

Vidya

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 440 OF 2007
(Not on board, taken on board)

1.	Balu Shivdas Dhas	
2.	Santosh Dnyaneshwar Chipde	
3.	Shivaji Uttareshwar Lomte	
4.	Rangnath Shamrao Dhas	... Appellants
	Vs.	
	The State of Maharashtra	... Respondent

Mr. Ujwal R. Agandsurve, Advocate for the appellants.
Mrs. U.V. Kejriwal, APP for the State.

CORAM: **MRS.V.K. TAHILRAMANI &**
MRS.MRIDULA BHATKAR, JJ.

DATE: **JUNE 16, 2016**

JUDGMENT (Per Mrs. Mridula Bhatkar, J.)

This Appeal is directed against the judgment and order dated 12th April, 2007 passed by the learned Principal District & Sessions Judge, Solapur in Sessions Case No. 173 of 2006 by which the appellants/accused were convicted for the offences punishable under section 326 r/w. 34 of Indian Penal Code to suffer R.I. for one year and to pay fine of Rs.1,000/-, in default to suffer S.I. for three months; and also for the offences punishable under section 323 r/w. 34 of Indian Penal Code they were sentenced to suffer S.I. for one day, i.e., till rising of the Court and to pay fine of Rs.500/-, in default to suffer further S.I. for 8 days.

2. This Appeal is triable by the Single Judge, however, while hearing group of four Appeals bearing Nos. 415 of 2007, 434 of 2007, 611 of 2007 and 1174 of 2007, we are informed that this Appeal is filed against the order of conviction in a cross case which was lodged out of the same incident of assault. As the facts in all these Appeals are same and it was out of cross case, we felt it appropriate to call the record and also to dispose of this Appeal.

3. The case of the prosecution, in brief, is that the incident of assault has taken place on 23rd October, 2005 between 8.00 a.m. to 8.30 a.m. at Village Dhas-Pimpalgaon. In the village, there was election of Village Panchayat. The appellants/accused belonged to Rashtravadi party and the complainant and injured belonged to other political party, namely, Shiv sena. In this case, one Chandrakant Kerba Dhas PW-6 is a complainant. He along with other injured persons was distributing voters slip near the polling booth and at that time, the appellants/accused armed with weapons like sticks, axe, sword arrived there and they assaulted the complainant Chandrakant and other persons and then there was a scuffle. Chandrakant and other persons were admitted to the Shushrusha hospital. Pursuant to the information given by Chandrakant to the police, an offence was registered at C.R. No. 80 of 2005 with the Pangri Police Station. The police carried out spot panchnama, recorded statements of the witnesses, collected injury certificates of the injured and filed charge

sheet after completion of the investigation. The case was committed to the Sessions Court. The charge was framed by the learned Sessions Judge. The accused pleaded not guilty. The learned Judge tried total 7 accused persons, out of which (original accused no. 1) Balu Shivdas Dhas, (original accused no. 5) Santosh Dnyaneshwar Chipde, (original accused no. 6) Shivaji Uttareshwar Lomte and (original accused no. 7) Rangnath Shamrao Dhas were convicted and others were acquitted.

4. The learned counsel for the appellant has submitted that this is a false case lodged against the appellants/accused. The accused persons are falsely implicated by the complainant Chandrakant Dhas and other witnesses only for the reason that they belonged to other political party. He submitted that the learned trial Judge has erred in believing these witnesses. PW-2 panch Waman Sadashiv Kakde on the point of recovery at the instance of accused Santosh Chipde did not support the prosecution. He further submitted that the injuries sustained to PW-6 Chandrakant and PW-8 Vithal Dhas are not of severe nature but they are simple. The fracture sustained to Chandrakant Dhas was not due to the assault by the accused persons. He submitted that the appellants were not aggressors. They had defended themselves when the complainant and the witnesses attacked on them. He submitted that the judgment of the learned trial Judge hence is to be set aside and the Appeal be allowed.

5. Learned APP submitted that there are eye witnesses and their evidence is cogent and consistent and the conviction in this case is justified.

6. In this case, the prosecution has examined 10 witnesses. PW-4 Bhanudas Prabhu Waghmode, PW-5 Hanmant Murlidhar Pawar and PW-8 Vithal Dhas are the eye witnesses other than the complainant PW-6 Chandrakant Dhas. All these witnesses have stated that the incident of assault has taken place on 23rd October, 2005 near the polling booth between 8.00 a.m. to 8.30 a.m. On perusal of the injury certificates of PW-6 Chandakant (Exhibit 44), PW-8 Vithal (Exhibit 43) it discloses that they have sustained injuries due to weapons. PW-7 Dr. Bhakre of Shushrusha Hospital has deposed about the injuries of Chandrakant and Vithal and the treatment given to them. The injury certificate of Chandrakant (Exhibit 44) discloses that there is fracture of front right bone of the skull and injury certificate of Vithal (Exhibit 43) discloses that there was CLW on the parietal bone. Thus, the evidence of these eye witnesses is supported by the medical evidence. We do not find any reason to disbelieve these witnesses. Therefore, we uphold the judgment of conviction given by the learned Sessions Judge under section 326 and 324 r/w. 34 of Indian Penal Code.

7. The learned counsel for the appellants have submitted that the incident of assault has taken place in the year 2005. After this incident,

two elections between the two groups have taken place peacefully. No further cases are registered between these two groups and the accused and complainant, injured persons and other persons are not carrying animus against each other. The learned counsel further submitted that the appellants are not the aggressors. A cross case was filed by the original accused no. 7 Rangnath Dhas against the complainant Chandrakant and eye witness Vithal Dhas and their associates, which is registered at C.R. No. 79 of 2005. In the said case, one Sarjerao, brother of accused Rangnath was killed by the complainant, eye witness Vithal and their associates. Their one of the associates Suresh Dhas was convicted under section 304 Part I of Indian Penal Code for 10 years and all the accused persons including complainant in the said case were convicted under section 326 of Indian Penal Code for a period of 3 years and under section 324 r/w. 149 for one year and with fine. Thus, they were the aggressors and the appellants had to defend themselves and scuffle took place. Therefore, even though the conviction is upheld, leniency is to be shown on the point of sentence. The appellants are not criminals. They are all staying in one village with the complainant and that group.

8. We gave thought on the point of quantum as we uphold the conviction. The submissions made by learned counsel for the appellants need to be considered, as there are certain mitigating circumstances. Sarjerao, brother of accused Rangnath was killed in the assault. Accused

Rangnath himself was injured along with 4 to 5 associates. Thus, it shows that the complainant and his associates were aggressors and they initiated fight. However, complete benefit of private defence cannot be given to the appellants because except Rangnath, other three accused were not injured. It is also true that though it was an attack with weapons, only one person, i.e., Chandrakant had sustained fracture. Other persons did not sustain fracture but there was CLW. When compared with the nature of the injuries sustained to the complainant and his associates and the human loss and injuries caused to other side are much lesser. The attack was not premeditated, it was sudden. It was not out of vengeance but it took place due to election fever. The incident has taken place 10 years back and since then, as pointed out by the learned counsel for the appellant, which is confirmed by the prosecution, there are no incidents of fight between the two group and they are living peacefully. Hence, though it is a conviction under section 326 of Indian Penal Code and wherein corporeal is necessarily to be given along with fine, as we have maintained the conviction, considering all these mitigating circumstances, we are inclined to reduce the sentence of punishment for the period undergone by the accused persons and maintain the fine as imposed. Thus, Appeal is party allowed.

(MRIDULA BHATKAR, J.)

(V.K. TAHILRAMANI, J.)