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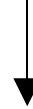
Sessions Case No. 112/2006
 Exhibit No. /A

IN THE COURT OF ADDL.SESIONS JUDGE KOLHAPUR

AT KOLHAPUR

State of Maharashtra

Complainant



Versus

1. Shrimant Vasant Gavali
 Age: 24 years. Occu: Labour
 R/o: Rajendrnagar slum area
 Kolhapur.

2. Bankat Sandippan Suryawanshi
 Age: 19 years. Rest as above.

3. Anil Keshav Kamble
 Age: 19 years. Rest as above.

4. Trimukh Vasant Gavali
 Age: 19 years. Rest as above.

5. Sau. Ijabai Vasant Gavali
 Age: 40 years. Rest as above.

Accused.



Appearance : Mr. A. N. Randiwe APP. for State.
 Mr V. V. Patil Adv. for Accused.

J U D G M E N T

1. The accused stands charged for the offences punishable u/ss 307 r/w 149, 147 r/w 149,, 148 r/w 149, 323 r/w 149, 504 r/w 149 and 506 r/w section 149 of Indian Penal Code.

2. The factual matrix from which the prosecution case arises is as under:

The complainant-Mahadev Vishwanath Ghatge is residing jointly at Rajendrnagar hutment area Kolhapur along with his wife, son Rahul, Babasaheb, Atul, daughter-in-law Ujawala and granddaughter Nandini. In the year 2002 murder of Dundappa Dolare took place and said murder was committed by one Khandu Kamble and his companion and since then Khandu Kamble is in prison and the matter is pending before the sessions court wherein he is one of the important witness. Therefore, people from the group of Khandu Kamble used to visit his house and pressurize him and also used to create terror in the locality to depose on their behalf in support of Khandu Kamble.

3. It is the case of the prosecution that, on 12-3-2006 at about 12-15 hours in the afternoon while he was present in his house at that time Arjun Mhaske who was residing at the neighbourer visited his house and called his son Atul and told him to accompany with him to kerosene depot in order to carry the kerosene. At that time complainant told his son to bring the money which is due from one person. Therefore ArjunMhaske and his son Atul went to Kerosene depot belonging to Kamble at Rajendranagar. Thereafter, within 15 minutes quarrel started in his lane and therefore he rushed there along with his wife Birkabai and in the square of kerosene depot they saw the mob of people gathered and therefore he went further and saw that, his son Atul and Arjun were fell on the road inert. At that time Shrimant Gawali,Bankat Suryawanshi, Anil,nephew of Khndu Kamble Sagar and Sagar Khandu Kamble came running there . At that time Shrimant Gawali was armed with sword and he came near him and threatened him and they will not leave him, now they had beat his son and now it is your turn and Bankat Suryawanshi sprinkled chilee powder on the person of my wife .Anil and Sagar

Khandu Kamble were having sticks in their hand and they abused them. But as seeing that number of people gathered at the spot they fled away from the spot and while leaving the place Anil gave a stick blow to Sakharabai Hari Kamble who was standing abducting to him. Thereafter he rushed to police station along with his son Atul and Arjun in a auto rickshaw. At that time his son told him that, Shriamnt Gawali had assaulted Sahadev Rodge by means of sword on his thigh who due to fear ran away from the spot and Anil Sagar Khandu Kamble bet him by stick below the knee portion, chest and face so also to Arjun Mhaske and Bankat Suryawashi gave fists and kick blows with a iron fist in the wrist. This fact is also told by his son before police and thereafter police sent them to C.P.R. Hospital for medical treatment. Accordingly he lodge complaint before police against the accused No's 1 to 5 as per Ex.11. On the basis of said complaint Rajrampuri police has registered Crime No. 31/2006 for the offences punishable u/s 307,323,504,506 r/w 34 of Indian Penal code and investigation was handed over to PSI Mr.Ghodke.

4. PSI Mr.Ghodke recorded the statement of witnesses as per their say. He visited the spot of incident and prepared the spot panchnama as per Ex.29. Said spot of incident pointed out by the complainant. Thereafter he sent the injured person to C.P.R. Hospital Kolhapur for medical treatment. He has also arrested the accused and seized the clothes on their person under seizure panchnama in presence of two panch witnesses. He has also seized the clothes of injured in the present crime under seizure panchnama in presence of panch witnesses .On 14-3-2006 he recorded the memorandum statement of accused Shrimant Gawali and at his instance recovered

the muddemal article No's 15 to 20 before the court, under seizure panchnama in presence of panch witnesses. On 17-3-2006 he sent the mudemal articles to C.A.Pune along with forwarding letter and after due investigation submitted the charge-sheet against the present accused on 9-6-2006 in the court.

5. On receipt of the charge-sheet Adhoc.Addl.Sessoins Judge, Kolhapur Mr.Makhare, framed charge against the accused No's 1 to 5. The contents of the said charge were read over to the accused in vernacular language. Accused pleaded not guilty and claimed to be tried. Their defence is of total denial.

6. In order to prove the prosecution case, the prosecution has examined in all nine witnesses. The accused did not lead any defence evidence.

7. I have heard Mr.A.N.Randiwe Ld.APP for State and Mr.V.V.Patil Ld.Adv.for accused. Considering the oral and documentary evidence on record and the arguments advanced from both the sides, following points arises for my determination and my findings thereon are as under:

	Points	Findings
1	Whether prosecution prove that accused No's 1 to 5 along with along with juvenile offender Balalya @ Sagar Khandu Kamble on 12-3-2006 at about 12-30 p.m. in Rajendranagar slum area in furtherance of their common intention did an act with such intention under the circumstances that, by using weapon like sword,sticks,iron fist and using chilly powder,if by that act, they would have caused death of injured witnesses namely Atul Mahadev Ghatge, Arjun Mahadev Salave,Sadashiv Harinath Rodage, Pintu @ Tatyarao Devdas Mote etc..they would have been guilty of their murder and that thereby they have caused the	No

	hurt to the said witnesses and committed an offence punishable u/s 307 r/w section 149 of I.P.C.?	
2	Whether prosecution further prove that, on the aforesaid date,time place present accused along with juvenile accused in furtherance of their common intention, and member of an unlawful assembly and with common object of that assembly , assaulted above named injured witnesses and thereby committed an offence punishable u/s 147 r/w S.149 of I.P.C ?	No
3	Whether prosecution further prove that, on the aforesaid date,time and place present accused along with juvenile accused were the members of unlawful assembly armed with deadly weapons like sword,iron fist,sticks etc.in prosecution of the common object for assaulting the above named witnesses and thereby committed an offence punishable u/s 148 r/w section 149 of I.C.O ?	No
4	Whether prosecution further prove that, on the aforesaid date,time and place present accused were the members of unlawful assembly in furtherance of their common object of said assembly,voluntarily caused hurt to the injured witnesses namely Atul Mahadev Ghatge,Arjun Salave, Sadashiv Rodge,Pintu Mote and thereby committed an offence punishable u/s 323 r/w sect. 149 of I.P.C.?	No
5	Whether prosecution further prove that, on the aforesaid date,time and place present accused were the members of unlawful assembly in furtherance of their common object of the said assembly intentionally insulted and thereby gave provocation to the injured witnesses , intending or knowing to be likely that such a provocation that would cause the said person to break the public peace and thereby committed an offence punishable u/s 504 r/w section 149 of I.P.C.?	No
6	Whether prosecution further prove that, on the aforesaid date,time and place present accused were the members of unlawful assembly in	

	furtherance of their common object committed criminal intimidation by threatening to the injured witnesses named above with injury to their person with intent to cause alarm to the said witnesses and thereby committed an offence punishable u/s 506 simplicitor or u/s 506 r/w sect.149 of I.P.C.?	No
7	What offence if any committed by the accused?	No offence is proved against the accused.
8	What order ?	As per final order.

REASONS

8. Point No 1 to 6 :

All these points are interconnected to each other and therefore, I think it necessary to discuss all these points together. It is the case of the prosecution that, complainant Mahadev Ghatge is residing in slum area of Rajendra nagar, Kolhapur whereat murder of one Dolare was committed in the year 2002 by Khandu Kamble who is now in prison and in the said sessions case, complainant is the main witness, therefore people from the group of Khandu Kamble used to pressurize Mahadev Ghatge to give evidence in support of said Khandu Kamble and therefore they have assaulted his son Atul Kamble and his friend Arjun at about 12-00 p.m. and also spread the chilee powder on the person of his wife and further assaulted them by giving fists and kick blows. Therefore, Mahadev Ghatge lodged complaint against the accused at Rajarampuri police station.

9. In support of its case the prosecution has examined in all nine witnesses. PW-1 Pramod Gaikwad is a panch witness at Ex.28. It has come in his evidence that, he was present at the time of preparing the spot panchnama and spot of occurrence is in Rajendrnagar slum area but nothing was found on the spot of occurrence and police has accordingly prepared the spot panchnama Ex.29 in his presence and

it bears his signature. But he has admitted in his cross-examination that, house of accused no.1 is situated in the back side of Chavan hall which is at a distance of 30 ft. from the spot of incident. On perusal of the spot panchnama Ex.29 it is clear that, nothing was seized from the spot of incident but spot of incident is situated in Rajendranagar slum area in front of Shivajirao Chavan hall. The road on which the incident took place is a tar road having width of 21 ft.

10. The prosecution has examined Jalindar Kamble PW-2 at Ex.32 another panch witness of seizure of clothes of Trimukh Gawali and Anil Kamble under panchnama Ex.33. But he has admitted in his cross-examination that, clothes were on the person of accused and he has no knowledge that, after preparing the seizure panchnama whether there were clothes on the person of accused or not. On perusal of Ex.33 it is clear that, police has seized the clothes of accused Anil Kamble and Trimukh Gawli. According to this witness, police has seized the clothes of Anil Kamble and Trimukh Gawali in his presence and police has written in the panchnama that, there was one shirt of square but he has not stated to whom it belong to. The prosecution has also examined PW-3 Kumar Bhadkamble at Ex. 34 another panch witness, who has stated before the court that, he was called to act as a panch witness for seizure panchnama of clothes of the injured person Atul Ghatge, Arjun Mhaske, Sahadev Rodge and Pintu Mote and there were stains on the clothes of Atul Ghatge and there were blood stains on the clothes of Sahadev and police has prepared seizure panchnama of these clothes vide Ex.35. But he has admitted in his cross-examination that, police has produced the clothes of injured in his presence and they have not seized the clothes of injured in his presence. Therefore, seizure

panchnama of clothes of injured Ex.35 is not proved by the prosecution.

11. The prosecution has examined Sudhakar Mane the panch witness for the memorandum statement of Shrimant Gawali at Ex. 39. It has come in his evidence that, Shrimant Gawali gave his memorandum statement before him and he has stated before him that he had concealed the weapons and he is going to produce it and accordingly his statement is recorded as per Ex.40. Thereafter accused Shrimant carried them till the place whereat he had concealed the weapons and said place is situated at Rajendranagar adjacent to Shivajirao Chavan hall. There accused Shrimant Gawali get down from the vehicle and show the weapons concealed in the pan shop. It consists of one sword, one iron fist, four sticks which were seized by the police under panchnama Ex.41 and article Nos 15 to 20 before the court are the same. But he has admitted in his cross-examination that, when they went to the police station first of all they were told that, Shrimant Gawali was in the police lock up and they have to go along with Shrimant Gawali at Rajendranagar and have to come back by taking weapons. He has also admitted in his cross-examination that, in all 8 signatures were obtained in the police station and he has also signed the recovery panchnama in the police station and it was written in respect of concealed weapons. Therefore, memorandum statement of accused Shrimant Gawali and seizure panchnama of weapons is not proved properly by the prosecution.

12. The prosecution has examined the material witness Mahadev Gahtge -complainant at Ex.89 but he has not supported the prosecution case and therefore Ld.APP declared him hostile and he

was cross-examined at length by the Ld.APP but nothing incriminating evidence has come against the accused. Even he has denied that, he had shown the spot of occurrence to the police and in his presence police prepared the spot panchnama. Even the complaint of the complainant is not proved.

13. The prosecution has examined PW-6 Tatyaso Mote at Ex.92 who is a injured witness and he is also turned hostile and cross-examined by the Ld.APP but nothing incriminating has come in his evidence against the accused No's 1 to 5. The prosecution has also examined injured Arjun Mhaske as PW-7 at Ex.93 but he is also turned hostile and did not support the prosecution and nothing has come in his cross-examination by Ld.APP against the present accused. The prosecution has also examined another injured Sahadev Rodge as PW-8 at Ex.95 but he is also declared hostile by the Ld.APP as he has not supported the prosecution and nothing incriminating has come in his evidence against the present accused during the cross-examination by the Ld.APP. The prosecution has examined the Investigating Officer PSI Mr.Ghodke as PW-9 at Ex. 110. He is a formal witness in respect of investigation carried out by him and submitting the charge-sheet in the court.

14. In the present case, though it is the case of the prosecution that, accused No's 1 to 5 have formed unlawful assembly and in furtherance of their common object of assembly they have assaulted the complainant and his family members and to other prosecution witnesses by means of weapons in their hand, but none of the witnesses have supported the theory of prosecution story. The seizure panchnama of the weapons is not properly proved by the prosecution. Even the complainant and injured witnesses turned

hostile in the present case and they have not supported the prosecution case. Therefore, the prosecution has utterly failed to prove any of the charge levelled against the present accused No's 1 to 5. I, therefore have no other alternative but to acquit the accused. Hence, I answer these points accordingly.

15. Point No.7

In view of my findings on point No's 1 to 6, I come to the conclusion that, prosecution has utterly failed to prove beyond reasonable doubt any of the charge levelled against the accused No's 1 to 5 and therefore they are entitled for acquittal.

16. Point No.8

In view of my findings on point No's 1 to 7, I proceed to pass the following order.

O R D E R

1. The accused No.1-Shrimant Vasant Gavali, No.2-Bankat Sandippan Suryawanshi, No.3- Anil Keshav Kamble, No.4- Trimukh Vasant Gavali, No.5-Sau.Ijabai Vasant Gavali are hereby acquitted for the offence punishable u/s 307 r/w 149, 147 r/w 149,, 148 r/w 149, 323 r/w 149, 504 r/w 149 and 506 r/w section 149 of Indian Penal Code.
2. Bail bond of the accused stands cancelled and sureties are discharged.
3. Muddemal article No's 1 to 20 being worthless, be destroyed after the appeal period.

Sd/-

(Smt.P.D.Desai)

Date: 30-11-2011

Addl.Sessions Judge,Kolhapur

