanoon Citation : sooperkanoon.com/1176400

Court : Mumbai Nagpur

Decided On : Aug-19-2015

Judge : B.P. Dharmadhikari & P.N. Deshmukh

Appeal No. : Criminal Appeal No. 310 of 2012

Appellant : Rahul and Others

Respondent : The State of Maharashtra

Advocate for Pet/Ap. : Shri. Jaltare

Judgement :

B.P. Dharmadhikari, J.

1. The appellants question the judgment dated 10.07.2012 delivered by the Additional Sessions Judge-5, Nagpur, in Sessions Trial No. 53 of 2011, convicting them of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentencing them to suffer life imprisonment and to pay fine of Rs.1,000/- each, in default of payment of fine amount, they have to undergo further R.I. for three months. For the offence punishable under Section 307 read with Section 34 of I.P.C., they are sentenced to suffer R.I. for five years and to pay fine of Rs.500/- each, in default of fine they have to undergo further R.I. for two months.

2. The Accused Nos. 1 to 3 are convicted under Section 324 read with Section 34 of I.P.C. and sentenced to suffer R.I. for one year and to pay fine of Rs.500/- each, in default of payment of fine, they have to further undergo R.I. for two months. These accused are also convicted under Section 341 read with Section 34 of I.P.C. and sentenced to suffer R.I. for one month and to pay fine of Rs.100/- each, in default they have to suffer R.I. for 15 days.

3. Briefly stated prosecution case is that on 12.10.2011 at about 10.00 PM, the complainant " Sanjay (PW-1), his father " Waman (PW-2) and his deceased brother Ishwar were coming from their field at Village " Hudpa, after loading harvested Soyabean in the tractor. The complainant " Sanjay was driving it. The deceased Ishwar along with Amit Badge (PW-3) and Mahadeo Shende were riding on the motorcycle in front of the tractor. At about 12 O' clock in the night, they reached near Bus stand of village Mandhal. The accused riding on motorcycle came from behind, overtook the tractor and intercepted motorcycle of Ishwar, they got down from the motorcycle and Accused No. 1 " Rahul assaulted Ishwar on his neck by Gupti, due to which Ishwar fell down. Sanjay and Waman ran towards them. Accused No. 3 " Shamsundar assaulted his father on his abdomen and right elbow. Accused Dilip assaulted complainant Sanjay on his left middle finger. All three accused then ran away. Sanjay searched for a jeep near village " Mandhal but could not find any. In the meanwhile, police had reached the spot and his brother Ishwar was found dead lying on the spot. Waman and Ishwar were taken to hospital by police. The complainant " Sanjay then lodged report at Police Station Kuhi.

4. The Police, after completing investigation, submitted charge sheet in the court of J.M.F.C. at Kuhi. That Court vide order dated 07.01.2011 submitted the matter to Sessions Court. The Sessions Court then conducted the trial and delivered judgment as mentioned supra.

5. It is here necessary to note that the appellants gave their defence in writing as a part of their statement under Section 313 of the Code of Criminal Procedure. They have stated that accused No. 2 " Dilip Naik purchased agricultural land at Mouza Hudpa on 03.08.2006 from one Prashant Meshram and Dilip Meshram for a

consideration of Rs.2,35,000/-. At the time of incident accused No. 1 “ Rahul and accused No. 3 “ Shamsundar were proceeding to village Mandhal after watching Navratri programme. They noticed one tractor full of Soyabean and members of Dahake family were present there. Those members were Ishwar Dahake, Waman Dahake and Sanjay Dahake. Shamsundar then inquired whether Soyabean was stolen from their field at Hudpa. The members of Dahake family and people with them had a scuffle with accused Nos. 1 and 3. Shamsundar fell down and Ishwar sat on his chest and started beating him. PW2 “ Waman Dahake was holding weapon like Gupti and Waman inflicted the injury by that gupti on the forehead of Shamsundar. When Waman attempted second blow, it by mistake landed on the neck of Ishwar. This led to commotion. As Shamsundar and Ishwar were lying injured, accused No. 1 “ Rahul went to Police Station, Kuhi, and communicated the incident. He was asked to sit there. After sometime, Police arrived at Police Station and put him in lock up. Accused Nos. 1 and 3 claimed that they did not assault anyone and accused No. 2 “ Dilip was not along with them.

6. We have heard Shri Jaltare, learned counsel for the appellants and Ms. Mehta, learned APP for the respondent.

7. Shri Jaltare, learned counsel submitted that the members of Dahake family had attempted to disturb their possession of agricultural field at Mouza Hudpa even in the past. Soyabean was of accused Nos. 1 to 3. By visiting the agricultural land at Hudpa at late hours in the night and by bringing with them the people of their own village, Soyabean was stolen. Accused Nos. 1 to 3 who were returning to Mandhal, saw members of Dahake family along with Soyabean and hence made inquiry. In this situation, the members of Dahake family and so called labours with them assaulted accused persons. He has emphasized the direction of injury on the neck of Ishwar. He submits that it has been caused when Ishwar was sitting on Shamsundar. He points out that Shamsundar also sustained grievous injuries inasmuch as in said attack his ribs were broken. According to him, story of prosecution that the very same gupti was used turn by turn by three accused to injure three different persons of Dahake family is unacceptable and unnatural. He also submits that accused No. 2 “ Dilip Naik was not present on the spot and Reporter “ PW1 Sanjay had taken name of Dilip Meshram as accused.

8. Accused No. 2 had lodged a complaint against Dahake family that Dahake family was stealing his crop even in the past i.e. on 25.10.2006, 16.11.2006, 17.06.2009 and 27.06.2009. In this background, he has also pointed out that the alleged weapon of attack has been mentioned to be knife at some places and as gupti at some other places. The injuries sustained by Waman were disclosed to be by knife initially and accordingly, the same were mentioned in requisition sent by the police to Medical Officer vide Exh. 137.

9. The omissions in statement of PW1 " Sanjay are pressed into service and it is pointed out that though Sanju claimed that he made phone call to Police Station, police does not have any record of such call. He argues that it is accused No. 1 " Rahul, who informed police and, therefore, police reached the spot.

10. The evidence of PW2 " Waman is also challenged by him by stating that the prosecution has recorded several statements of Waman and also other members of Dahake family and all those statements have not been produced before the trial Court. PW2 " Waman has accepted that accused came from front and hence has falsified the version of other prosecution witnesses that accused persons came from behind i.e. chasing or following members of Dahake family. It is submitted that on the gupti recovered allegedly by police under Section 27 of the Evidence Act at the instance of accused No. 1 " Rahul, no blood stains were seen. The members of Dahake family, who travelled a distance of more than 60 kms. To harvest Soyabean had come prepared with weapons and PW2 " Waman handed over a different gupti to police.

11. The prosecution as also trial Court has overlooked the fact that Shamsundar was also lying on the spot of the incident. He has attacked spot panchnama to urge that it does not record the correct position and place where Shamsundar was lying. He has also invited attention to map drawn by the police authorities to substantiate this contention. He submits that PW3 " Amit cannot be said to be a labour as he owns 18 acres of land. The story made by the prosecution through Amit is attacked as after thought. According to Shri Jaltare, learned counsel, the prosecution developed a story that accused No. 3 " Shamsundar, who had run away then came back and villagers attacked him. Thus, Shamsundar developed

injuries because of attack by villagers. Even PW6 “ Mahadeo Tiwade has also spoken on the same lines in his evidence but in cross examination, he accepted that he did not tell anything to police about the incident.

12. Insofar as seizure of gupti from accused No. 1 “ Rahul is concerned, he argues that witnesses there to have turned hostile. He further invites attention to requisition at Exh. 97 sent by the police to Medical Officer pointing out the injuries sustained by Shamsundar and blame therefor cast upon Dahake family.

13. By placing reliance upon the evidence of Doctor examined as PW8 (Dr. Hemant Wagh), he points out injuries suffered by PW1 “ Sanjay, PW2 Waman and accused No. 3 “ Shamsundar. On the strength of deposition of said witness, he states that as the injuries suffered by Waman were found not serious and hence not sufficient to cause death of Waman, if medical treatment was not provided to him within time. Thus, offence under Section 307 in respect of said injuries were not made out. He has also invited our attention to post mortem report to show that injury therein is found possible by gupti (Article 1). Inviting attention to size of injuries sustained by Waman and PW1 “ Sanjay, he contends that injuries were only skin deep and as the injuries were suffered during grappling, the injuries were not serious.

14. Though incident took place at about 12 O' clock in the night, complainant lodged FIR almost after four hours i.e. after discussion with other family members and this delay has not been explained. Not only this, injury to Shamsundar has also not been explained. He contends that the prosecution has thus not approached this Court with clean hands. He draws support from the judgment of the Hon'ble Apex Court in the case of Lakshmi Singh vs. State of Bihar, reported at 1976 Cri. L.J. 2263, to contend that as very genesis of crime has been suppressed, injuries sustained by Shamsundar have not been explained, the accused persons must be given benefit thereof.

15. Ms. Mehta, learned APP, at the outset submits that though there appears to be a dispute in relation to possession of agricultural land at Mouza “ Hudpa between the parties, the accused persons did not enter witness box and have remained satisfied by avoiding cross examination. Hence, adverse inference needs to be

drawn against them.

16. PW3 “ Amit and PW6 Mahadeo are independent witnesses and as such, their evidence needs more credence. She relies upon spot panchnama to point out how accused persons have attacked Ishwar. She also submits that the Investigating Officer removed Shamsundar, who was seen lying on the spot. She also relies upon the requisition sent by the Police Officer to Medical Officer in respect of Shamsundar (Exh. 97) to demonstrate that Shamsundar sustained injuries because of beating by mob of the village. She relies upon the memorandum of admission (Exh. 111) given by Rahul to Police to show that Gupti was bent by pressing it against hard ground by Rahul before hiding it. Diagram of said weapon showing its bent shape on Query Report at Exh. 141 is also relied upon by her. In the background of these arguments, she has invited our attention to various paragraphs of judgment to show how all these aspects have been looked into by the learned Trial Court. The report of Chemical Analyzer is also pressed into service to show that blood group of deceased Ishwar 'B' has been found on the shirt of accused No. 1 “ Rahul. Lastly, she points out that accused No. 2 “ Dilip Naik had taken a plea of alibi but failed to substantiate it. She also points out that during identification parade, witnesses have identified the accused persons. She, therefore, prays for dismissal of the appeal.

17. The fact of possession of members of Dahake family or of accused persons (accused No.2) on agricultural land at village Hudpa is not decisive insofar as this matter is concerned. The complainant claims that accused accosted them on Soyabean which they have harvested and accused in defence also submit that they inquired whether soyabean in tractor was harvested from the field of accused No. 2 at Hudpa. In this situation, it is not necessary for this Court to delve more into this controversy. The incident as such is not disputed and only dispute between the parties is the mode and manner in which it occurred. The prosecution examined total eight witnesses. PW1 Sanjay is complainant and brother of the deceased Ishwar while PW2 “ Waman is father of the deceased Ishwar. The prosecution claimed that PW3 “ Amit Badge is a labour carried by Dahake family to harvest soyabean. Mahadeo Tiwade has also been placed in the same category. These four persons are examined by the prosecution as eye witnesses.

PW4 “ Ashok Nagpure and PW5 “ Balkrushna Kuthe are panchas on memorandum statement under Section 27 of the Evidence Act. They have not supported the prosecution. PW8 “ Dr. Wagh examined the victim and accused and also conducted post mortem of Ishwar. Last witness PW7 “ Prakash Hake is the Investigating Officer. It is, therefore, obvious that the evidence of these four eye witnesses needs to be considered.

18. The trial Court has found that Spot Panchnama (Exh. 78) has been admitted by the accused persons. The trial Court has not made reference to the map which has been drawn on the basis of said spot panchnama and that map is Exh. 62 on record.

19. PW1 “ Sanjay states that they harvested Soyabean on 10.12.2010. He along with the deceased Ishwar, his father “ Waman, Amit Badge, Mahadeo Shende, Ramaji Chanode, Kawdu Chachere and Krishna Dahake went to the field at Hudpa to bring that soyabean. Ishwar came on his Passion motorcycle. They loaded soyabean in the tractor and proceeded towards their village viz. Sonarwahi in Kuhi Tahsil at about 10.30 in the night. He was driving tractor while his father and other persons were sitting with him in the tractor. Ishwar was proceeding ahead of the tractor in his passion motorcycle with Amit Badge and Mahadeo Shende sitting on it. They had just crossed village Pimpalgaon and at that time all accused persons riding on Pulsor motor bike came from behind and then overtook bike of Ishwar. They reached at Mandhal village. The accused after overtaking stopped at Bus stand and in the meanwhile his brother Ishwar also reached there. Accused No. 1 “ Rahul Shende asked Ishwar to come to him. He took out gupti and assaulted near collar bone of Ishwar and Ishwar fell down. He, his father Waman, Ramaji Kanode, Kawdu Chachere and Krushna Dahake reached there. The accused No. 2 “ Dilip Naik took gupti from Rahul Shende and hit his (Sanju's) finger. His father Waman reached near him and at that time accused No. 3 “ Shamsundar Naik took gupti from Dilip Naik and assaulted Waman with it. Accused No. 3 assaulted Waman on abdomen and hand. His father started bleeding. Blood was also oozing from the person of his brother Ishwar and, therefore, he went in search of jeep but he could not find any jeep. He came near his brother. That time his brother was dead. The villagers had gathered and then

police also arrived. The health of his father deteriorated and, therefore, in police vehicle he was taken to Kuhi hospital. He also accompanied police in that vehicle. He was admitted there and after half an hour was referred to Nagpur Medical college. He was given first aid and medicine, then he went to Police Station to lodge report. He identified the report Exh. 60 and printed FIR (Exh. 61). He stated that they have purchased that field from Dilip Meshram and accused persons are related to Dilip Meshram. His cross examination shows that Police has reached the spot at about 12 O' clock at night and were at the spot up to 3 or 4 O' clock in the morning. Thereafter he was taken to Kuhi and he stayed at Kuhi hospital for about one hour. He reached Kuhi Police Station at about 5 AM. He has stated that earlier he gave report to Kuhi Police Station on phone. That time Police was informed that son of Waman had been murdered. He stated that villagers of Mandhal gave phone call. After police came, he gave information in detail but police did not record his statement on the spot. He has disclosed name of Dilip Meshram as person assaulting him. The trial Court has mentioned all omissions in paragraph 8 of his cross examination. The fact of overtaking, accused No. 1 " Rahul asking Ishwar to come near him, Dilip Naik taking gupti from Rahul and assaulting his finger or then accused No. 3 " Shamsundar taking that gupti from Dilip, are those omissions. He could not explain why these facts were not mentioned in his police statement. He accepted that Shamsundar was taken to hospital along with them and the Police reached the spot, Shamsundar was there lying injured. He denied that accused No.1 " Rahul and accused No. 3 " Shamsundar came towards their tractor from the front side. He denied story of defence as mentioned supra by us. He denied that he did not state gupti as weapon at village Mandhal. He denied that he disclosed knife as weapon at that time. It is important to note that in Exh. 137 i.e. requisition issued by the police to Medical Officer in relation to this witness, police have recorded attack on him by knife. This has to be as disclosed by PW1 to Police at that juncture. He denied that when he reported the matter to police on phone, he did not communicate names of accused persons. However, perusal of cross examination of PW7 Prakash Hake (Investigating Officer) reveals that at Police Station, there was no entry of any such phone call made by Sanjay Dahake. He also denied that when police first came on the spot, he told name of Dilip Meshram to them. Thus, he contradicted

himself with answer given by him in paragraph 6.

20. The other witness is PW2 “ Waman, who is the father of the deceased “ Ishwar and father of PW1 “ Sanju. He states that after loading Soyabean in the tractor, they started at about 11.00 PM in the night to return. He states that three accused came in front from back side at Mandhal. Rahul Shende stopped the bike of Ishwar and called Ishwar and all of a sudden he gave a blow of gupti near his throat. Ishwar fell down. They got down from the tractor. Shamsundar took gupti from Rahul Shende and assaulted him on abdomen and hand with it. Sanju then went to find out vehicle. The villagers also reached there. Thus, in examination-in-chief, he does not speak of any assault on his other son i.e. Sanju by accused No. 2 “ Dilip Naik. His cross examination shows that police made inquiries from him at the spot twice but he is not aware whether his statement was recorded. 2 or 3 days after the incident, police again inquired from him in Police Station. He accepted that PW1 Sanju then had a cell phone but in the next breath he stated that he was not certain about it. He accepted that the statement given by him at Kuhi was reduced into writing. The statement given by him at Mandhal was also reduced in to writing. The statement of his son and other persons was also recorded by Police at Mandhal. It is important to note that these statements are not on record. In paragraph 9, omissions are put to him. He could not explain why the fact that Rahul gave call to Ishwar did not figure in his police statement. In paragraph 10, he accepted that when they reached on Bus stand of Mandhal, at that time Rahul and Shamsundar came there on bike from front side. He denied that Shamsundar inquired whether it was his crop. He denied that Shamsundar threatened them with police report. He accepted that Shamsundar alighted from his bike and came towards their tractor. He denied that he alighted from the tractor and went to Shamsundar. He could not tell whether at that time Rahul was near his motorcycle. He denied that at that juncture his son Ishwar and friends with them attacked Shamsundar and fell him down. Different version then put to him and he denied it. However, then cross examination reveals a totally different version. He does not take name of accused No. 2 “ Dilip Naik at all and point out any attack by Dilip Naik on his son Sanju. He mentions that Shamsundar came towards Tractor making inquiry about the ownership of crop. He denies that he himself (Waman) had then got down from the tractor and went near Shamsundar.

He also does not know whether Rahul was then on his motorcycle. He also states that the accused persons came from front in cross examination. Thus, he has contradicted his son Sanju on material aspects of the event.

21. PW3 " Amit Badge, is claimed to be a labour and he has also deposed accordingly. He states that on 12 O' clock in the afternoon when he returned to his village " Sonarwahi, Ishwar contacted him and asked him to come to Hudpa for harvesting. He agreed. After dinner, after 7 PM, he came back to his village and then left for Hudpa. On way, they collected labours from the village Bhiwapur and village Fegad. At about 9.00 PM to 9.30 PM they reached the field at Hudpa, loaded Soyabean and at about 10.30 PM, started return journey. He, Ishwar and Mahadeo were riding the motorcycle and remaining persons were on the tractor. He states that on two motorcycles, three persons came near them and intercepted their motorcycle. They got down from their motorcycles and he, Ishwar and Mahadeo also got down from their motorcycle. He then states that a tall fair colour person suddenly took out Gupti from his waist and attacked on the neck of Ishwar. Their tractor also reached there in the meanwhile and Waman rushed towards them. One black colour dwarf man took gupti from tall and fair man and attacked on the abdomen and hand of Waman. Sanjay also rushed from the tractor. The third person then assaulted on Sanjay's fingers and all persons ran away. Sanjay then left to bring the jeep. They took Ishwar to Dr. Dolas. Black man again came to assault. Till then villagers of Mandhal gathered there. The villagers beat that black man. He also states that hospital of Dr. Dolas was closed.

22. Before proceeding further with the discussion on his cross examination, it is important to note that though he speaks of attack on Sanjay by third person, the sequence of attack given by Sanju (PW1) is altered by him. As per PW1, accused No. 1 first attacked Ishwar, thereafter accused No. 2 attacked Sanju and lastly accused No. 3 " Shamsundar attacked Waman.

23. This witness (PW3) Amit then speaks about identification parade in which he identified accused persons. His further cross examination also shows that he owns 18 Acres of land. He accepted that he was knowing Dahake family since his childhood. The omissions are put to him in paragraph 10 and he could not point

out why assault made by gupti on hand of Waman and on the finger of Sanju did not figure in his police statement. He also could not explain why return of black man (accused No. 3 “ Shamsundar) who attacked again or then villagers beating that black man did not figure in his police statement or in his statement before the Magistrate. He denied defence version of the event.

24. The deposition of this witness, therefore, shows that he is the owner of 18 Acres of land and, therefore, not a labour. He points out odd hours at which they visited the field at Hudpa to collect soyabean. His evidence also shows that labours from other villages i.e. Bhiwapur and Fegad were picked up for said work.

25. The next witness is PW6 “ Mahadeo Tiwade. PW1 “ Sanjay has not taken name of any person with surname Tiwade. He mentioned one Mahadeo Shende. PW2 also does not take name of this person. PW3 again uses name Mahadeo but does not point out surname. The question, therefore, is whether this witness PW6 was at all with Dahake family. He states that the accused persons came from back side and they stopped motorcycle of Ishwar. One fair tall person assaulted on throat of Ishwar. In the meanwhile, their tractor reached there. Waman got down from the tractor and black colour shirt person took gupti from tall person and assaulted on the abdomen of Waman. Sanjay also got down and another tall black person took gupti and assaulted on the hand of Sanju. Then he shouted. The accused fled away on motorcycle and Sanju went to arrange a vehicle. He then deposes that black coloured person again came on the spot and people of Mandhal assaulted him. He fell down. His cross examination shows that he owns 5 Acres of agricultural land and he knew members of Dahake family since childhood. In para 8, he accepted that his statement was recorded by police on 13th day after the incident and on 12th day he did not tell anything to police. He denied defence version. He stated that immediately after incident, PW1, Sanjay told him name of the injured person as Shamsundar and name of other person as Rahul. However, he in the next breathe stated that names were told to him few days after the incident. He could not explain why attack on Sanju or return of black person and villagers beating him did not figure in his police statement. Thus, assault on PW1 “ Sanju deposed to by him is an omission in his police statement.

26. When depositions of these four so-called eye witnesses are seen, inconsistencies therein are apparent. The fact that accused No. 3 “ Shamsundar was lying injured on the spot and his two ribs were fractured and injury on his forehead is not in dispute. The Investigating Officer has in his examination-in-chief pointed out that accused No. 3 “ Shamsundar was lying injured at the spot and the deceased was lying dead in front of the hospital of Dr. Dolas. The omissions put to various witnesses have been put to him during cross examination. He also accepted that accused No. 2 “ Dilip Naik had lodged complaint against Waman Dahake on 25.10.2006 and 26.11.2006 for stealing Soyabean crop. However, he was not aware about complaints dated 27.06.2009 and 21.12.2007.

27. PW8 “ Hemant has described injuries on Shamsundar, Waman and Sanju. Injuries on Waman are found to be stab injuries muscle deep and Dr. has stated that those injuries were not sufficient to cause death if the medical treatment is not provided in time. He found lacerated injury on middle finger and incised wound (muscle deep) on ring finger of Sanjay. He proved injury certificate “ Exh. 132 issued by him about injuries sustained by Shamsundar. He found two stab injuries on forehead with grave and sharp margins, contusion on temporal area, contusion on chest and abrasion.

28. It is in this background that perusal of spot of occurrence and panchnama becomes necessary. In spot panchnama (Exh. 76) in first part, a spot opposite Girja Bhawan by the side of road on its slope finds mention. There blood was found accumulated. The said panchnama does not mention that Ishwar was attacked at that place or then was found lying at that place. It also does not mention that Shamsundar was found lying at that spot. In later part, another spot on the road going inside Mandhal town is mentioned. That spot is opposite dispensary of Dr. Dolas and there body of Ishwar was seen. Passion motorcycle was also found there. The tractor is found standing at a distance of 15 feet from this spot facing South and cut Soyabean was being carried in that tractor. Number of motorcycle has been mentioned as MH-40/SR-0335. Thus, this spot panchnama does not throw much light.

29. If Ishwar and Shamsundar were attacked at the same spot, their bodies could have been seen lying near that spot or in the vicinity. Even if it is presumed that accused persons (accused Nos. 1 and 2) ran away on motorcycle, motorcycle of the deceased Ishwar could have been seen in or about the vicinity of spot. The motorcycle is seen in map (Exh. 62) near Dr. Dolas dispensary and body of Ishwar is seen lying there with blood spot. The place where Shamsundar was found lying does not appear in this map at all. The map does not show Bus stand and at the centre of the map, there is Nagpur-Ambhora road. The first spot is shown below on the map on Southern side of this road. There for 10 feet tyre marks of tractor are also shown. However, the other spot is 165 feet away from the spot. It appears that body of Ishwar was carried to Dr. Dolas dispensary which is at a distance of 165 feet. Map shows that after going 100 feet in Eastern direction of this West-East road, right turn is required to be taken on road, after taking right turn at a distance of 65 feet, body of the deceased was seen in front of Dolas dispensary. The body was seen on right hand side of this North-South road. The tractor was shown on opposite side of road i.e. on its left hand side.

30. This evidence, therefore, does not establish the presence of accused No. 2 Appellant No. 2 “ Dilip Naik on the spot at all. Similarly, the injuries sustained by accused No. 3 “ Shamsundar have not been properly explained. Looking to the nature of injuries suffered by him, the prosecution ought to have made efforts to bring on record some definite material in this respect. Improvements made by witnesses on their police statement by stating that accused No. 3 “ Shamsundar, who had run away earlier, returned back to spot and was attacked by villagers is apparently by way of after thought and a false story. But then this false explanation needs drawing of adverse inference against the members of Dahake family.

31. We have also noted that attack with gupti on PW1 “ Sanju has not been convincingly proved. Once we hold that accused No. 2 “ Dilip Naik was not on the spot, it is clear that attack by him on Sanju needs to be discarded but then the fact that PW8 “ Doctor has found injuries on the hand of PW1 “ Sanju, cannot be ignored. Members of Dahake family had travelled a long distance at odd hours to bring back Soyabean. They had taken help of some other persons who cannot be strictly called as labours for said work. Why they could not bring Soyabean back

during day time, cannot be understood. If they went with preparation to bring back soyabean at odd hours, the attack by them on accused persons cannot be ruled out. Accused No. 2 “ Dilip Naik had lodged reports of theft on earlier occasions against Dahake family. All these facts raise several doubts and material on record does not convincingly show that accused persons attacked PW1 “ Sanju. Once the prosecution story is rendered doubtful, the other narration also needs to be viewed with suspicion. The finding of a bent gupti at the instance of accused No. 1 “ Rahul or finding of blood of Ishwar on his clothes in this situation, by itself, cannot be a decisive circumstance. It may lend credence to defence version also. If there was a quarrel or scuffle between the parties, the clothes may get blood stained. The material on record is, therefore, insufficient to hold that the accused persons are proved to be guilty.

32. We, therefore, acquit Appellant No. 2 “ Dilip Naik of the offences with which he is charged. Similarly, appellant Nos. 1 and 3 are also given benefit of doubt and acquitted. Accordingly, the judgment dated 10.07.2012 delivered by the Additional Sessions Judge “ 5, Nagpur, in Sessions Trial No. 53 of 2011 is quashed and set aside. The appellants are acquitted of the offences punishable under Sections 302, 307, 324 and 341 read with Section 34 of the Indian Penal Code. They be set free, if their custody is not required by the State Government in any other matter. Muddemal property be dealt with as directed by the trial Court after expiry of appeal period.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com