

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.432 OF 2000

The State of Maharashtra,
Through Public Prosecutor,
High Court, Bench at Aurangabad.

...APPELLANT

VERSUS

Sankosh s/o Tukaram Bhalerao,
Age-22 years, Occu:Agri. & Labour,
R/o-Malkapur, Tq-Latur.

...RESPONDENT
(Ori. Accused No.2)

...
Mr. A.R. Borulkar, A.P.P. for Appellant- State.
Mr. Abhay Rathod Advocate for Respondent.

...

CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.

DATE : 28TH JUNE, 2017

ORAL JUDGMENT [PER S.S. SHINDE, J.] :

1. This Appeal is preferred by the State
challenging the Judgment and order dated 27th July,

2000, passed by the Additional Sessions Judge, Latur in Sessions Case No.151 of 1997, thereby acquitting original accused No. 2/ Respondent – Sankosh s/o Tukaram Bhalerao from the offence punishable under Section 324 of the Indian Penal Code (in short "I.P. Code").

2. The prosecution case, in nut-shell, is as under :-

(A) It is alleged by the prosecution that on 15th April, 1997 at about 7.00 p.m. the original accused Nos.1 to 12 have formed an unlawful assembly in front of Samaj Mandir i.e. community hall at village Malkapur, Tq-Udgir. The common object of such assembly was to assault PW-4 Shrihari and to cause his death. The accused were armed with deadly weapons, viz. knives, and thereby the accused have committed an offence of rioting with dangerous weapon punishable under Section 147 and 148 of the I.P. Code.

(B) It is further alleged by the prosecution that accused Nos.1 and 2 being members of such an unlawful assembly, and in prosecution of their common object to assault and cause death of the informant Shrihari (PW-4), accused Nos.1 and 2 have given knife blows at the back and head of the informant Shrihari (PW-4), and thereby attempted to commit his murder, and as such accused Nos.1 to 12 are vicariously liable for punishment under Section 307 read with Section 149 of the I.P. Code, and in alternate individually for the offence of murderous attack punishable under Section 307 of the I.P. Code.

(C) It is the case of the prosecution that the proclamation was issued under Section 37(1)(3) of the Bombay Police Act by the District Magistrate, Latur prohibiting formation of any assembly. Accused however have formed an unlawful assembly with deadly weapons, in contravention of

the proclamation, and thereby committed an offence punishable under Section 135 of the Bombay Police Act.

(D) It is the case of the prosecution that all the accused i.e. accused Nos.1 to 12 are resident of village Malkapur, Tq-Udgir. The victim PW-4 Shrihari is also resident of the same village Malkapur. He is employee of one poultry farm of one Shivaji.

(E) It is the case of the prosecution that one Sopan Souda Bhalerao has gifted his plot admeasuring 20 X 25 foot for the construction of community hall at village Malkapur. Panchayat Samiti, Udgir has constructed community hall upon said disputed plot, allegedly gifted by Sopan Bhalerao, in the year 1987. The accused are claiming that the said plot is owned by them. Often quarrel used to take place on account of ownership of the plot in between accused one side,

the owner Sopan Bhalerao and the prosecution witness PW-4 Shrihari, PW-3 Shrawan Bhalerao etc. on another side. The suits and appeals are pending in the Court for adjudication of title of the plot. The villagers used to celebrate birth anniversary of Dr. Babasaheb Ambedkar in the said community hall constructed by Panchayat Samiti upon the disputed plot.

(F) On 14th April, 1997 birth anniversary of Dr. Babasaheb Ambedkar was celebrated in the community hall. Injured PW-4 Shrihari attended the anniversary function in the community hall. PW-5 Sakhubai is sister of PW-4 Shrihari. It is alleged that on 15th April, 1997, accused Nos.1 and 2 abused PW-5 Sakhubai, as her brother informant PW-4 Shrihari attended the anniversary function at the disputed community hall premises. PW-5 Sakhubai informed the said incident of abusing her to PW-4 Shrihari on his return from duty, in the evening. PW-4 Shrihari asked accused Nos.1 and 2,

as to why they had abused his sister PW-5 Sakhubai. Some altercation took place between them. Accused Nos.1 and 2 called accused Nos.3 to 12 who were sitting nearby the community hall. In response to such call, it is alleged that accused Nos.3 to 12 assembled, armed with deadly weapons in front of the community hall. Accused Nos.3 to 12 started pelting stones and abused PW-4 Shrihari and instigated accused Nos.1 and 2 to assault him. Accused No.1 taken out a knife and gave knife blow to backside ribs of Shrihari causing him bleeding injury. Accused No.2 gave knife blow to the head of PW-4 Shrihari causing him bone deep injury. On hearing noise of commotion, the neighbouring eye witnesses, i.e. PW-2 Sunanda Kamble, PW-3 Shrawan Bhalerao, PW-6 Ram Bhalerao, PW-5 Sakhubai and PW-8 Manohar arrived to the spot and they have witnessed the incident. PW-5 Sakhubai tried to snatch knife from the hand of accused No.1 and thereby sustained bleeding injuries to her palm. PW-4 Shrihari was

taken to the police station. Police referred him to the hospital and thereafter he lodged complaint to the police station, Udgir and the offence bearing Crime No.53 of 1997 was registered.

(G) Investigating Officer Mr. Mundhe, police head constable carried out the investigation, drew panchnama of scene of offence, the blood stained clothes of injured PW-4 Shrihari were seized. Accused were arrested. At the instance of accused, the weapons were seized under panchnama. The case was committed to the Court of Sessions at Latur. The trial Court framed the charge against accused Nos.1 to 12. The accused persons pleaded not guilty and claimed to be tried.

3. After recording the evidence and conducting full fledged trial, the trial Court convicted accused No.1 for the offence punishable under Section 324 of the I.P. Code and sentenced him to suffer rigorous imprisonment for three

months and to pay fine. The trial Court acquitted rest of the accused i.e. accused Nos.2 to 12 from the offences with which they were charged. Hence this Appeal by the State against acquittal of original accused No.2 from the offence punishable under Section 324 of the I.P. Code.

4. Learned A.P.P. appearing for the State invites our attention to the evidence of the prosecution witnesses and in particular, evidence of PW-4 Shrihari Pundlik Kamble and submits that his evidence gets corroboration from the evidence of other eye witnesses and also from the medical evidence. He further submits that the trial Court has accepted the evidence of prosecution witnesses and also the medical evidence, however, wrongly acquitted accused No.2 - Sankosh s/o Tukaram Bhalerao. It is submitted that it has come in the evidence of PW-4 Shrihari that when he returned from his duty at about 5 p.m. in his house, his sister Sakhubai informed him that accused Nos.1

and 2 had abused her. Therefore, he asked accused No.1 as to why he had given abuses to Sakhubai, sister of PW-4. The accused No.1 replied that he would also beat PW-4. Meanwhile accused No.2 instigated to caught hold PW-4 and then accused No.2 gave a knife blow to the head of PW-4. Therefore, it is submitted that when accused No.1 is convicted for the offence punishable under Section 324 of the I.P. Code, in that case even accused No.2 Sankosh s/o Tukaram Bhalerao ought to have been convicted for the same offence. It is submitted that all the eye witnesses, except PW-2, stated that accused No.2 i.e. Respondent herein also inflicted blows by knife. PW-4 Shrihari sustained five injuries and out of them some of the injuries are on vital part. Medical officer was examined by the prosecution. Therefore, he submits that there was no reason for the trial Court to acquit the Respondent1 and the view taken by the trial Court was not possible view.

5. On the other hand, learned counsel appearing for the Respondent invites our attention to the findings recorded by the trial Court and submits that those are in consonance with the evidence brought on record and there is no any factual or legal infirmity and therefore the impugned Judgment and order deserves no interference. He submits that the Investigating Officer who conducted the investigation, was not examined by the prosecution. It is submitted that evidence of the alleged eye witnesses suffers from serious omissions, contradictions and improvements and makes it unbelievable. The trial Court, after considering different versions stated by the eye witnesses about the role of the Respondent in the incident, has taken a possible view and acquitted the Respondent.

6. We have given careful consideration to the submissions of the learned A.P.P. appearing for the Statements and learned counsel appearing

for the Respondent. With their able assistance, we have perused the entire evidence so as to find out whether the findings recorded by the trial Court are in consonance with the evidence on record or otherwise.

7. It is true that there are as many as five eye witnesses and their evidence has been believed by the trial Court so as to convict accused No.1 – Vilas s/o Hanmant Bhalerao for the offence punishable under Section 324 of the I.P. Code. However, at this stage it would be relevant to discuss the evidence of PW-4 Shrihari Pundlik Kamble, who was the informant and was injured in the incident. In his deposition before the Court he stated that he knows all the accused. Present incident had taken place before three years of recording his evidence. The incident had taken place on 2nd day of Dr. Babasaheb Ambedkar Birth Anniversary. The said incident was taken place at the evening time when he returned from his

official duty at about 5.00 p.m., at which time his sister Sakhubai informed him that accused Nos.1 and 2 had abused her. Therefore he asked accused No.1 as to why he abused Sakhubai and thereafter there was some altercation between accused No.1 and witness himself. Accused No.2 instigated to caught hold the witness. Accused No.1 then gave a knife blow at the right side rib of his chest. Accused No.2 gave knife blow to his head. Accused No.1 attempted to give another knife blow to him but that blow was defended by his sister Sakhubai by snatching the knife. He further stated that both the palms of Sakhubai got injured in the said incident. PW-4 Shrihari also sustained bleeding injury to his head. He has further narrated the details about the manner in which accused assaulted him. Upon careful perusal of his evidence, he stated that accused Nos.5 and 8 did not come to the place of incident. Accused Nos.2, 4, 6, 7, 9, 11 and 12 have pelted stones. Thereafter he was taken to the civil hospital and

thereafter he lodged the complaint. During his cross-examination, he reiterated his statements in examination-in-chief.

8. However, if we peruse the evidence of another eye witness i.e. PW-2 Sunanda Murhari Kamble, in her evidence she stated that accused No.1 gave blow by knife to the back of Shrihari and accused No.2 gave sword blow to the head of Shrihari. Shrihari thereby sustained bleeding injury to the head and to his back. Even in her cross-examination she reiterated her statement in examination-in-chief that accused No.2 gave blow by sword on the head of PW-4 Shrihari. Presence of PW-2 Sunanda at the spot is stated by other prosecution witnesses, including PW-5 Sakhubai. It is also relevant to make reference to the evidence of PW-6 Ram Maruti Bhalerao, who was also eye witness to the incident. In his evidence, he stated that accused No.1 gave knife blow to the rib back side of PW-4 Shrihari. Accused No.2 took

knife from accused No.1 and then accused No.2 gave knife blow to the head of PW-4 Shrihari.

9. Upon comparative account of all the above three eye witnesses, it is clear that all the three eye witnesses have stated different version so far weapon used by accused No.2 in the alleged commission of offence. As already observed the deposition of PW-2 Sunanda cannot be brushed aside when the prosecution is approaching with two versions that accused No.2 assaulted PW-4 by sword and another witness says that blow was by knife and third witness says that knife was snatched by accused No.2 from accused No.1 and then blow was given. In that case the trial Court was justified in giving benefit of doubt in favour of accused No.2 i.e. Respondent herein. Apart from it, alleged recovery of knife from the Respondent is not supported by the panch witness. As already observed, the Investigating Officer was not examined by the prosecution. We do not think it

necessary to lengthen this Judgment by reiterating the findings recorded by the trial Court. Suffice it to say that the findings recorded by the trial Court are in consonance with the evidence brought on record by the prosecution and the view taken by the trial Court in acquitting the accused No.2 i.e. Respondent herein, is a possible view. This Appeal is preferred only against original accused No.2 - Sankosh s/o Tukaram Bhalerao, therefore we need not travel beyond the case of the prosecution qua Respondent - Sankosh s/o Tukaram Bhalerao.

10. For the reasons aforesaid, we do not find any merit in the Appeal. Hence the Appeal stands dismissed. The bail bonds, if any, of the Respondent, shall stand cancelled.

[S.M. GAVHANE, J.]

asb/JUN17

[S.S. SHINDE, J.]