

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 374 OF 1996

Narayan Gangaram Khandekar.
Resident of Gotewadi,
Taluka- Mohol,
District- Solapur.

... Appellant.

Versus

The State of Maharashtra.

... Respondent.

WITH

CRIMINAL APPEAL NO. 707 OF 1996

WITH

CRIMINAL APPEAL NO. 708 OF 1996

The State of Maharashtra.

... Appellant.

Versus

1) Narayan Gangaram Khandekar.

2) Birudeo Narayan Khandekar.

3) Tanaji Narayan Khandekar.

(All resident of Gotewadi,

Tal: Mohol, Dist. Solapur.)

... Respondents.

Mr. Ujwal Agandsurve, advocate for Appellant.

Mr. R.S. Patil, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J

DATE : JANUARY 27, 2016

JUDGMENT :

1 Heard the learned Counsel for the appellant and the learned APP for State.

2 The appellant in Criminal Appeal No. 374/1996 is convicted for the offence punishable under Section 304 Part II of the Indian Penal Code and sentenced to suffer R.I. for 5 years by II Additional Sessions Judge, Solapur in Sessions Case No. 121 of 1995 vide Judgment and Order dated 18/6/1996. Hence, this appeal.

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

On 28/12/1994 Babasaheb Khandekar approached Mohol Police Station initially in an injured condition alongwith Vilas and Vaijayanta and informed the police that they had sustained injuries at the hands of the present appellant and others. Taking into consideration the urgency of the situation, PSI had given them

requisition and referred them to Primary Health Center and had also directed them to return to police station after taking first aid.

4 After taking first aid at Primary Health Center, Mohol, Babasaheb Khandekar again approached the police station and lodged a report that on 28th December, 1994 at about 7 a.m. he was carrying fodder on his head and was returning to his house from the agricultural land. Due to fodder on his head, he did not have sufficient vision. He gave a dash to Birudev Narayan Khandekar. There was verbal altercation between Babasaheb and Birudev. Babasaheb had informed him that because of fodder on his head, he could not see the person approaching from the opposite direction. Birudev started abusing and assaulting Babasaheb with fists and kick blows. He raised hue and cry. Upon hearing his hue and cry, his cousin Vilas Yashwant Khandekar, his wife Vijayanta Khandekar and Malhari Yashwant Khandeka came to the spot to rescue him. At the same time, Birudev was also accompanied by Tanaji Narayan Khandekar and Narayan Khandekar. There was a scuffle between both

the groups. In the said scuffle, it is alleged that Narayan had abused and assaulted Vilas by stick on his head and other parts of the body. He has sustained traumatic injury. He was referred to Civil Hospital, Solapur.

5 On the basis of the report of Babasaheb, Crime No. 209 of 1994 was registered against the accused for offence punishable under Section 324, 323, 504 read with Section 34 of the Indian Penal Code. The investigation was set in motion. The accused was arrested on 30th December, 1994 at Solapur.

6 The injured was taken to Wadia Hospital for C.T. Scan and thereafter, for treatment to Civil Hospital, Solapur. In the course of medical treatment, the injured had succumbed to the injury and report was accordingly sent to the police station on 30th December, 1994.

7 After completion of investigation, charge-sheet was filed. The
case was committed to the Court of Sessions and registered as
Sessions Case No. 121 of 1995. Prosecution examined 8 witnesses to
bring home the guilt of the accused.

8 It would be relevant to consider the evidence of first informant
who also happens to be an injured eye witness as well medical
evidence on record and the circumstance in which the incident had
occurred.

9 P.W. 1 Babasaheb Khandekar has deposed before the court that
on 28/12/1994 at about 7 a.m., he was carrying sugar cane fodder
on his head. When he reached near Babul tree, Birudeo had come
from front side. Since the bundle of the fodder was on his head, he
could not see him. He had given dash to accused No. 2, which was
the cause for altercation between 3 to 4 persons on each side. The co-
accused (acquitted) had assaulted P.W. 1 with fist and kick blows and
hence, they are acquitted. It is elicited in the cross examination that

initially, they had brought Vilas to Farm house. There are material omissions in the evidence of P.W. 1. He has proved the contents of the first information report, which is at Exh. 12.

10 P.W. 2 Dr. Dhanpal Parisa Ainapure was attached to Rural Hospital, Mohol from 20/6/1988. He has deposed before the Court that on 28/12/1994 injured were brought to the Rural Hospital alongwith reference letter of Mohol Police Station. Reference letters are at Exh. 15 and 16. The police had referred Vilas Khandekar. P.W. 2 had examined him at about 12.15 noon. He had found contused lacerated wound on right parietal area measuring 5 cm. x 1 cm. x ½ cm. The injury was simple in nature. The patient was conscious. P.W. 2 has placed medical papers on record, which are collectively marked as Exh. 17. Vilas had sustained head injury and hence, he has admitted in the hospital for observations. At about 4 p.m. on the same day, he had noticed that the condition of Vilas was deteriorating. At about 6.30 p.m. Vilas had vomited twice. P.W. 2 had informed his relatives and therefore, had directed them to refer

Vilas to Civil Hospital, Solapur and accordingly, he has shifted him to Civil Hospital, Solapur. It is elicited in the cross-examination that the injury sustained by Vilas was also possible due to fall. P.W.2 had not suspected any internal injury and therefore, he had given opinion that it was a simple injury.

11 It is pertinent to note that in the cross-examination P.W. 2 has admitted that Narayan was also referred for examination by the police. He had examined Narayan on the same day. He was confronted with the injury certificate of Narayan. That Narayan had also sustained (i) contused lacerated wound 1 cm x $\frac{1}{2}$ cm x $\frac{1}{2}$ cm on right forearm middle, $\frac{1}{3}$ rd ulnar aspect, (ii) contused lacerated wound 2 cm. x $\frac{1}{2}$ cm x $\frac{1}{2}$ cm. left frontal area. (iii) Abrasion $\frac{1}{2}$ cm x $\frac{1}{2}$ cm on epigastis. The injury certificate of Vilas would show that he had sustained only one injury which is shown as simple injury. It prima facie appears that the complications had developed subsequently.

12 P.W. 3 Dr. Ashok Kanki had observed sutured wound on the scalp right parietal region near vertex and the abrasion on right leg above ankle of Vilas.

13 The learned Counsel for the appellant has drawn attention of this Court to Column No. 17 of the post mortem notes which would indicate that Vilas has sustained only one external injury. However, there are corresponding internal injuries. The learned Counsel for the appellant rightly submits that it cannot be said that the accused had any knowledge of internal injuries corresponding to the external single injury of Vilas. The cause of death is shown as head injury and fracture of skull with intra-cranial haemorrhage.

14 There is nothing on record, to even remotely to indicate that there was previous enmity between two groups or that the present appellant had any intention to cause such injury to Vilas, which may necessarily result in his death.

15 P.W. 3 has stated that injury sustained by Vilas were sufficient in the ordinary course of nature to cause death. However, P.W. 3 has given expert opinion on the basis of post mortem notes.

16 That all the witnesses examined by the prosecution have specifically contended that the incident had taken place suddenly i.e on the spur of moment. There is nothing on record to remotely indicate that there was pre-meditation or previous meeting of mind to cause homicidal death of Vilas. Learned Sessions Judge has rightly held that no intention can be attributed to the accused for having caused death of Vilas. According to the learned Sessions Judge, accused had knowledge that the act committed by them would result into death. Prima facie, this opinion of the learned Sessions Judge cannot be upheld for the simple reason that the complainant as well as the accused are basically agriculturists. The quarrel had ensued due to a trifling dispute as P.W. 1 had given a dash to original accused No. 2. There is sufficient evidence to indicate that there was a scuffle between the two groups. The accused Narayan has also

sustained injuries in the said transaction and there is no plausible explanation forth-coming from the prosecution witnesses as to how Narayan had sustained injury in the same incident.

17 Upon perusal of the entire evidence, this Court is of the opinion that the appellant had rather taken the law in his own hands, he deserve to be convicted for an offence punishable under Section 324 read with Section 34 of the Indian Penal Code. The injuries sustained by the both the parties prima facie were simple in nature. There was no evidence on record to show that the accused had taken undue advantage of situation. The prosecution witnesses have also stated that the present appellant and others had nurtured a grudge against relatives. There was no pre-meditation or meeting of minds. The appellant had brandished stick and assaulted Vilas by the same stick. However, taking into consideration the fact that P.W.1 is also an agriculturist and that possession of a stick in the present circumstances cannot be considered to be a weapon.

18 It appears from the record that the appellant herein was arrested on 30/12/1994 and continued to remain in custody till 11/1/1996. Similarly, on 18/6/1996 he was again taken into custody and enlarged on bail on 28/6/1996.

19 In view of the above observations, the appeal deserves to be partly allowed. In the facts of the case, the appellant deserves to be convicted for the offence punishable under Section 324 of the Indian Penal code and sentenced to the period already undergone.

20 Hence, following order is passed :

ORDER

- (i) The Criminal Appeal No. 374 of 1996 is partly allowed.
- (ii) The conviction for offence punishable under Section 304 part II of the Indian Penal Code imposed upon the appellant-Narayan Gangaram Khandekar vide Judgment and Order dated 18/6/1996 passed by II Additional Sessions Judge, Solapur is hereby quashed and set aside. Instead, the appellant-Narayan Gangaram Khandekar is

convicted for offence punishable under Section 324 of the Indian Penal Code and is sentenced to the period already undergone.

(iii) The sentence of fine is maintained.

(iv) Bail bond stands cancelled.

21 In view of the fact that the appeal against conviction filed by accused Narayan Gangaram Khandekar is partly allowed, the appeal filed by the State challenging the said Judgment and Order deserves to be dismissed. Accordingly, the Criminal Appeal Nos. 707/1996 and 708/1996 stand dismissed.

22 All the appeals are disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)