

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 442 OF 1996

Shri Pandurang Rukmanna Patil
Aged 49 years, Resident of Mhalewadi,
Taluka Chandgad, District-Kolhapur. ... Appellant.

Versus

1 The State of Maharashtra.
2 Sambhaji Shivaji Patil.
3 Smt. Anusaya Shivaji Patil,
Both Respondent Nos. 2 and 3
R/o. Mhalewadi, Tal. Chandgad,
Dist. Kolhapur. ... Respondents.

Ms. V.V. Thorat, advocate for apeepllant.

Ms. Monali Patil, advocate appointed for respondent Nos. 2 and 3.

Ms. V.S. Mhaispurkar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : MARCH 30, 2016

JUDGMENT :

1 The appellant herein is convicted for the offence punishable
under Section 307 of the Indian Penal Code and sentenced to suffer

R.I. for 5 years and to pay fine of Rs. 5,000/- I.d. to suffer R.I. for 3 months by the Additional Sessions Judge, Gadhinglaj in Sessions Case No. 27 of 1996 vide Judgment and Order dated 28th June, 1996. Hence, this appeal.

2 Such of the facts which are necessary for the decision of this appeal are as follows :

- (i) The appellant herein happens to be the paternal uncle of Sambhaji Shivaji Patil(P.W.10). That the father of Sambhaji had met homicidal death. The accused persons who had caused the homicidal death of Shivaji Patil were convicted.
- (ii) Sambhaji was residing with his mother Anusaya in the common household which was shared by the accused/appellant. There was notional partition between both the families. They were residing separately in the same house. Entry to the house was common.
- (iii) Sambhaji has filed Civil Suit against the appellant seeking partition i.e. half share in the property. At the time of filing of the suit, sugarcane crop was standing in the land. Pursuant to the orders

passed by the Civil Court, Sambhaji was entitled to half share of the crop and the appellant was entitled to the remainder half.

(iv) It is the case of the prosecution that on 6/5/1995 at about 8.30 p.m. when Sambhaji was standing in front of the house supervising the transport of the sugarcane to the sugar factory, the accused/appellant had abused him, as he was annoyed on account of Sambhaji being entitled to the half share, although he had cultivated the said crop. There was verbal altercation between the uncle and the nephew. It is alleged that the appellant was armed with sickle and he assaulted Sambhaji on his neck with the sickle. Then Sambhaji attempted to rescue himself. He was followed by the appellant who gave subsequent blow on his left leg. When Sambhaji fell down, the appellant had allegedly assaulted him with the same sickle on his abdomen.

(v) That the mother of Sambhaji i.e. Anusaya (P.W.11) had appeared on the scene of the offence. The appellant had allegedly assaulted Anusaya (P.W.11) with the sickle on her head, shoulder and back.

(vi) They both had fallen on the ground. Both were left unattended for almost two hours and thereafter, at the instance of Dr. Shinde, police vehicle was called and injured were shifted to Belgaon Hospital. They were taking treatment at K.L.E. Hospital, Belgaon for almost 3 to 3 ½ months. The sarpanch of the village Shri Vithal Hari Patil (P.W. 4) lodged report at the police station. On the basis of his report, Crime No. 20 of 1995 was registered at Chandgad Police Station against the accused for the offence punishable under Section 307, 504, 506 read with Section 34 of the Indian Penal Code.

(vii) Upon completion of investigation, charge-sheet was filed on 21/11/1995. The case was committed to the Court of Sessions and registered as Sessions Case No. 27 of 1996.

(viii) The prosecution examined as many as 13 witnesses to bring home the guilt of the accused. The case rests upon the evidence of P.W. 10, P.W.11 and P.W.5.

3 P.W. 10 Sambhaji Shivaji Patil has deposed before the Court that civil suit was filed by him seeking share in the property. The

Court by the interim order had granted half share to P.W. 10. He has deposed before the Court the manner in which the incident has occurred. He has reiterated the abuse hurled at him by the appellant. He has specifically stated that the appellant herein had assaulted him on neck, left leg and abdomen. As far as the incident in question is concerned, witness has not been shattered in the cross-examination. He has admitted in the cross-examination that the suit is still pending and interim orders were passed in his favour. It is reiterated in the cross-examination that after the first assault, he ran to a distance of 4 to 5 ft. and the accused had assaulted him on the leg from behind by bending down and when he further ran for 10 to 15 ft., the appellant had assaulted him on his abdomen. It is elicited in the cross-examination that on the date of incident the sugarcane from the land of the accused was being sent to the sugar factory and not the sugar cane from the land of P.W. 10. However, it is clear that as far as the actual assault is concerned, the witness has not been shattered in any manner.

4 P.W. 11 Anusaya Patil is the mother of P.W. 10. She has reiterated the narration of P.W. 10. In the cross-examination, she has admitted that her husband Shivaji was murdered and all the concerned accused were convicted and sentenced to imprisonment for life and that they were in the village on the date of the incident. She has also admitted that the accused/appellant as well as her son P.W. 10 are cultivating their own share. She has also admitted that they were lying abandoned for almost more than two hours and thereafter, the police had taken them to Belgaon Hospital.

5 The prosecution has examined P.W. 5 Dr. Mahabaleshwar Kaddi who had given treatment to the injured in K.L.E. Hospital. He has deposed before the Court that Sambhaji Patil was admitted in the hospital at about 12.20 a.m. i.e. in the mid night of 6/5/1995 and 7/5/1995. He had found following injuries on his person.

(i) Incised spindle shape wound over Rt. Side of the neck 5" x 1 ½" partially muscle was out and obliquely placed.

- (ii) Incised spindle shape wound just side, $\frac{1}{2}$ " below the 1st above said injury & obliquely placed 4" x 2" muscle deep.
- (iii) Penetrating incised wound on anterior wall of abdomen, intestines were protruded.
- (iv) Incised spindle shape wound on Lt. Ankle on posterior aspect 1 $\frac{1}{2}$ " x 1" muscle deep.

He has deposed before the Court that the injury No. 3 was sufficient in the ordinary course of nature to cause death.

6 He has also deposed before the Court that at the same time, Anusaya Patil was admitted by Chandgad Police Station. She had sustained following injuries :

- (i) Incised spindle shape injury over posterior aspect, Lt. side of scalp, (parital bone) obliquely placed 2" x 1 $\frac{1}{2}$ ", spindle shape bone deep.
- (ii) Incised wound behind Lt. Ear 3" x 1" cartilage deep.
- (iii) Incise spindle shape puncture-don Lt. Side back of the chest 1" lateral to midline lower part of lung punctured.

(iv) Incised spindle shape wound on Lt. Supra scapular area 2 ½” x 1” bone deep and tapering towards shoulder.

He has further deposed that the injury No. 3 was dangerous to life. He had issued the injury certificates which are at Exh. 19 and 20 respectively. It is elicited in the cross-examination that the certificate was issued on the basis of the M.L.C. record. That he has received the requisition letter from the police station alongwith the patient. He has admitted that he was not the first doctor to examine the patient. The earlier doctor would be in a better position to describe the injuries as well as the condition of the clothes.

7 P.W. 7 Dr. Pandurang Shinde was attached to Primary Health Center at Mangaon. He has deposed before the Court that on 6/5/1995 at about 9.15 p.m. the sarpanch of Mhalwadi called him one phone and informed him that two persons were injured and they are unconscious. That he had gone to the scene of offence and examined the injured. He has seen that the intestine was coming out from the injury of P.W. 10. He gave primary treatment and had tied

the injuries. P.W. 10 had received two injuries on the neck. He has deposed before the Court that both the injuries were serious. The police had taken the injured to the hospital. He has not been shattered in the cross-examination.

8 Upon perusal of the evidence adduced by the prosecution, it is clear that both the injured had fortunately survived injuries. The injuries sustained by them are proved by P.W. 5 and P.W. 7. In fact, it was an extremely unfortunate incident that two persons were lying in abandoned condition on the road with serious injuries. In fact, they could have succumbed to the said injuries for want of medical treatment. The injured are eye witnesses, as they have survived the injuries and there is no reason to disbelieve them on any count.

9 The learned Counsel for the appellant submits that in fact, it is due to quarrels inter se that the appellant has been falsely implicated. According to the learned Counsel, the appellant happens to be the uncle of the injured P.W. 10. They were almost residing in the same

house although there was notional partition and therefore, according to her, it cannot be believed that the uncle would have mounted assault upon P.W. 10 in the said manner.

10 Since the respondent Nos. 2 and 3 are not represented, this Court had requested advocate Ms. Monali Patil to espouse the cause of the respondent Nos. 2 and 3. She has graciously accepted to espouse the cause of respondent Nos. 2 and 3. By short notice, she has gone through the record and assisted the Court.

11 It is submitted by the learned Counsel appointed for the respondent Nos. 2 and 3 that the very fact that they are residing in the same house and yet not noticed by the appellant or his wife or any other kith and kin for almost two hours would reflect the insensitivity of the appellant and his family. According to the learned Counsel for the respondent Nos. 2 and 3, this omission on the part of the appellant and his family members would be sufficient to infer that the incident as narrated by P.W. 10 and 11 inspires confidence of the

Court and their sterling testimony, cannot be brushed aside by considering peripheral issues.

12 Taking into consideration the evidence on record and the submissions advanced across the bar, this Court is of the opinion that no fault can be found with the conviction recorded by the learned Additional Sessions Judge and that the appellant deserves to be convicted for the offence punishable under Section 307 of the Indian Penal Code. However, it is a matter of record that the appeal is of the year 1996. The appellant was in custody from 21/5/1995. He has faced trial as an under-trial prisoner. The Judgment was delivered on 28/6/1996 and this Court had granted bail to the appellant by an order dated 7th August, 1996.

13 Learned Counsel for the appellant submits that the appellant had furnished bail almost one week after 7/8/1996. The learned Counsel for the appellant fairly submits that in view of the pendency of the appeal for almost 20 years, a sympathetic view be taken as the

appellant is almost a senior citizen. That he has served the substantive sentence for one year and 3 months.

14 In view of the submissions made by the learned Counsel for the appellant, this Court is of the opinion that the appellant deserves to be sentenced to the period already undergone.

12 The learned Counsel appointed for the respondent Nos. 2 and 3 submits that in the said eventuality, the sentence of fine be enhanced. The learned Counsel for the appellant in reply submits that the appellant is an agriculturist. He has hardly 5 acres of land. That since there was drought, he cannot afford enhancement of fine.

13 However, this Court is of the opinion that the fine needs to be enhanced. In view of this, the fine is enhanced to Rs. 10,000/- i.e. Rs. 5,000/- in addition to the fine imposed by the Session Court and deposition of fine of Rs. 5,000/- at the time of being enlarged on bail needs to be taken into account.

14 Before parting with the Judgment, this Court appreciates the efforts taken by the learned advocate Ms. Monali Patil for espousing the cause of the respondent Nos. 2 and 3. The professional fees are quantified at Rs. 1,000/- to be paid to the learned advocate so appointed within 3 months from today.

15 Hence, the following order is passed :

ORDER

- (i) The appeal is partly allowed.
- (ii) The conviction of the appellant for the offence punishable under Section 307 of the Indian Penal Code in Sessions Case No. 27 of 1996 vide Judgment and Order dated 28/6/1996 passed by the learned Additional Sessions Judge, Gadhinglaj is maintained.
- (iii) The appellant is sentenced to the period already undergone. However, the sentence of fine is enhanced to Rs. 10,000/-, i.e. Rs. 5,000/- in addition to the fine imposed by the learned Additional Sessions Judge, Gadhinglaj.

- (iv) The fine to be paid within 8 weeks from today.
- (v) Out of the fine amount of Rs. 10,000/-, the injured Sambhaji (P.W. 10) shall be given compensation of Rs. 9,000/-.
- (vi) The learned Sessions Court, Gadhinglaj shall issue notice to Sambhaji Shivaji Patil and call upon him to receive the compensation of Rs. 9,000/-.
- (vii) The bail bond stands cancelled.

16 The appeal is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)