

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 372 OF 2000

- 1) Namdev Bhagaji Kshirsagar,
Age about 50 years,
- 2) Subhash Namdeo Kshirsagar,
Age about 25 years,

Both R/o. Umbri-Balapur,
Tal. Sangamner, Dist. Ahmednagar.**Appellants.**

Versus

State of Maharashtra

....**Respondents.**

Mr. Satej S. Jadhav, Advocate for appellants.

Mr. A.V. Deshmukh, APP for State.

CORAM : T.V. NALAWADE, J.

DATED : 5th February, 2015.

JUDGMENT :

- 1) The appeal is filed against judgment and order of Sessions Case No. 28/2000 (Old No. 397/1995) which was pending in the Court of Additional Sessions Judge, Sangamner, District Ahmednagar. The appellants are convicted and sentenced for offences punishable under sections 307 r/w. 34, 324 r/w. 34 and 323 r/w. 34 of Indian Penal Code.

2) The maximum sentence of rigorous imprisonment for six years is given and the fine is also imposed. A Statement was made that entire fine amount has been deposited. The learned counsel for appellants submitted that the Village Committee by name Mahatma Gandhi Tanta Mukti Samiti made an attempt to settle the dispute between two sides, who are neighbours to each other and they have settled the dispute. Some record is filed in respect of that settlement and affidavit of both the sides is also filed which include the affidavit of Aba Murlidhar Mali, the injured witness. He has contended in the affidavit that they have settled the dispute and they want to live peacefully and as they are adjoining land holders, so lenient view may be taken. The learned counsel for appellants submitted that appellants are behind bars for about four months. The learned APP is also heard.

3) The crime was registered on the basis of report given by Aba Murlidhar Mali. He had dispute with the appellants since 1990 on the count of taking water for irrigation. The quarrels had started about 15 days prior to the date of incident. In the incident dated 27.8.1995 when he was returning to the field, according to him, the appellants and their family members intercepted him. There are allegations against appellant

Subhash that he used pen knife and gave blows of knife to the complainant and there was allegation that Namdeo gave one stick blow on his head. In F.I.R., he has contended that during incident, they said that they wanted to teach him lesson and when they saw blood, they all ran away. The charge sheet was filed for aforesaid offences and before the trial court both the injured witnesses and medical officers are examined. On the basis of evidence given by prosecution, the conviction and sentenced is given by the Trial Court.

4) This Court has gone through the injury certificates and the evidence of the doctor. Around 11 C.L.Ws. were found on the person of complainant. It was submitted that he was indoor patient for about three days. Doctor has given evidence that the injuries were grievous in nature. However, no fracture injury was sustained by Aba Mali. It appears that there was excessive bleeding due to use of pen knife.

5) In view of the evidence given against the appellants and the discussion made above, this Court holds that lenient view needs to be taken. Appellants were behind bars for about four months in aforesaid offences and fine amount is also deposited. In view of the facts and circumstances of this case,

this Court holds that lenient view can be taken.

6) In the result, the appeal is partly allowed. The judgment and order of trial Court is modified to reduce the sentence for the period already undergone and for the fine amount already deposited. The bail bonds of the appellants stand cancelled.

[T.V. NALAWADE, J.]

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