

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No. 473 of 1995

District : Solapur

1. Shivanand Janardhan Bhadkumbe,
Age : 27 years,
Occupation : Labourer.
2. Devanand Janardhan Bhadkumbe,
Age : 21 years,
Occupation : Education.
3. Umaji Devappa Waghmare,
Age : 70 years,
Occupation : Nil.

All are residing at Village -
Gunjegaon, Tal. South Solapur,
District : Solapur.

.. Appellants
(Original accused
nos.1, 2 and 3)

versus

1. The State of Maharashtra,
through Mandrup Police Station,
District : Solapur.
2. Kerappa Sadhu Bhadkumbe.
3. Yalappa Kerappa Bhadkumbe.

.. Respondents.

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Mr. Surel S. Shah, Advocate, for the appellants.

*Ms. A.A.Mane, Addl. Public Prosecutor, for
respondent no.1.*

Mr. Suresh Kumbhar, Advocate, for respondent no.2.

Respondent no.3 served.

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With**Criminal Application No. 1567 of 2015**
(In Criminal Appeal No. 473 of 1995)

District : Solapur

1. Shivanand Janardhan Bhadkumbe,
Age : 48 years,
Occupation : Labourer.

2. Dayanand Janardhan Bhadkumbe,
Age : 42 years,
Occupation : Labourer.

Both residents of
village Gunjegaon,
Taluka : South Solapur,
District : Solapur

.. Applicants
(Original accused
nos.1 and 2)

versus

1. The State of Maharashtra,
through Mandrup Police Station,
District : Solapur.

2. Kerappa Sadhu Bhadkumbe.

3. Yalappa Kerappa Bhadkumbe.

.. Non-applicants.

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Mr. Surel S. Shah, Advocate, for the applicants.

*Ms. A.A.Mane, Addl. Public Prosecutor, for
non-applicant no.1 - State.*

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CORAM : Smt. SADHANA S. JADHAV, J.

DATE : 23RD DECEMBER 2015

JUDGMENT :

The appellants herein are convicted for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 3 years each and to pay fine of Rs. 750/-, in default of payment of fine, further rigorous imprisonment for 6 months each, by the Addl. Sessions Judge, Solapur, in Sessions Case No. 64 of 1994, vide judgment and order dated 28th August 1995. Hence, this appeal.

2. During the pendency of this appeal, original accused no.3 i.e. appellant no.3 has expired and hence, the appeal stands abated as against original accused no.3 - Umaji Devappa Waghmare.

3. Such of the facts necessary for the decision of this appeal are as follows :-

(a) On 18th January 1994, Police Head Constable Bansode, attached to Police Station, Mandrup, had brought three injured persons with their relatives in a private jeep. It was noticed that the injured had sustained serious injuries and, therefore, they were sent to Primary Health Centre, Mandrup, along with a requisition letter issued by the Police Station. PW 12 Ganpat Nikam, who was attached to Mandrup Police Station as PSI, had been to the Primary Health Centre and recorded statement of the injured Kerappa. The

injured Kerappa had disclosed to the Police, that he is in possession of Government land having area 1 Hectare 21 Are at village Gunjegaon. That, he had disputes over the said land with his kin i.e. Janardhan Bhadkumbe and 8 others. Civil Suit was pending. The said Suit was decreed in favour of Kerappa. However, Janardhan had started cultivating the said land under pressure. The complainant had maintained silence with a hope that the dispute would be amicably settled.

(b) Kerappa further disclosed to the Police that on 17.01.1994 at about midnight, he was sitting in Samaj Mandir and was chatting with friends and relatives. Suddenly, the present appellants along with other accused had come on the spot and had mounted assault upon them with axe and sword. The women accused had thrown chilly powder in the eyes of the complainant and others accompanying him. His wife, Suganda had attempted to intervene. However, she was also assaulted. Kerappa had sustained injury on his nose as well as his fingers and other parts of the body. That, his son Yalappa was also assaulted by the appellants on his head and leg. On the basis of the said report, Crime No. 5/94 was registered at Mandrup Police Station against the accused for the offences punishable under Sections 147, 148, 149, 307, 326, 324 of the Indian Penal Code and under Section 135 of the Bombay Police Act.

(c) After completion of investigation, charge-sheet was filed against the accused. The case was committed to the Court of Sessions and registered as Sessions Case No. 64/1994. Charge was framed against all the accused on 22nd June 1994. The accused pleaded not guilty. The prosecution examined as many as 12 witnesses to bring home the guilt of the accused.

4. The evidence in the present case mainly rests upon the evidence of the injured witnesses and the Medical Officer who have proved the injury certificate.

5. PW 1 Nijguna Bashetti is the Circle Officer who had prepared the map of the scene of offence. PW 2 Bhimrao Patil is the Panch for the spot Panchanama which is at Exhibit 20. PW 3 Mahtabbi Madar Shaikh is the Panch for the arrest Panchanama which is at Exhibit 22.

6. PW 4 Shivaji Patil happened to be the Sarpanch of village Gunjegaon. He has deposed before the Court, that in the intervening night of 17.01.1994 and 18.01.1994, Ranjana, daughter of Kerappa had gone to his house. She was crying. She disclosed to PW 4 Shivaji Patil that the sons of Janardan Bhadkumbe and the womenfolk from his family

were beating the parents. She requested the Sarpanch to come to the spot. Upon enquiry, she informed that the Police Patil had been to Solapur and, therefore, she was constrained to approach Sarpanch of the village. Thereafter PW 4 Shivaji Patil along with Ranjana went to the house of Kotwal, Malhari Jadhav and then they all three proceeded to the spot. He has deposed that the injured persons were in serious condition. They saw that Kerappa and his wife were assaulted in front of the house of Maruti Bhadkumbe and that, they were groaning in pain. PW 4 Shivaji Patil then sent the Peon of Grampanchayat and brother of Bhanudas to the Police Station and informed the Police about the incident.

7. PW 4 Shivaji Patil has admitted in the cross examination, that his house is at a distance of about 1000 to 1200 feet from the spot, whereas the house of kerappa is at a distance of 15 to 20 minutes duration from his house. He has admitted before the Court, that the injured persons have not disclosed names of the persons who had assaulted them. That, Ranjana had given them the entire narration of the incident. He has also admitted that he met the Police on the next day in the morning and narrated the incident before the Police. That, there is medical facility at village Kamati which is at a distance of about 7 Kms. from village Gunjegaon. PW 4 Shivaji Patil has also admitted that there was previous incident of

assault between the same parties and that he had compromised the issue.

8. PW 5 Malhari Jadhav is the Kotwal of the said village. He has deposed before the Court, that in the intervening night of 17.01.1994 and 18.01.1994, PW 4 Shivaji Patil had been to his house and woke him up. That, he had requested PW 5 to accompany him. They were accompanied by Ranjana. He had noticed that Keraba and his wife Sugandha were lying near the house of Janardan Bhadkumbe in an injured condition, whereas Yalappa was lying unconscious in his house. That, PW 4 Shivaji Patil and PW 5 Malhari Jadhav had taken further steps to lodge report at the Police Station.

9. In the cross examination, PW 5 Malhari Jadhav has admitted that on 18.01.1994, at about 7.00 a.m., he had telephonically informed Mandrup Police Station about the said incident. Police Head Constable Bansode had received the said information. Police had come to the spot immediately in a jeep and Head Constable Bansode had carried the injured in the Police jeep. It is admitted that Police Head Constable Bansode had not made any enquiry about the incident at that relevant time. The Police had taken the injured to the hospital. The statement of PW 5 Malhari Jadhav was recorded by the Police on the next date.

10. PW 6 Dr. Jagdevappa Karande was attached to Civil Hospital, Solapur. He has deposed before the Court, that on 18.01.1994, he had examined injured Santoshi Yalappa Bhadkumbe as she had sustained injuries. The injury certificate is at Exhibit 26. That, Santoshi had sustained linear abrasion on her back. It is admitted in the cross examination, that Santoshi had been to the Civil Hospital without Police requisition. She informed the Doctor that she had been assaulted and hence, the same was registered as a medico-legal case. That, PW 6 Dr. Karande has not given any information to the concerned Police Station. It is admitted that the injury certificate at Exhibit 26 was prepared on 28th February 1994.

11. PW 7 Dr. Asha Gaikwad was also attached to Civil Hospital, Solapur. On 18.01.1994, she had examined Yalappa Bhadkumbe. She had noticed that Yalappa had sustained incised wound, bone deep on vertex which was caused by a sharp object; an incised wound on occipital region caused by sharp object; an incised wound over left leg, bone deep on middle of left leg caused by sharp object and other contused lacerated wound. PW 7 Dr. Asha Gaikwad has further deposed that injury nos.1 to 4 were dangerous to life and injury no.5 was grievous. That, Yalappa was treated as an indoor patient from 18th January 1994 to 20th February 1994. The injury certificate is at

Exhibit 28.

12. PW 7 Dr. Asha Gaikwad had also examined Sugandha Kerappa Bhadkumbe and had noticed that she had sustained contused lacerated wound, bone deep on left temporal parietal region caused by hard and blunt object and that the said injury was dangerous to life. The patient was treated as an indoor patient from 18.01.1994 to 26.01.1994. PW 7 Dr. Asha Gaikwad had also examined Kerappa on the same day. That, Kerappa had sustained about nine contused lacerated wounds and hence the patient was sent to Civil Hospital, Solapur, for further management. That, the patient was not in a position to talk. The injury certificate is at Exhibit 31. That, injury no.4 was caused by sharp weapon. It is elicited in the cross examination, that the Doctor had not handed over the injury certificate at Exhibit 31 to the Police during the course of investigation. The patient Kerappa was discharged from the hospital on 10.05.1994. It is also admitted that the injury certificate at Exhibit 31 is prepared on the basis of the case papers. That, she had not personally given any specific treatment to the patient Kerappa. It is also admitted that at the time of medical examination, Kerappa was conscious and had given the history of assault. When she examined the patient, there was no fresh bleeding injury. It is pertinent to note that PW 7 Dr. Asha Gaikwad has categorically

admitted in the cross examination that the injuries in the present case were not sufficient in the ordinary course of nature to cause death.

13. PW 8 Ranjana Chandanshive is the daughter of injured Kerappa. She has deposed before the Court, that the incident had taken place at about 11.00 p.m. Her brother and father had been to Samaj Mandir. She was sitting on the platform abutting her house. She heard the voice of her father calling for help. The voice was from the direction of house of Janardan Bhadkumbe. They rushed to the spot and saw the accused persons assaulting her brother Yalappa and her father Kerappa. That, original accused no.3 Umaji was assaulting Yalappa, whereas original nos.1 and 2 i.e. Shivanand and Devanand were assaulting her father Kerappa. She cried for help. However, nobody came to rescue. Initially, her father Kerappa was semi-conscious. That, the womenfolk had thrown chilly powder in the eyes of the family members. She had then narrated before the Court, the steps taken by her to set the law in motion.

14. It is admitted in the cross examination by PW 8 Ranjana Chandanshive, that she is resident of village Ichgaon, Taluka Mohol. That, she was married 13 years prior to the incident. On the day of the incident, she had casually come to meet her parents. That, her house is surrounded by the other houses.

The defence has not been able to shatter her evidence in the cross examination. There are certain omissions in her evidence. However, they are not material omissions and hence need not be considered.

15. PW 9 Kerappa Bhadkumbe is the injured. He has given the background of the quarrel between both the parties. He has deposed before the Court, that the accused persons were in possession of 3 Acres 38 Gunthas of Mahar Watan land. That, they had filed proceedings and the said proceedings were decided in favour of Mahar community. After about one year of the said judgment, the accused persons had assaulted Yalappa with sticks. They were prosecuted and convicted. They were sentenced to undergo substantive sentence of one year and to pay fine of Rs. 200/-. He has narrated the incident as per the First Information Report. It is admitted in the cross examination, that the house of the accused is just behind Samaj Mandir. It is also admitted in the cross examination, that the first blow was given on Yalappa and then Kerappa. There was a time gap of about 5 - 6 minutes. That, except his family members, no one else had been to rescue them from the clutches of the appellants. As far as the main incident is concerned, the accused have failed to create any dent in the course of cross examination.

16. PW 10 Yalappa Bhadkumbe is the injured son

of PW 9 Kerappa. He has deposed before the Court, that on the night of the incident, accused no.1 Shivanand had been to Samaj Mandir and when he saw that some people were playing cards, he requested them to allow him to play the game. He was not allowed to participate. He then threatened that he would tear the playing cards. That, accused no.1 Shivanand had threatened that he would switch off the light. He had proceeded to switch off the light. According to him, he had requested accused no.1 Shivanand to end the game of cards as senior members were sleeping.

17. PW 10 Yalappa has further deposed that accused no.1 Shivanand was annoyed with the request of PW 10 Yalappa. That, accused no.1 Shivanand along with accused nos.2 and 3, Devanand and Umaji, had caught hold PW 10 Yalappa by his neck. There was hue and cry in the Samaj Mandir. Upon hearing the same, PW 9 Kerappa and Shantabai had rushed to Samaj Mandir. When they attempted to intervene, they were also assaulted. It is alleged that when PW 9 Kerappa and PW 10 Yalappa were passing from front of the house of Janardan, accused nos.4 to 7 had thrown chilly powder in the eyes of PW 9 and thereafter accused nos. 1, 2 and 3 had mounted assault. All the people who had attempted to intervene, including the mother of PW 10 Yalappa, were assaulted.

18. It is elicited in the cross examination of PW 10 Yalappa, that the Mahar Watan land was in possession of the accused persons since 1963. That, accused nos.1 to 3 were acquitted in Criminal Appeal in the year 1991 in a case which was instituted on the basis of the report of PW 10 Yalappa. As far as the present case is concerned, PW 10 Yalappa had candidly stated that the Police had not made any enquiry with him in this case after he had regained consciousness. He has admitted that he had never stated before the Police that accused nos.1 to 3 had assaulted him when he was returning to his house from the house of Sarpanch. He has also admitted that he had not stated before the Police that at the time of incident, his father PW 9 Kerappa was sitting at a distance of 5 - 6 feet from Samaj Mandir, whereas he was standing near the pillar in Samaj Mandir. It is also admitted that Shivanand had requested Dhanappa to allow him to play the cards. The said prelude to the incident was also never disclosed by PW 10 Yalappa to the Police. In short, PW 10 Yalappa was confronted with his previous statement and he has admitted the omission. These are material omissions as far as the prelude to the incident is concerned.

19. PW 11 Abdul Kadar is the Panch for the seizure of clothes which is at Exhibit 40. The said witness has been declared hostile.

20. PW 12 Ganpat Nikam is the Investigating Officer. He has deposed before the Court that on 18th January 1994, when he was present in the Police Station, Police Head Constable Bansode had brought three injured persons with their relatives in a jeep. Upon seeing the injuries, PW 12 Ganpat Nikam had directed the Police Head Constable to send them to Primary Health Centre, Mandrup, for medical examination and treatment. PW 12 Ganpat Nikam had also been to the Primary Health Centre. He recorded the statement of PW 9 Kerappa in the Primary Health Centre and he had then sent him to the Police Station for the purpose of recording his statement under Section 154 of the Code of Criminal Procedure and for the purpose of setting the law in motion. The injured were sent to Civil Hospital, Solapur. PW 12 Ganpat Nikam had then carried out the investigation.

21. It is elicited in the cross examination of PW 12 Ganpat Nikam, that at the time of filing charge-sheet, the documents at Exhibits 55 to 60 were not with PW 12 Ganpat Nikam and, therefore, the same do not find place in the charge-sheet and were produced in the Court. It is also elicited that when PW 12 Ganpat Nikam saw the injured for the first time, PW 9 Kerappa was conscious, whereas the other two injured were unconscious. That, PW 12 had recorded the statement of PW 9 Kerappa in the presence of the Doctor after obtaining endorsement

that all the injured were in a position to talk. It is also admitted that he had not prepared the Panchanama of Samaj Mandir although there is a mention about it in the report at Exhibit 35. It is also admitted that in the course of investigation, no witness had stated before PW 12 Ganpat Nikam, that accused no.1 Shivanand had also assaulted PW 10 Yalappa with an axe, between Samaj Mandir and the spot which is described in the Panchanama at Exhibit 20. It is also admitted that he had learnt about the weapons used in the crime before the accused were arrested. That, the house of the accused was not searched prior to their arrest. PW 12 Ganpat Nikam has proved the omissions and contradictions in the evidence of the witnesses.

22. Upon appreciating the evidence adduced by the prosecution, it appears that the prosecution witnesses have not disclosed the whole of the truth before the learned trial Court. The prelude to the incident needs to be taken into consideration. However, the prelude is not stated by any of the witnesses for the reasons best known to them. However, as far as the incident of assault is concerned, the defence has not been able to make any dent in the substantive evidence of the witnesses. There were no traces of chilly powder and, therefore, the co-accused have been acquitted. It is an admitted position, that there was a civil dispute

between the parties over Mahar Watan land. The learned Counsel for the appellants has submitted that there were civil disputes between the parties and being annoyed with the same, the complainant had initiated criminal proceedings against the appellants. That, PW 4 Shivaji Patil - Sarpanch had taken a lead in the present case and had called upon Kotwal Malhari, who happened to be Ex-Police Patil of the village.

23. PW 6 Dr. Jagdevappa Karande has categorically stated that the patient Santoshi had been to the hospital without any requisition letter issued by the Police. PW 6 has admitted that he had not informed the Police about a medico-legal case of patient Santoshi. In fact, the medico-legal certificate ought to have been collected by the Investigating Officer forthwith.

24. It appears from the record, that there was longstanding rivalry between both the groups over an agricultural land about which a dispute was pending before the court. It further appears that the incident has been blown out of proportion by the prosecution witnesses. In view of the evidence of the of P.W. 10, it appears that there was no pre-meditation. The accident has occurred on the spur of the moment. The injuries sustained by the witnesses are simple in nature. There is an admission that he

was not assaulted on the way. The incident is admitted. The question whether they are falsely implicated deserves to be taken into consideration. Upon appreciating the nature of injuries sustained by the prosecution witnesses, this Court is of the opinion that an offence under Section 307 read with Section 34 of the IPC would necessarily fail. This is a case of direct evidence, inasmuch as, the injured have seen and identified the accused persons. Hence, the appeal deserves to be partly allowed, in the interest of justice.

25. Hence, I pass the following order :-

O R D E R

(i) The appeal is partly allowed.

(ii) The appellants are acquitted of the offence punishable under Section 307 read with Section 34 of the Indian Penal Code vide the judgment and order passed by the Addl. Sessions Judge, Solapur, dated 28.08.1995.

(iii) The appellants are instead convicted for the offence punishable under Section 324 of Indian Penal Code and are sentenced to the period already undergone.

(iv) Fine amount is enhanced to Rs. 10,000/- (Rupees ten thousand only), to be paid before the Sessions Court, Solapur, within eight weeks from today.

(v) The learned Sessions Judge shall make an endeavour to issue the notice to the legal heirs of the victim - Kerappa Sadhu Bhadkumbe and Yalappa Kerappa Bhadkumbe.

(vi) The appellants be released forthwith, if not required in any other offence.

(vii) Parties to act on an authenticated copy of this order.

26. Appeal stands disposed of. In view of the disposal of the appeal, Criminal Application No. 1567 of 2015 stands disposed of.

(Smt. SADHANA S. JADHAV)
JUDGE

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